Introduction

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No area of law and policy presents more important and pressing questions, or ones more central to human well-being, than that of housing. Yet academic discourse around housing is too often siloed into separate topical areas and disciplinary approaches, while remaining distanced from the contentious housing policy debates unfolding in communities across the nation. In June 2016, the Kreisman Initiative on Housing Law and Policy at the University of Chicago Law School convened a conference in downtown Chicago with the goal of breaking down these barriers and forging new connections – between different facets of housing law and policy, between different disciplinary approaches to housing issues, between academic inquiry and applied policy, and between the lessons of the past and adaptations for the future.

This volume is the product of that conference and the dialogue it provoked among academics, practitioners, and policy makers. Its baker's dozen of contributions comprises cutting-edge interdisciplinary work on housing and housing finance from leading scholars in law, economics, and policy. The pieces individually and collectively showcase how research and policy can come together in the housing arena. We hope the end result will have lasting relevance in setting the course – and identifying the obstacles – for housing law and policy going forward.

This book is organized around two interlocking roles that housing serves: as a vehicle for building community, and as a vehicle for building wealth. These facets of housing carry implications both for the households who consume residential services and for the larger economic, political, and spatial domains in which housing plays such a primary and contentious role. Cumulatively, the pieces here confront, and respond innovatively to, the dilemmas that these two facets of housing create for law and policy at different scales of analysis.

Part I takes a wide-lensed look at how housing fits into the larger metropolis and the communities and spatial structures contained within it. The contributions in this part consider the ways in which decisions about land use controls, transportation, and housing affordability shape where and how people live. Zoning regulations heavily influence the quantity and location of different kinds of housing stock

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throughout the urban landscape, and their restrictiveness plays a key role in inflating home prices. William Fischel's chapter pushes beyond these well-documented findings to interrogate the causal mechanisms at play. Restrictive zoning policies are not just the *cause* of rising home prices, he posits; they are also the *result* of rising home prices. In his view, escalating home prices in the 1970s turned homeowners, who had previously seen the home as just a place to live, into a powerful interest group – "homevoters" – bent on employing local politics to protect the value of what they now saw as a growth stock.

Homeowners thus became intensely motivated to mobilize against development, which they perceived as a threat to the value of the household's single largest asset, the home. One way they did so, Fischel explains, was by allying themselves with the then-nascent environmental movement, which provided protective cover for their less-than-selfless goals. This account underscores the connections between different land use agendas and interest groups, as well as between different elements of housing policy. Fischel argues that tax breaks for homeownership help fuel a cycle of overinvestment in housing that contributes to overprotective land use policies and higher housing prices, which in turn reinforce a vision of the home as a household's primary growth asset. His analysis also emphasizes path dependence, as homeowners sort into communities that feature the restrictive land use policies that they favor, further entrenching the political will to preserve or tighten those restrictions. In this way, housing policy begets housing policy, and breaking the cycle requires rethinking the forces – including tax policy – that contribute to this entrenchment.

Interconnectedness and path dependence also feature heavily in David Schleicher's contribution, which examines interactions between land use controls and transportation innovations – from the now-familiar GPS systems for cars, to popular ride-hailing services like Uber and Lyft, to emerging developments in autonomous vehicles. These and other transportation innovations might make one's existing commute easier, but, as Schleicher explains, their real power lies in their capacity to transform where housing can be located relative to workplaces and other points of interest. Schleicher argues that innovative shifts in transit could make useful new forms of "distributed density" possible. But if the real estate development that would produce these patterns is prohibited by existing land use controls and cannot be readily changed – and Fischel's analysis suggests some reasons why this might be the case – transportation technologies may be unable to fulfill their potential in contributing to more functional urban agglomerations. In fact, Schleicher suggests, we might see new transit technologies used in the service of increased sprawl as autonomous vehicles and similar innovations enable longer commutes by rendering them less tedious and unproductive.

Whether one urban pattern is to be preferred over another is of course a normative question, one that raises broader questions of what makes for a good city or a good way of life. While land use controls can thwart the realization of preferences, they can also at times solve collective action problems and address costly externalities.

