

## HOUSING OCCUPANCY STANDARDS: INSCRIBING ETHNICITY AND FAMILY RELATIONS ON THE LAND

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*Attempts to define family and the appropriate sociospatial arrangements for an idealized "normal" U.S. household formation have had profound influences on the design and size of houses, apartments, and communities throughout the twentieth century. Based on ethnographic, historical, social, political, and legal research, this paper explores the sociopolitical construction of occupancy standards (the number of people who may legally live in a unit based on size and/or number of bedrooms per person). It concludes that the regulations derive from a combination of upper-class English ideals and outdated scientific knowledge, with concomitant moralistic and assimilationist aspirations on the part of the policy makers. Today, these social ideals still implicitly underlie much of our current urban design, affecting the ethnic, racial, and economic structure of cities, and by extension, homelessness, coercive segregation, and access to services.*

## INTRODUCTION

### *DSS Dream*

*I dreamed  
the Department of Social Services  
came to the door and said:  
"We understand  
you have a baby,  
a goat, and a pig living here  
in a two-room apartment.  
This is illegal.  
We have to take the baby away,  
unless you eat the goat."*

*"The pig's OK?" I asked.*

*"The pig's OK," they said.  
(Martín Espada, 1993)*

It was Gabriella's first night in college. Like most new students she was sharing a room with a stranger. "I was feeling homesick and lonely and couldn't sleep. It was the first time I'd ever slept alone in a bed. I heard Barbara" — her stranger roommate — "also being restless. I turned to her and asked, 'You can't sleep either?' 'No,' Barbara replied, 'I've never shared a room before.'"<sup>1</sup>

Both are middle class, Gabriella Mexican-American and Barbara from a midwestern farm family of northern European heritage. Both had learned important lessons about the self, relation to others, the body, individualism, and interdependency in this one seemingly trivial practice of household spatial arrangements. Each saw her own experience as normal. Neither had had occasion to think about how they lived before this.

Joanna is 45, Jewish-American, brought up in the Bronx and Queens, and now is a civil rights attorney specializing in housing discrimination.

In our interview Joanna took the lead:

*Can I start by telling how I realized how I lived?*

*I never really thought about how I lived until I was an attorney working city cases where the state was moving to take kids away from their families. One case had a very young social worker, 24, and she was just outraged that a grandmother was sleeping in the same room with her grandchild. [The social worker] said it's "inappropriate and we have to intervene in this family and take this child out. How could you have two generations ... sleeping in the same bedroom ... It's totally inappropriate."*

*The social worker was white Anglo, and this was ... an African-American family. And I was just shocked because it never occurred to me that this would be something that was unacceptable. And all of a sudden I said, "Wait a minute, I grew up living in the same bedroom as my sister and my mother and father. And there was nothing wrong with that ... I'm OK." And I think then it hit me that that was not this normal thing that everybody did. When I told her she was ... totally shocked ... I remember it was just such an awakening for me that I never had thought about it before ... one of those light bulb kind of times ... And then I started thinking ... I had relatives who had teeny tiny apartments and I know of stories when relatives came over people doubled up.*

In Joanna's home the parents could have chosen to sleep in the living room had they wanted. This is a point I will refer to time and again: with the exception of households living in poverty, the choice to share beds and bedrooms is not just the economic necessity many policy-makers, social workers, and academics would have us believe.

Joanna's children now each have their own bedrooms; she had worked hard to be part of the American Dream. Like many who found it, she had not anticipated some of the subtle implications. Having been part of two cultures and having lived within contradictory cultural meanings makes it easier for her to understand alternative practices, even as she forgets her past in her daily life. Her own reactions show the use of oneself and one's own experiences as a marker for determining what is right and proper for social and spatial arrangements. In her case, the power of the dominant society's norms and her own background led to internal conflicts. This conflict is clear in an experience from her own law practice: She told me about a Latina, her partner, his two young children and his mother who were living in a small apartment. Joanna was trying to draft a complaint in order to help them get a larger space. She wanted to write, "And she's in really crowded conditions ... with no space." That is the approach that would work within the legal system and that is what Joanna herself felt when imagining being in the space. So she said to her client: "Well that must be really cramped." The response was "No, not really." Which of course would have been Joanna's own response 25 years before.

What about people without that personal experience — whose only sleeping experiences mesh with the dominant vision; or who have become so assimilated that they only want to see the dominant vision as right and proper and healthy? What happens to them? They are often the ones writing our laws and judging in our courts, even to the extent of erasing their own past in the process.

## OCCUPANCY STANDARDS: THE CONFLICT

The conflict at the base of this article is how we define and conceptualize housing discrimination on the basis of national origin and by extension, how we conceptualize familial status discrimination (discrimination against families with children under 18).<sup>2</sup> This inevitably leads to an exploration of how mundane daily practice and macrolevel social policies are inextricably entwined with one another. The daily practice in question here is sleeping arrangements as they are regulated by occupancy standards, the number of people who may live in a unit (see Pader, 1998). This directly influences where households with restricted means and more than four or five household members can live.

The Fair Housing Act (FHA), which is Title VIII of the 1968 Civil Rights Act plus the 1988 Fair Housing Amendments Act, protects people from being discriminated against in housing because of their national origin or familial status. The other nationally protected categories are: race, color, religion, sex, and handicap. States and municipalities may be more protective than federal legislation and set additional categories, as long as they are not in conflict with the FHA. For example, in Washington, D.C., homeseekers are protected from discrimination on account of their political affiliation and personal appearance, while in Massachusetts sexual orientation and the receipt of public assistance are protected.

National origin and race discrimination in housing are fairly obvious when someone is denied the opportunity to rent or purchase a home for reasons unrelated to his or her ability to pay, and the subtext is "I don't want someone of your type here," referring to color or ethnicity. But what about when the discursive text is "you're welcome here regardless of your ethnicity or race," and the subtext is, "as long as you live by my sociocultural concepts of right and proper behavior?"