What is certain is that the future placement of housing stock within the metropolis will depend not just on the possibilities that transportation innovations open up, but also on the avenues that land use controls shut down – for better or worse. Schleicher's work prompts thoughtful attention to transportation policy as an element in housing policy (and vice versa), and highlights land use law as foundational to both.

The third chapter in Part I examines another facet of land use policy as it relates to housing: "inclusionary zoning" laws that require housing developers to set aside a certain percentage of units in their projects for affordable housing. Although the details of these laws vary widely, they have in common the goal of enhancing housing affordability in areas that are undergoing new residential development, typically by requiring the in-kind provision of affordable units or the payment of an "in lieu of" fee for the development of affordable housing offsite. Using the recent California Supreme Court case *California Building Industry Association v. City of San Jose* (2015) as a springboard, Richard Epstein argues that such laws are counterproductive as a matter of economics, and should be impermissible as a matter of constitutional law.

Epstein's economic argument is straightforward. If the business of residential development is made more expensive by a requirement to provide affordable units, we would expect to see less residential development – something that would reduce supply and be bad for housing affordability. What complicates the picture, however, is the fact that these inclusionary zoning mandates are enacted against a backdrop of pervasive regulation of housing stock – the zoning restrictions that were the subject of Fischel's chapter and that featured prominently in Schleicher's. Under a typical inclusionary zoning ordinance, developers are permitted to build more housing or build it at higher densities than would otherwise be allowed if they provide the required number of affordable units. What, then, is the appropriate baseline when assessing the impact of such an ordinance on housing supply: a world without any other restrictions on developing housing, or the already heavily restricted world in which developers seek to build?

Answering this question leads us to Epstein's legal analysis. His interpretation of the takings clause eschews the distinctions that the Supreme Court uses to determine when a regulation is so invasive or confiscatory as to require just compensation. In Epstein's view, *every* diminution in the value of property is a taking that must be accompanied by just compensation, whether in cash or in kind. Thus, although Epstein focuses his critique in this chapter on affordable housing mandates, his legal and economic critiques extend broadly to a range of land use controls that constrain owners and restrict housing supply – including those that provide the backdrop against which affordable housing mandates operate. Given the capacity of the government to set these background conditions, the deal extended to developers through inclusionary zoning ordinances is, in Epstein's view, an impermissible land use exaction. Epstein's chapter thus prompts readers not only to investigate when well-intentioned laws might have unintended consequences, but also to consider how the burdens associated with achieving housing policy goals should be distributed among members of society.

Part II zooms in to consider how community identity and resident perceptions shape the housing consumption experience. A recurring theme is the interplay between stability and change in residential neighborhoods. One tool for managing these tensions is through historical preservation initiatives, through which individual landmarks or entire neighborhoods are protected from redevelopment. In their chapter, Ingrid Gould Ellen and Brian McCabe argue for more explicit and balanced assessments of the costs and benefits of historic preservation. They offer a compelling approach to estimating development constraints imposed by preservation initiatives in historic districts. By estimating the amount of unbuilt floor area within a district, and comparing the density of historic districts to their undesignated but nearby counterparts, Ellen and McCabe provide a clear methodology for measuring the direct costs of preservation.

Their evidence from New York City suggests that supply restrictions in historic districts reduce density, increase prices and rents, and likely exacerbate economic segregation. Ellen and McCabe conclude by recommending a restructuring of the preservation decision-making process in New York City, highlighting the need for independent assessments beyond the Landmarks Preservation Commission, a formal comment from the City Planning Commission, an "as of right" framework for construction on vacant and non-contributing sites, and a direct estimated impact on housing supply. Their analysis highlights the fact that historic preservation is at its core land use regulation, with development-suppressing effects that echo those identified by Fischel, Schleicher, and Epstein in Part I. While the countervailing benefits of neighborhood stability and landmark preservation are acutely difficult to measure, this chapter provides a necessary rethinking of the costs of historic district designation.