In other words, I am retheorizing the definition of "national origin" away from its legal definition the place of origin of one's self or one's ancestors — and toward an anthropological definition what it *means* to be from, or descended from, someone born in a particular geographic locale.<sup>3</sup>

This means reframing the standard question derived from the 1949 Housing Act which set the goal that all citizens should enjoy "a decent home and suitable living environment." Thus, rather than asking "Do all households, regardless of national origin or familial status, have equal access to decent housing?," I ask "Do all households, regardless of national origin or familial status, *have the same opportunity to decide for themselves what they consider acceptable and preferred living arrangements*, and, therefore, have equal access to decent housing?" I am, therefore, arguing for a definition of equality that recognizes difference, not one that touts sameness as a social goal.

The facet of housing policy that I am particularly concerned with is occupancy standards, the number of people who may legally live in a unit based either on the absolute number of people per bedroom or the number of people per square foot. While a property owner may exceed this number if they desire and no one complains, individual renters have no recourse in law if denied a unit which would put them above the legally accepted person-to-space ratio. Even considering it appropriate to legislate how many people may share a living space is a cultural construct.

The basic questions are: What is the basis and justification for current standards — which are generally some variation of no more than two people per bedroom? How did this ratio become normalized and win over three people per bedroom, for instance; and why did bedrooms come into the talk of restricting occupancy anyway? Even culturally mediated definitions of what should be counted as a bedroom have found their way into codes and legislation. How did occupancy standards come to be such a bone of contention?<sup>4</sup>

### *Occupancy Standards Policies*

Occupancy standards take up just a handful of lines in state health and safety codes, a fraction of a page in model housing codes, or, if Congressional Republicans had their way in 1996, 1997, and 1999, new federal legislation taking up about 1/2 page in the Public Housing Reform Act would codify a two-person-per-bedroom standard (Pader, 1997).<sup>5</sup> In relation to the amount of paper they take up, these standards have a disproportionately large impact on the ethnic, racial, social, and economic structure of communities. When fewer people are permitted to share a unit, it means larger families may be priced out of the market or forced to move into run-down neighborhoods with larger, less expensive homes and often poorer quality services (e.g., transportation, recreation, shopping) and schools. In practice, this tends to segregate neighborhoods by race, ethnicity, and class and be implicated in affordability and homelessness problems. This is not a call to remove occupancy standards altogether and return to the severely densely populated and ill-kempt tenements of early 1900s New York City; this is a call for a reappraisal of currently accepted standards. I do, however, question the standards proposed in recent and current federal legislation on cultural, economic, and political grounds.

The most widely followed occupancy standard is the one the U.S. Department of Housing and Urban Development (HUD) has used since the early 1970s, although they continually undergo debate from all sides. Their general rule of thumb is no more than two people per bedroom (hereafter referred to as 2:1) (Keating Memorandum, 1991). On a case-by-case basis, HUD allows the living room to be counted as a bedroom and bedroom size to be taken into consideration (which of course since it is case-by-case means, in practice, this is hardly ever done).<sup>6</sup> Neither HUD nor the Department of Justice tend to take a case in which the ratio is greater than two people per bedroom plus one. Many rental property owners will defend that policy, or defend more restrictive policies arguing either that they are following HUD, it is justified by business necessity, or they are contesting the legality of regulated standards altogether as interference in their right to control their own property.

I will argue later in this article that even substantiating a two-person-per-bedroom or two-person-per-bedroom-plus-one restriction without providing explicit alternative housing is antithetical to the original intention of the HUD occupancy standard. Tangentially I will argue that even the rental industry has not been able to substantiate a business necessity for these restrictive standards.

If the two-people-per-bedroom ratio were rigorously enforced, there simply would not be sufficient rental units available to meet the needs of households with families. And the cost difference for a family of five or six people renting a two-bedroom unit or a three-bedroom one can be the difference between being housed well, precariously, or not housed at all. The question is, is this simply an economic issue, in which case, since class is not a protected category, a civil rights defense would be inappropriate, or is it something more?

The stories of Gabriella, Barbara, and Joanna, with their different ideas about proper and acceptable sleeping arrangements, are not just odd anecdotal cases invoked to substantiate my position that current occupancy standards should be deemed illegal as discriminating on the basis of national origin and familial status. They represent different culturally constructed perceptions of right and proper social and spatial relations.

The Fair Housing Act has been interpreted by case law to be explicitly inclusionary in intent; the Notes of Decisions go so far as to state: "Integration is a goal of this chapter" (24 USC 24, Ch. 45 §3601 p. 68). Paradoxically, the overly restrictive occupancy standards advocated by HUD perpetuate segregation by having a disparate impact on the protected categories of national origin, familial status, and race. I will argue that the standards in use can only be justified by outdated medical arguments and empirically unsupportable moral and cultural dictates. Rental property owners have not been able to substantiate a reasonable business necessity either.

Occupancy standards are an arena in which mutually incompatible laws, policies, effects, intents, and rights to uncontrolled profit conflict. I believe that most current standards also contravene the 1866 Civil Rights Act (USC 42 §1982), which states that "All citizens ... shall have the same right...as enjoyed by white citizens ... to lease ... real and personal property." Race in the 1866 Act has been construed by the courts to include much of what is now considered ethnicity, reasoning that this was the definition of race when Congress drafted the Act. Thus, the 1866 Act was intended to protect all "identifiable classes of persons" who are discriminated against "solely because of their ancestry or *ethnic characteristics*" (italics added).<sup>7</sup>

Debates around regulating occupancy standards place us firmly in the blurry jurisdictional boundaries between courts and Congress. Here, I will walk in that blur as I draw on some of the social, cultural, historical, political, and legal data that make up my argument as to why most current occupancy standards should be deemed illegal on the basis of national origin and familial status.

### *Cultural Constructs*

At the core of this argument is the anthropology of household social and spatial relations, in particular, the anthropology of sleeping arrangements. Current occupancy standards and their rationales are historical and cultural artifacts that have been accorded the status of universal truth. The implications of this for daily life, and the importance of daily practice for disproving this universality, are significant and necessary to prove that current occupancy standards are not really about physical and psychological health at all, as they are purported to be, but rather about culture and moral health and safety from the perspective of the dominant society, and, therefore, should have no standing in law.

So, how did I start thinking about these questions and how did I arrive at this conclusion? The basis of this argument comes from my ethnographic fieldwork in Mexico and amongst Mexican-origin households in southern California. As part of my research into changing social relations and social policy, I compared the design, use, and meaning of domestic space in Mexico with standard U.S. floor plans (Pader, 1993, 1994).