Historical preservation is, of course, a central way in which communities construct and preserve their identities – and, in so doing, influence the composition of their populations. Lior Strahilevitz's chapter raises pointed questions about this process by focusing on a setting where history is literally manufactured out of thin air. The Villages, a set of retirement communities in Florida, seeds its walkable and golf-cartable "downtown" areas with dozens of plaques recounting fictitious historical events, and pairs them with suitably themed and distressed buildings featuring peeling signs from a nonexistent past. While this overlay of artifice strikes some observers as rather creepy on its own terms, more troubling is the uncanny degree of racial homogeneity that exists in The Villages – despite its location in a diverse region, its residents are overwhelmingly white. Strahilevitz raises the possibility that contrived history could serve as a kind of "exclusionary amenity" that induces residential sorting along racial lines. But he does much more than this: he provocatively suggests that "real" history is nearly as inauthentic, and fully capable of operating in an equally exclusionary fashion.

The kind of history that gets preserved through land use law, Strahilevitz observes, is always highly selective. If preservationists were serious about preserving the past, he suggests, choosing random buildings from particular eras would do a better job, and at less social cost. Recognizing that all history is consciously constructed and curated should weaken any reflexive normative deference to preserving the past in setting land use policy. Strahilevitz's contribution pushes us not only to examine carefully the sorts of costs that Ellen and McCabe explore, but also to question the benefit side of the equation as well. Counterintuitively, false histories may serve just as well – or just as poorly – as anchors for community identity. And if historical truth is not necessary for establishing a community's identity, neither is it sufficient, as Strahilevitz's randomization thought experiment emphasizes.

Ultimately, the case for preserving or redeveloping the past must turn on its impacts on the residents – present and potential – who stand to gain or lose. That community change brings losers as well as winners comes through clearly in Georgette Phillips's contribution, which examines the repurposing of churches for secular ends, including upscale condominiums and lofts. Church conversions typically follow dramatic attrition in church membership in particular areas and offer the potential both to generate funds for the church (through the sale of valuable, well-positioned real estate) and to inject new development into a foundering area. But because churches serve as more than worship centers and play a crucial role in delivering services to the communities in which they are located, the conversion process may have ripple effects that undermine the viability of the remaining community and accelerate community change. Phillips considers a variety of approaches to this dilemma, which is sharpened by the fact that land use restrictions may often limit the introduction of stand-alone community service providers, and suggests the use of impact fees to induce decision makers – whether developers or churches – to internalize the effects of their choices on the community.

Church conversions to condominiums may be largely a symptom rather than a cause of the decline in the community for which the church served as anchor and mainstay, and could even be a marker of a shift to a more diverse community that is no longer centered around a single faith tradition. Nonetheless, the phenomenon could exacerbate a trend toward gentrification in the area, spurring fears of involuntary displacement or a diminished neighborhood experience. Even though housing is being added to the mix, a fact that should advance housing affordability, there may be concerns that the new housing stock will be configured and priced in a way that would place it out of reach for the original residents who are simultaneously losing services.

Some of the more subtle and pernicious effects of involuntary displacement from one's home are explored in Matthew Desmond's chapter. Desmond finds that renters who arrived in their neighborhood through "forced moves" (via eviction, foreclosure, or building condemnation) were half as likely to trust their neighbors

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relative to other renters, and far more likely to perceive suffering in their neighborhood. Such perceptions of the neighborhood will have a key impact on residents' willingness to strengthen neighborhood ties, improve local public goods like schools and parks, and participate in local government. Desmond explores the role of housing dynamics and neighborhood perceptions using data from a survey of renters in Milwaukee, Wisconsin. The survey both measured the degree to which renters trusted their neighbors, and asked a series of questions regarding the perception of social problems in the neighborhood.

Crucially, the analysis accounts for neighborhood quality and housing characteristics, so this comparison isolates a difference in perceptions about their current neighborhood between renters with and without a forced relocation. Renters who found their housing through government or nonprofit agencies also held a more negative view of their neighborhood. Desmond's work raises new questions regarding the importance of housing dynamics in determining a resident's outlook on her community. The results from this timely and ambitious study should encourage policy makers to revisit the eviction process, temporary housing alternatives, and source-of-income discrimination laws to help low-income families improve their level of trust in community. It also carries implications for the ways in which housing policy assists homeseekers.