It became clear that sharing sleeping spaces was commonly a preference not simply borne out of economic necessity. I started thinking about this my first night in Mexico when I was sharing a bedroom with seven other people spanning three generations. I was sharing the top of a bunk bed with a 17-year-old girl I had met only hours before. My initial reaction was — What have I gotten

myself into? So many people and no privacy felt uncomfortable. Then everyone started chatting. And I found myself suddenly feeling unexpectedly comfortable and safe and started wondering why do we in the U.S. so highly value our own physically bounded spaces when we are semi-comatose in sleep? The answer lies in the intersection of the primacy accorded individualism, private property, and attitudes toward the body.

The underlying premise is that there is recursive relation between the design and use of domestic space and larger societal values and conceptual frameworks — the enculturation process. Homes are dynamically implicated in the social construction of self and society — *at both individual and policy levels.*

I am interested in the intimate interaction between the most seemingly mundane facets of daily action and the form of social policy. The basic strands of my argument for believing that a two people per bedroom (or similar) standard discriminates on the basis of national origin and familial status are:

First: The general justification for current standards presume this standard to be *reasonable to the ordinary person*. If I can demonstrate that they *explicitly* derive from, and refer to, upper-class, English and Anglo-American definitions of reasonable, and that definition is in fact *unreasonable* to many of the ethnicities in the U.S. exactly on account of where they or their ancestors are from and what it means to be from there, then surely the prevailing definitions of "ordinary" and "reasonable" categories lose their privileged positions.

Second: The standards tend to be further justified under the rubric of providing for the health, safety, comfort, and convenience of the inhabitants. I argue that it is not physical or emotional health, safety, comfort, and convenience that is being protected by the 2:1 standard as purported. Rather it is a very specific, culturally constricted definition of *moral* health, safety, comfort and convenience. This is *not* to argue that less restrictive occupancy standards would similarly have no legitimate physical health, safety, and comfort rationale.

What is crowded to some is exactly what is comfortable to others; what is comfortable to some is exactly what is lonely to others. Such differing reactions to spatial relations are largely the consequence of socialization and cultural practices, with implications beyond occupancy standards (Werner, *et al.*, 1997). The ordinary person being envisioned by the standards is actually numerically in the minority, and even excludes many White ethnics in the U.S., as well as people of all ethnicities across the globe.

Likewise, what might have been justifiable on health grounds early in the twentieth century, at the turn of the twenty-first century has become antiquated due to modern medicine and technology.

The standards, in other words, are historical and cultural artifacts of the policy-makers who enacted them; they have no universal validity. I often wonder what current policy-makers would say if they knew that their health and safety rationale was based on nineteenth century concepts about miasmas and vitiated, or impure air. This cutting edge scientific knowledge of the late nineteenth century proved, without doubt, that one's own breath was full of deadly carbonic poisons and that some 40% of deaths in New York City were directly caused by breathing one's own self-inflicted noxious air — you could drown in your own exhaled breath (Townsend, 1989; Janes, 1876).

This led to the perceived need to ensure the right combination of ventilation for dispelling the poisons to match the number of people in an enclosed space. If the fundamental base of the standards cannot hold up to scrutiny, then one can argue that they discriminate not only against people on account of their national origin, but against other protected categories of people who are hurt by them as well.

Therefore, while the occupancy standards might be facially neutral, that is they are equally applied to everyone across the board, their effect certainly is not, and their intent often is not either. With conservative administrations, such as in the Reagan era and increasingly now, it is not sufficient to

prove that the law has the effect of discrimination; rather one has to prove an intention to discriminate, and proving motive is notoriously hard. I believe that I can demonstrate traces of intentional (as well as unintentional) discrimination in the origins of the standards. As to the current use of the standards, there are recent cases in which attempts to revise occupancy standards to be more restrictive have lost in court because the judge found them to be intentionally discriminatory against protected groups.

Congressional bills sponsored by the rental industry attempt to establish, in essence, a national 2:1 standard which would no longer allow standards to be established on health and safety grounds. They want to wrest control from low-income housing advocates and return to the nineteenth century where the rights of property owners to do what they wanted with their own property reigned over the right of families to stay together and live in decent housing. Debates over occupancy standards hinge on the split between the right to housing versus the right to uncontrolled profit and owner self-determination. Undermining the right-to-profit arguments is almost impossible in a capitalist society. It is more imaginable to undermine the socio-historical justification underlying the standards and thereby demonstrate that the standards are void on their face. This is where historical and ethnographic research has a role.

## THE HISTORY OF OCCUPANCY STANDARDS

*Standards are nothing more than structured preferences.*  
(Williams, 1991:103)

The history of occupancy standards follows the prevailing social, cultural, economic, and health rationales of particular eras and particular sectors of society; they are the product of socially constructed personal feelings and opinions. In large part, occupancy standards derive from the tenement conditions of 19th- early 20th century New York, the Lower East Side in particular with its densely populated immigrant households. As Social Darwinism was losing clout, other ways of denigrating the humanity of the largely Jewish, Polish, Italian, and Slavic populations were taking its place. It must be remembered that each of these non-WASP ethnic groups was considered a separate race; they were what historian David Roediger (1991) calls the "not-yet-white," a concept with significant implications here.

Turn of the century urban tenements were pretty miserable. No one was responsible for cleaning the streets, buildings tended to be dirty, dark, poorly maintained, and often unsanitary (DeForest and Veiller, 1903; Janes, 1876; Lubove, 1962; Veiller, 1910). A 1905 survey of the area found that in these insalubrious physical conditions about 50% of the apartments housed three or four people per room, while 25% had five or more people (Takaki, 1993). The fairly new discipline of Public Health fought for the first building codes in New York State in 1867 through their organization, the American Public Health Association (APHA). They wanted to contain the spread of contagious disease, both within the slums and from moving uptown. Improving physical health was only one part of their mission; improving what they assumed to be a lapse in moral health was more important for justifying the push toward assimilation through restructuring domestic space, and in particular, sleeping arrangements.

Housing reformers — who came from the middle and upper class establishment — saw the physical condition of the tenements and heard the noise of street vendors, kids playing outside, and adults socializing on the stoops. Inside homes they saw children sharing beds and bedrooms, intergeneration sharing, and living rooms and kitchens turning into sleeping rooms for immediate family, extended family, or boarders. Many reformers, for whom socializing in public outside areas was more restrained and inside the home more private and spacious, interpreted what they saw as emotionally, morally, and physically unhealthy. The dominant belief of the era was that bad housing conditions, including too many people per unit according to their standards of uncomfortable crowding, directly produced illness, crime, intemperance, promiscuity, and the breakdown of the family. Their goal was

to bring order to what they considered to be disordered, and thereby dangerous. The reapportionment of domestic space was one step in the orderly Americanization of these not-yet-white immigrants.

In 1880 Charles Brace Loring, founder of the Charity Organization Society (COS), published the influential book, *The Dangerous Classes*. His contribution to the debate about proper domestic spatial apportionment and the establishment of particular occupancy standards included this sentiment (1967):

*If a female child be born and brought up in a room of one of these tenement-houses, she loses very early the modesty which is the great shield of purity. Personal delicacy becomes almost unknown to her. Living, sleeping, and doing her work in the same apartment with men and boys of various ages, it is well-nigh impossible for her to retain any feminine reserve, and she passes almost unconsciously the line of purity at a very early age.*

*In these dens of crowded humanity, too, other and more unnatural crime are committed among those of the same blood and family (emphasis added).*  
(Loring, 1880:55)

One solution was to send girls out to work for upstanding Protestant families as servants, where they would learn proper morals and to accept their place in the world, or maybe even marry up. Not surprising, I have not yet found a comment by Reformers fearing that the men of these proper homes might rape the servant. COS had a different strategy for saving boys: they were to be put on orphan trains going across the country to be adopted by upstanding Protestant farmers or pulled into a boys home in the city to learn the religion and moral behavior said to be lacking at home.

But among the greatest evils of all to nineteenth century Reformers, one that goes hand in hand with Loring's 1880 statement, is what was known as the "lodger evil." In short, the middle and upper classes became great believers in the sanctity of the nuclear family. With it came a growing value placed on physical privacy as a personal and national necessity, greater sexualizing of the body, and a general distrust of what went on with those immigrants when they were behind closed doors and out of control of the reformers, moralists, and others who saw it as their duty to Americanize these people about whom few good words were said. All this was metaphorically bound up in the fear of the lodger evil, the outsider. All lodgers, be they kin or not, symbolized evil.

Sharing household space with extended family members is a common way of living throughout much of the world, and a common way of getting through hard times, or even strange times such as first entering a new country. I have often been told when I have interviewed people from a wide range of ethnic backgrounds, a home full of kin is not considered crowded as long as there is room on the floor.

Conversely, what constituted overuse of sleeping rooms to the Reformers (and most rooms were sleeping rooms in the tenements) was lack of physical privacy. The ability to gain privacy by having one's own physically bounded space to sleep and think, was by now perceived as an essential necessity for healthful living. Too many people sharing, children sharing bedrooms with their parents, and of course, sharing with lodgers,

*almost inevitably means that there can be no provision for privacy or decency, and results in sexual precocity and in many cases promiscuity, which may, of course, in time lead to a criminal record.*

(Gries and Ford, 1932:xx)

This clearly articulated environmental deterministic view from the 1932 reports of President Hoover's Commission on Housing and Home Ownership is no different than the earlier views of Loring and other nineteenth century public health and housing reformers. Ironically, these moralists did not consider that many people in a room was a form of surveillance which might even mitigate sexual abuse. If any sleeping arrangement is to be suspect (a problematic concept in itself), it should be private sleeping rooms with their closeable and lockable doors.



It is important to note that this obsession with privacy is not "traditionally" American. Puritans had no such moral qualms about sharing sleeping spaces (not to mention Native Americans or Mexicans in locales that were Mexico and are now the U.S.). During the Puritan era, entire families shared sleeping quarters and visitors to inns would commonly find the innkeeper putting a stranger of the same sex into their bed (Flaherty, 1972/1967).

How valid were the fears of nineteenth and early twentieth century moralists that the flame of immorality would be further fueled by children seeing their parents or adult boarders disrobe, or observe their parents having sex? That parents generally practiced *respeto* (respect) as a Guatemalan man whose children sleep in the same room as he and his wife told me, was not even a consideration. Respect means having sex when the children were asleep or not around, and being discreet. If anything, adults living in shared quarters probably learned to practice greater sexual control than their separate-room contemporaries.

And, were boarders really immoral as a category of people? My grandfather was one of those "evil" lodgers; my grandparents and great-grandparents all had boarders living with them or were boarders themselves in the Lower East Side of New York City and its environs. My mother even slept in her parents' bedroom. Somehow I doubt my family is just the exception that escaped depravity by bringing relatives and strangers into their homes as boarders. This is not to romanticize tenement conditions, but it is also not the blind vilification found then and still dominant.

Like public and low-income housing today, there is a conflation of the now decrepit physical environment left to deteriorate by the government or private landlords with the moral character of the inhabitants. The difference then and now is that then it was largely not-yet-white Italians, Poles, Slavs, Irish, and Jews who were considered immoral by the dominant society. I wonder, should it be the character of the people who leave the housing to deteriorate, not the residents who have to live in that decrepitude, that is conflated with the condition of the property?

But how did we get to the particular two persons per bedroom (2:1) ratio as an occupancy standard that is generally considered "reasonable" to the "ordinary" person in law and practice? Remembering of course, that the "ordinary" person as defined legally, is not from immigrant or non-dominant race-ethnic groups. I will juxtapose the prevailing justification for the occupancy standard against some competing, but silenced, views and concentrate on the history of two specific issues: two person per bedroom standard as "natural" and proper behavior and the definition of a bedroom as a room that is not a passthrough to another room.

### *Two People Per Bedroom Standard*

The first occupancy standard in the U.S. was enacted in 1870 when San Francisco passed the Lodging House Ordinance. Proposed at the request of the Anti-Coolie Association it required a minimum of 500 cubic feet of air space per person. However, it was disproportionately enforced in Chinatown where low-paid, single, working Chinese men had no choice but to share rooms with less air space each than mandated. In 1876 California made this minimum a state-wide law. An editorial the same year in the *Sacramento Record* decried its explicitly racist intentions, suggesting that legislators measure their own home space to see how many would have to find larger living quarters under these standards (Sandmeyer, 1991/1939); *Sacramento Bee*, 1876).