Housing is not only central to residents' sense of community, it is also critical to their financial well-being. Part III thus turns to the wealth-building facet of housing policy, considered from the perspective of the housing consumer. Homeownership is often viewed as virtually the only viable path to significant wealth building for most Americans. It offers both a highly leveraged stake in a large asset and an automatic vehicle for regular savings, while at the same time controlling housing expenditures over time. There are some problems with this vision of homeownership, however. Not only is the home an undiversified asset that is highly vulnerable to risks that lie out of the homeowner's control, as the recent foreclosure crisis dramatically demonstrated, it may also prompt the sorts of risk-averse defensive behaviors that Fischel identifies, which raise the costs of housing by limiting development. Moreover, discrimination in housing finance can derail a household's wealth-building plans and produce devastating setbacks by making mortgages unnecessarily expensive and risky. The chapters in this part take on these challenges from a number of perspectives.

Variations on homeownership that would reduce the amount of housing market risk that households must bear have received some attention, but the potential for a variation on the rental model to deliver some of the wealth-building benefits of homeownership has been almost entirely ignored. Stephanie Stern takes up this topic in her chapter by examining some emerging models of "renter equity" that enable tenants to build up savings for undertaking particular behaviors. While these models do not extend a true equity stake to renters, they do provide an automatic savings vehicle with vesting rules that encourage staying put in one's residence – and leaving the money in place to grow – as well as an incentive structure that rewards the kinds of behaviors, including maintenance and upkeep, in which homeowners often engage. Selection effects make evaluating this form of tenancy tricky, however, and the fact that existing models bundle multiple features together makes tracing causal mechanisms difficult. Stern's contribution highlights the importance of parsing these effects and queues up a set of empirically testable questions for future researchers to pursue. It also emphasizes the importance of taking into account the findings of behavioral law and economics about human cognition, willpower, and precommitment in setting housing policy.

Homeownership has traditionally enabled wealth accumulation through self-amortizing mortgages that represent a form of automatic or forced savings. As the baby boomers reach retirement, a crucial source of wealth and opportunity is tied up in their homes. More than 75 percent of retirees own (and have substantial equity in) their homes. In his chapter, Christopher Mayer explores the relationship between homeownership and retirement stability, connecting a number of disparate datasets and measures of financial health. Mayer documents that over the past two decades mortgage debt has increased substantially among older cohorts, especially those nearing retirement age. Furthermore, more households are entering retirement without fully paying off their mortgages. Thus, mortgage debt will serve as a greater burden on consumption in retirement years. Mayer also finds that few households pay down debt by selling their homes, keeping much of their equity in their homes until very late in life. The results suggest that baby boomers' decisions on how and when to extract equity from their homes, either through downsizing or reverse mortgages, will determine much of their financial health during their retirement years. This analysis carries important legal and policy implications, as it bears on the choice sets and protections that will be most useful to housing consumers over the life cycle.

The capacity of households to build wealth through homeownership can be thoroughly undermined by invidious discrimination, as the contribution of Ian Ayres, Gary Klein, and Jeffrey West demonstrates. Ayres and his coauthors show how discretion granted to mortgage brokers led to higher-cost mortgages for African American and Hispanic borrowers for reasons unrelated to the substantive measures of creditworthiness built into lenders' underwriting algorithms. Not only do these more costly mortgages undercut efforts to accumulate equity, they also increase the risk of foreclosure. Moreover, because of entrenched residential segregation, the prevalence of high-cost loans in communities of color – "reverse redlining" – produces a negative synergy of heightened risk as proximate foreclosures cause property values to fall, making further foreclosures more likely. The resulting involuntary moves can be personally as well as financially devastating for households.

Disparate impact analysis might seem to provide a promising avenue for redress, especially in the wake of the Supreme Court's recent decision in *Texas Department* *of Housing & Community Affairs v. The Inclusive Communities Project* (2015), which recognized the validity of the disparate impact cause of action under the Fair Housing Act. But as Ayres and his coauthors show, there are significant legal roadblocks in the path. In *Inclusive Communities* itself, the Supreme Court articulated tight causation requirements that may be difficult for litigants to meet. Another hurdle is found in another Supreme Court decision, *Wal-Mart Stores v. Dukes* (2011), that suggests individual discretion of the type exercised by mortgage brokers might not constitute the sort of unified policy that could be subject to legal attack through a class action lawsuit. As a result, Ayres, Klein, and West suggest that meaningful relief may depend on the choices of government actors such as the Consumer Financial Protection Bureau. The evidence that this chapter marshals showing the costs to minority households from inappropriate and excessively expensive mortgage products provides an important input for future legal and policy initiatives.

Part IV examines housing finance's role from a broader economic perspective. In a series of influential papers, Atif Mian and Amir Sufi have investigated the relationship between credit supply and the recent housing bubble. In their chapter in this volume, the authors provide additional new evidence that supports the "credit supply view" of the boom and bust. Their chapter establishes four key facts about the boom and bust. First, mortgage credit grew independently from economic conditions. Second, this credit growth directly increased house prices. Third, home equity extraction was a common response to house price growth. Fourth and finally, the default of homeowners with lower credit scores precipitated the broader default crisis.

Using a range of data sources, Mian and Sufi carefully document these four facts, and conclude that the financial sector played a crucial role in explaining the boom and bust. The centrality of the financial sector suggests a role for macro-prudential regulation, such as countercyclical loan-to-value restrictions. The credit supply view also supports the need for innovation in mortgage contracts to spread risk more broadly, reduce leverage, and infuse more equity into a highly levered system that amplifies housing cycles.

A key element of the modern mortgage system is the transformation of mortgage debt from an asset on the originator's balance sheet to a tradable security through securitization. However, securitization passes nearly all mortgage risk from the originator to the securities market. Contractual obligations, such as legal representations and warranties regarding the quality of the mortgage loans being sold, are supposed to assure investors that underwriting standards are kept at a high level.

In their chapter, Patricia McCoy and Susan Wachter examine why representations and warranties failed to protect the securitization system. They argue that, prior to 2008, the representations gave investors false assurance, which led to overinvestment in mortgage-backed securities (MBS). However, after the bust and massive losses on these securities, the securitization system has been hampered by excessively restrictive representations and warranties, and the enforcement of those provisions, leading to underinvestment in MBS and an underprovision of mortgage credit. McCoy and Wachter conclude that lenders should have been required to build up reserves to cover representation and warranty enforcement; they propose stricter capital standards to ensure that lenders have more ability to withstand the inevitable housing cycles of the future.

In this book's final chapter, Raphael Bostic and Anthony Orlando examine three causes of the housing crisis that have received little scrutiny from regulators thus far. First, the authors argue that nothing has been done to prevent firm owners and managers from "looting" their firms at the expense of long-run profitability for shareholders. This disconnect between short-run and long-run incentives may be best addressed by reforms in executive compensation and increased penalties for over-weighting the short-run financial gains over the long-run viability of the firm. Next, the authors examine why the credit ratings agencies failed to impose market discipline on mortgage lending. They outline the problematic agency–investor conflicts of interest inherent in the "issuer pays" model of credit ratings, and propose a structure to mitigate these issues. Third and finally, the authors shed new light on the tradeoff between access to credit and risk exposure in consumer credit markets. They emphasize the potential for greater financial literacy, as well as the possibility of creating subsidies for lending to creditworthy low-income borrowers.

With a colorful set of historical examples, Bostic and Orlando's chapter creatively charts out a series of reform proposals for making the financial system smarter and safer. Although it is not possible to anticipate the novel problems that the future will bring, some of the long-standing tensions and incentive mismatches that emerged in the recent crisis had deep roots in the past, and deserve continued attention going forward. There are recurring tensions between access to credit and vulnerability to risk, and between financial innovation and concerns for stability. And, as other chapters in this book emphasize in a variety of ways, the stakes could not be higher. People's lives are deeply bound up in the places that they live, both financially and experientially. Housing policy also carries repercussions for, and is impacted by, everything that affects the spatial structure of our urban areas and the soundness of our financial systems.

In all, this book's broad-ranging scope and mix of methodologies provide an unprecedented, holistic look at how these facets of the housing puzzle interact. At the same time, the contributions we bring together here are only the start of a series of important and necessary conversations around housing. We look forward to continuing the dialogue.