In 1879 New York City passed its first occupancy standard. It required 600 cubic feet of air space per person. This derived in part from the scientifically "objective" belief in miasmas and vitiated air, that one's own breath contained poisonous carbonic acids. It was believed that without a minimal amount of space and renewable air, people could literally drown in their own breath (Townsend, 1989; Janes, 1876). By 1901 this was decreased to 400 cubic feet for each adult and 200 for each child, still with an underlying, scientific health justification.

These early New York and California laws provide an important caution: Where does the line between caring for the plight of others and discrimination lie? It is not always a clearly defined or overt line. When does the desire to improve material conditions of the disenfranchised run a collision course with ethnocentrically derived moral platitudes?

While the New York codes emphasized the scientific health rationale, there were other forces influencing the standards. As stated, middle- and upper-class Protestant social reformers tried to Americanize the largely low-income, immigrant residents who populated the Lower East Side.<sup>8</sup> Many believed in eugenics, that these immigrants from Eastern and Southern Europe were genetically inferior and needed to be taught how to live proper moral lives. Part of the strategy to Americanize them was to teach them to respect personal, physically bounded privacy, and to otherwise rearrange their social and spatial arrangements to more closely mimic those of the reformers. Many immigrants had come from locales in which sharing undifferentiated, or minimally differentiated, spaces was the norm, in which the entire family might sleep in one room. In a manner that continues today with occupancy standards, one sector of society's concept of moral living was being insinuated upon people with very different belief systems (Brace, 1967/1880; Lubove, 1962; Myers, *et. al.*, 1996; Pader, 1993, 1994; Wright, 1981).

The reformers of the Progressive movement were largely responsible for getting occupancy standards enacted in order to improve the slum conditions and did at least replace the prevailing genetic interpretation of why certain groups predominated in many northern urban slums, with an environmental determinist interpretation, which is a step up. As Coontz points out, the "family that reformers favored existed in only a minority of the population" yet the progressives, believing in a particular, nuclear family formation helped attain legislation that imposed "middle-class norms on nonconforming families even while they instituted important humanitarian reforms and protections for women and children" (1992:134).

Progressive concerns with the design and use of low-income immigrant housing were not simply altruistic. Abramovitz argues that Progressives were worried that poor housing conditions "left workers less satisfied, less willing and able to work, and more interested in unionization. Overcrowded and unsanitary apartments in urban neighborhoods also made 'productive' living very difficult" (1988:82). In other words, housing was seen as an important political tool, to enhance both assimilation and worker productivity.

The emphasis on physically bounded privacy as a moral and even political good was part of the turn of the last century public discourse. Thus, in a 1905 speech, United States Commissioner of Labor Charles P. Neill pronounced that:

*[H]ome, above all things, means privacy. It means the possibility of keeping your family off from other families. There must be a separate house, and as far as possible separate rooms, so that at an early period of life the idea of rights to property, the right to things, to privacy may be instilled.*

(Wright, 1981:126)<sup>9</sup>

Democracy, citizenship, and physically bounded private space in the home were firmly united by 1905.

In 1910, Lawrence Veiller, one of the most influential housing reformers of his era, followed a similar line to Commissioner Neill:

*It is useless to expect a conservative point of view in the workingman, if his home is but three or four rooms in some huge building in which dwell from twenty to thirty other families, and this home is his only from month to month. Where a man has a home of his own he has every incentive to be economical and thrifty, to take his part of the duties of citizenship, to be a real sharer in government. Democracy was not predicated upon a country made up of tenement dwellers, nor can it so survive.*

(1910:6-7)

This equates conservatism with democracy. Lack of privacy in this theory leads to the lack of a "secure sense of individuality," which in turn undermines the ability for privacy and intrusion-avoidance that was popularly seen as essential for the continued healthy and proper growth of America. Home ownership, as a road to privacy, also fit into this equation. In the Americanization of immigrants it was important to rearrange their social and spatial arrangements in order to help them appreciate the finer points of self-interest — i.e., being assimilated into a form of selfishness that does not honor the concept of being one's sibling's keeper as the ideal, but rather honors individualism above all.

With an emphasis on privacy already part of an existing conceptual framework, it is easy to understand how the 1935 British Housing Act on Overcrowding could be adapted in spirit and content as the explicit model for modern U.S. standards. This Act in essence allowed no more than two people per room (counting only bedrooms and living rooms). While more generous than a simple two person per bedroom count, policy-makers felt it necessary to qualify the ratio: "It is relevant to point out that this standard does not represent any ideal standard of housing, but the minimum which is in the view of Parliament tolerable while at the same time capable of immediate or early enforcement."<sup>10</sup>

In the view of upper-class, male, Anglo-Saxon gentry, based on their own physical, social, emotional, and moral comfort zones, even this felt too crowded. They were aware that the existing housing stock would not allow strict enforcement of even this standard without causing nuclear and extended families to break up. A 1937 analysis of the Act even noted, despairingly, that "certain families showed a desire to crowd together, even when adequate housing accommodation was made available for them" (Swift, 1937:642). Significantly, a particular moral and cultural standard overruled an alternative *preference* predicated upon social relations and a different standard for measuring comfort. The incommensurability of these two ways of measuring appropriate space use is central to this critique.

The British Act was explicitly a basis for the American Public Health Association's (APHA) reports entitled *Standards for Healthful Housing*. The APHA standards then became the basis for the standards adopted by HUD and non-governmental standards creating agencies since the 1950s.

In the 1939 publication, *Principles for Healthful Housing*, the APHA wrote:

*'A room of one's own' is the ideal in this respect; but we can at least insist on a room shared with not more than one other person as an essential minimum. Such a room should be occupied only by persons of the same sex except for married couples and young children. The age at which separation of sexes should occur is fixed by law in England at 10 years, but some American authorities would place the figure 2 years lower. Sleeping-rooms of children above the age of 2 years, according to psychiatric opinion, should be separate from those of parents.*  
(p. 16)

Some clues as to why this should be so are found in the APHA's later explanations of these principles.

Harvard sociologist James Ford, who chaired the APHA Subcommittee on Standards of Occupancy and co-edited the 1932 Hoover Commission to which I have previously referred, succinctly provides the dominant rationale for these preferred sleeping arrangements in an unpublished 1940 paper circulated internally amongst members of the APHA. In it he argued that standards of overcrowding are based on "health and *morality*;" while minimum square feet requirements are "primarily consideration[s] of convenience, comfort, furnishability of rooms and health" (that is, assuming what pieces of furniture are essential in the standard home and what constitutes comfort in some universal sense, rather than as the cultural constructs that they are).<sup>11</sup> Thus, the standards were not really based primarily on science, but rather on deeply felt, "common sense" notions of subjective aesthetics, attitudes toward the body, and habits of preferred use of the bedroom as reflected in their definition of "furnishability." These considerations were said to be essential for psychological health.

In 1950 the APHA published: "privacy in the home should be one of the fundamental objectives of design ... . Since individual members *need isolation*, adequate dwelling space must give protection to ... the individual members from the *intrusion* of the household itself" (p. 15-16, italics added).

They also published a confession of sorts: The *minimum* occupancy standards necessary to attain the goal of "healthful housing ... *closely approximates actual practice in the high- income groups*" (1950: xx, italics added), making explicit that one sector of society, the high-income primarily white northern European Protestant, had become the marker for all.

These statements explicitly and intentionally privilege one culturally specific lifeway, discriminating in the creation of the standards against people with different preferred modes of living, and against low-income families with children.

Despite the ethnocentric logic underlying these statements, in part because of their environmental determinism and their emphasis on individual bedrooms, the APHA studies argued for larger units overall than are found now. They, like the earlier reformers, believed that decent housing should be a right for all. They believed that everyone should have what they, the reformers, considered a reasonable amount of space. Though generous in intent, they were highly culture-bound, assimilationist, and paternalistic in practice. They attempted to assimilate low-income immigrants by rearranging their domestic social and spatial relations in their own image. In other words, they saw their own moral and social world as natural and neutral, representing what should be legislated as reasonable to the ordinary person.

These seemingly neutral and healthy sociospatial relations found their way into the child raising dictates of a person who highly influenced how many of us were raised, Dr. Spock the baby doctor. Starting in the late 1940s, and continuing into later editions of *Baby and Child Care*, he wrote that children should ideally have a room of their own "where they can keep their own possessions under control and have privacy when they want it" (1976:201).

In the 1980s, another great arbiter of American culture, Dear Abby, wrote in *What Every Teen Should Know*: Youngsters "need a room to retreat to" in order to help them grow as individuals, including growing increasingly independent from older generations and other members of the household (Van Buren: n.d.).

To summarize thus far U.S. occupancy standards policy are about the privatization of the self and society.

The cultural specificity of these supposedly universal spatial apportionments for healthy living is clearly articulated in a 1995 interview with Jim, a 44-year old Chicano attorney from Arizona.

Jim and his 9 siblings slept in one room much of the time he was growing up; later they split into two rooms, one with 5 boys and one with 5 girls. This is his story:

*I think it was healthy. I think we have a very close family ... I think this contributed to it ... I have two children of my own, the youngest one is 23, and they grew up in a little bit better conditions, if you want to put it that way, with a lot more advantages. Their own bedrooms, a lot of privacy. And although we're a close family, we're not close in the same way that I'm close with my brothers and sisters, or my parents are with me ... Because oftentimes they ... could separate themselves ... from the unit. [But] we were kind of forced into socializing, forced into getting along, forced into sharing, forced into understanding that there were other people around that needed their space and needed a little nurturing, needed a little caring. So, my kids were able to just close their bedroom door and they were out of it. And in order to invade that space, we'd have to knock, and sometimes felt unwelcome ... so I think [that] psychologically that really, and subtly ... contributes to a person.*

*I think my children are a bit more selfish ... and a bit less caring for the group as a whole ... I think that those that did grow up like me have a much greater understanding of what it means to try to get along, to try to ... not take advantage of other people's space, and the concept of sharing. I'm not sure my kids understand that as well as I do.*

It is not just people who cannot afford more who share bedrooms. A professor of anthropology at an elite private university, after hearing a presentation of my work, told me his story. Giving each of their two sons his own bedroom changed the boys' relationship with one another permanently he said. When they shared a bedroom and had a fight, they had to learn to negotiate with one another; they did, after all, have to find ways to live amicably. Once each had his own bedroom, he simply closed his door; many disagreements went unreconciled. Their father is convinced that having private rooms had a negative impact on his sons' relationship with each other.

The cultural construction of this definition of sociospatial relations is further highlighted by the shock of a middle-class couple from Singapore upon arriving in the U.S. as students at an ivy league college. The woman said, "When we came here to college we were amazed by how many people hated their parents. When you share a bed with your parents, you can't hate them."

She grew up sleeping in not only the same bedroom, but the same bed as her parents. And there was another bedroom unslept-in in the home. It was choice, not economic necessity that led to these sleeping arrangements. Now their toddler sleeps with them, and when her husband is away and her mother-in-law there, she takes his bed space. The couple is convinced that their child does not have nightmares like his daycare friends because he sleeps in the safety and comfort of other bodies nearby. Nor, as our reformers — past and present — would have us expect, have I seen or heard any suggestion of moral depravity or sexualizing of the bodies in bed in this family. Here too there are unslept-in rooms.

*It is very common to share while choosing to leave bedrooms unused.* In countries as different as Mexico and China people commonly choose to share bedrooms while leaving other bedrooms unused. In a demographic study of household density in the U.S. using 1990 census data, researchers found that Latino and Asian households often have more than two people per bedroom even when their income is the same as White and Black households of the same size, again suggesting choice is at play, not economic necessity (Myers, *et.al*, 1996).

The social theory implicitly underlying Labor Commissioner Neill's 1905 correlation between separate spaces and beliefs in the right to private property is quite astute in its conceptualizing of the interactive relationship between social and spatial relations in and around the home, and how such daily acts influence large-scale political behavior. "When you learn to share when you're young," a Mexican-American woman once told me, "it's easier to share when you're older." I have heard variations on this from people of many ethnicities in which sharing space is an essential part of learning how to be part of that social group. This sentiment of communality is exactly what the reformers were trying to legislate out of city dwelling, low-income immigrants as they tried to create the ideal American citizen.

Not surprisingly, the home design guidelines found in HUD's handbooks and most housing codes reiterate and help maintain certain culturally acceptable notions of proper personal and social behavior. The same culturally imbued structural principles about privacy, privatization and proper moral behavior underlying the 2:1 codes guide the standard definition of a bedroom: "a bedroom cannot be a passthrough to another room" (HUD, 1985:6-5).

***"A bedroom cannot be a passthrough to another room."***

Conflated with this are questions of whether "a room used for sleeping" has to be a room labeled as a bedroom, and whether any non-passthrough which is not for instance, a bathroom or kitchen, can be counted as a bedroom for the purposes of establishing maximum occupancy. The ambiguity here is at

the basis of much legal and political action. HUD regulations allow a living room to be included as a sleeping room in determining how many people may share a unit, acknowledging this is necessary at times for economic reasons. Note that this is not seen as a preferred position, just an unavoidable necessity. I will come back to this, but first, a history of this definition of bedrooms not being a passthrough; a morality tenor rings throughout.

In the 1901 New York Tenement House Law this bedroom definition was under the heading: "Privacy." Remember Commissioner of Labor Neill's 1905 speech about the importance of learning the concept of private property.

The same is found in a 1918 British Walters Report that was relied upon for the 1935 Overcrowding Act, the latter being a main source of inspiration and justification for the APHA recommended standards. In their 1939 publication on healthful housing the APHA placed this definition of bedroom under "fundamental psychological needs," "privacy" and "fundamental habits of decency."

And in 1990 BOCA (Building Officials and Code Administrators), the writers of one of the standard model housing codes currently in use by many municipalities, placed it under "health, safety and welfare."

In his unpublished 1940 paper for the APHA, Ford wrote one of the few explicit analyses, and in so doing makes the health justification used by later occupancy standards problematic: "The health justification is to prevent interruption of sleep, but the moral argument is more commonly used" (APHA Archives). This in itself is telling in its sociocultural assumptions, beyond the morals. As seen in the opening story about Gabriela and Barbara's first night in college, many people cannot sleep without another person nearby.

But what is this moral argument Ford writes about, and why is it so persuasive? I am convinced that the argument is based on the U.S. emphasis on individualism objectified in the continual reiteration of the *necessity* of physical privacy within the home to attain a particular concept of physical, psychological, and social health. As I have suggested, in societies which value and practice *interdependency*, in which individualism and physical privacy are a punishment, a form of alienation, not a goal to be desired, one commonly finds house plans and social and spatial relations which correlate with and reinforce the concept of interdependency rather than independency (Pader, 1993).

This, together with the belief in the health and developmental benefits of private space has become so much a part of our popular discourse that it has become a taken-for-granted truth and thereby an acceptable avenue for attempting to discriminate legally. Various municipalities and policy-makers are trying to change the local occupancy codes to limit the number of people who may live in a unit. They are doing it by trying to change the method of counting the number of people who may share a dwelling, such as redefining what is a bedroom or redefining what constitutes an acceptable household. Not surprisingly, it is whoever are the current unwanted populations, the not-yet-white populations, that these codes are being used against.

For instance, in 1992, *Briseño v. the City of Santa Ana*, the lawyer for Mr. Briseño claimed the city had racist intentions and was trying to rid the city of the growing number of people of Mexican origin (*Briseño v. City of Santa Ana, CA, 6Cal. App. 4th 1378 1992*). The judge feared that the impact of the proposed ordinance would be greater homelessness and could find no compelling reason to permit the city to have a more restrictive policy than the state.

Other municipalities have passed restrictive occupancy policies and then lost them in court. In one case in Wildwood, New Jersey, the Department of Justice successfully argued that the new standards would have a disparate impact on local Latino households (*United States v. City of Wildwood, NJ, Civil Action No. 94CV1126(JEI)*).

In the suburbs of Chicago there are several recent disparate impact cases in which municipalities have tried to use occupancy standards to rid themselves of Mexican immigrants, many of whom live in extended households. In Cicero new standards were only being applied to Latino households (United States v. Town of Cicero, IL, Civil Action No. 930 1805). In Waukegan prominent citizens and politicians declared that regardless of house size, no housing unit may have more than two residents who were not part of the nuclear family (United States v. City of Waukegan, IL, Civil Action No. 94C4996).<sup>12</sup>

In other cases landlords have tried to evict a family of three from a one-bedroom apartment, when the third person was an infant. And so on and so forth. Not forgetting the attempts of the 104th, 105th, and 107th Congresses to pass a 2:1 standard. Although this law would primarily be to the advantage of private property owners, it has been inserted into the Public Housing Reform Act. Arizona has already passed a state 2:1 law.

My point then is not to suggest that people from some ethnic groups prefer to be packed like herrings in a barrel. Rather, it is to set a stage for less ethnocentric, more culturally inclusive occupancy standards. Of course most people would like to be in a position to choose whatever size home they want, and then choose for themselves how to apportion the space — maybe by giving each person their own physically bounded private space, or maybe by sharing all spaces with immediate and extended family, or maybe some other configuration altogether.

In conclusion, I argue that what we are talking about here is not physical and psychological health and safety as the codes are supposed to protect, but moral health and safety from the perspective of early 20th century upper class and mostly northern European reformers, transposed and naturalized into late 20th/early 21st century policies, and priorities about individualism, privacy, personal property, the body, responsibility, and social justice among other beliefs. Then, they were explicit about their rationale. Now it is just accepted as natural behavior.

And it is the people brought up to believe in the lessons of individualism through privately possessing one's own space, as psychologically and physically essential for health, who write the policies, and who decide what is, indeed, reasonable to the ordinary person — and who decide what that ordinary person looks like. In actual number, I would guess that the ordinary person they are talking about is in the minority, leaving out most ethnic groups, of all colors.

In the nineteenth century, as now, it was deemed appropriate to put the onus on tenants by legislating occupancy standards that are more restrictive than the housing stock reasonably permits. Rather than designing creative compromises which would enable families to live together in decent housing, it is significant that property owners and governments continue to use unsubstantiated health and safety arguments that are accepted as reasonable by the primarily white judges and legislators who were brought within in the dominant conceptual framework, when they are really looking either to rid themselves of certain ethnic populations or enable a greater profit for property owners. In 1939 the APHA suggested that housing complexes should be flexible and move households into different units within the same complex as the number of householders waxed and waned in order to maintain roots and social relations; unfortunately it was only their absolute minimum cubic feet of air per person standard that found their way into subsequent regulations.

What is needed is more discussion about reframing the definition of national origin to include what it means to be from a particular geographic locale within the context of understanding the intimate connection between social and spatial relations in the home, at the levels of the individual, the household, and of the larger society of which they are part. And then to accept the preference for sharing as equally legitimate as the preference for privacy. To do less than this is being complicit in discriminatory housing policies.

In a similar vein we can critique other social policies that relate to concepts of whether or not, and who, is/should be responsible for whom, when, under what conditions, etc. — are we or are we not

responsible for the *welfare* of our own kin, or for strangers, or only for ourselves — as if we were separate from each other. Sometimes I wonder what current debates would look like if the dominant mindset was, what I will call in shorthand, the shared sleeping one. Would more people be housed? Would extended families and large families have greater opportunity to select where they want to live? Would apartment developers move from the current trend of emphasizing two-bedroom units (which under current regulations tend to have the effect of eliminating many families with children) to larger ones to allow more nuclear and extended households to find housing of choice?

In response to my suggestion that we reconceptualize national origin to what it means to be from a particular locale, one fair housing activist from Virginia mused: "Right. Your type can live here as long as you live my way ... I think ... there's validity to that [as part of the rationale underlying current occupancy standards]. And I think it has to do with the pressure to assimilate ... in fact, I don't think you would get the same kind of objections about an Hispanic or a Cambodian family if there was a mother and father and two children and they lived just like your Aunt Sadie from Nebraska. Although as I recall, my Aunt Sadie in Nebraska had quite an extended family living in her house."

*'The pig's OK?' I asked.*

*'The pig's OK, they said.'*

## NOTES

Adapted from interviews with Fair Housing advocates: As is common in ethnographic work, all names are pseudonym

2. Familial status became a protected category in 1988, largely in response to the increase in the number of housing complexes that were becoming "adult only" and thereby severely decreasing the housing stock available for families with children.

3. Questions of the racialization of ethnicity and census categories of race and national origin are related questions, out of the range of this paper. See, for example, Perea, 1994; Yanow, 1996. I am interested in what national origin would cover from an anthropological perspective, as a critique of the legal concept. The legal meaning is controversial within the legal profession itself. As University of California-Berkeley Law Professor Angela Harris pointed out to me, "The courts and the EEOC (in employment discrimination) have gone around and around over the question of whether discrimination on the basis of national origin or race refers only to bigotry, or whether the concept includes discrimination against cultural practices linked to a group. The EEOC has been more generous in saying that in the employment discrimination context, employers should not discriminate against people based on their cultural practices when those practices are linked to race-ethnicity. The courts have been more restrictive: The Supreme Court has said that 'national origin discrimination' means only dislike for people based on their country of origin, and not discrimination against people whose cultural practices are seen as 'foreign' and problematic" (personal communication).

4. This article is part of a larger history of occupancy standards in progress. Here, I primarily concentrate on the more common people-per-bedroom restrictions and only mention the alternative square-foot-per-person standards in passing.

5. In the 1997 105th Congress, proposed occupancy standards legislation is in H.R. 2 the "Housing Opportunity and Responsibility Act." In 1999 it was back in Congress as H.R. 176, "The State Occupancy Standards Affirmation Act of 1999."

6. Unfortunately, having the living room as a bedroom only as a case-by-case determination of the individual assessor has led to a popular acceptance of the 2:1 ratio as the legal standard beyond which cases might not be brought.

7. According to Schwemm, 1990, 9-10, the 19th century law was invoked over 100 years later, in the 1987 cases, *Saint Francis College v. Al-Khazraji* (Arab) and *Shaare Tefila Congregation v. Cobb* (Jewish), "the Court ruled unanimously that the 'Caucasian' plaintiffs could assert 'racial' discrimination under §1981 and §1982 because Arabs and Jews were considered distinct 'races' at the time Congress passed the 1866 Civil Rights Act ... the Court concluded that the 1866 Act was intended to protect all 'identifiable classes of persons' who are discriminated against 'solely because of their ancestry or ethnic characteristics.'" Since these decisions, "claims by Hispanics, which had caused some difficulty in past fair housing cases based on §1981-§1982, now seem clearly covered." i.e. they cover most "national origin" cases — although the Court cautioned that a "pure" national origins case under the 1866 Act would probably fail — i.e. "place or nation of ... origin" as an argument would likely fail, but not if he could show that the discrimination was "based on the fact that he was born as Arab" would likely win. See also *Jones v. Alfred H. Mayer Co* (392 US 409,413(1968)); *Shelley v. Kraemer* (334 US 1, 68 S.Ct. 836, 92 L.Ed. 1161 1948).

8. Not all reformers were Protestant. For instance, Lillian Wald and other German Jews set up settlement houses for Eastern European Jews in the Lower East Side of New York.



9. Wright takes the citation from Ellen Richards, 1905, p. 7.

10. Swift, 1938 states that the Overcrowding Act was criticized for including living rooms in determining "the amount of sleeping accommodation available in a house" (p. 633). He also notes that the Manchester code, which he and others seem to favor, explicitly provides a separate sleeping room for the parents, in response to the Housing Act which did not. They invoke "privacy." This paper was used by the APHA in writing the 1939 publication.

11. Unpublished paper from APHA archives.

12. These cases are reminiscent of earlier zoning cases, such as the 1997 case *Moore v. City of East Cleveland* (431 U.S. 494, 97S.Ct. 1932), in which stereotypical definitions of acceptable family composition in a household are at stake. Also relevant is the dissent in *Bowers v. Hardwick* (478 US 186; 106 S. Ct. 2841 1986) in which the protection of the family as an important means to individual happiness and identity, the latter being "central to any concept of liberty." Margalynne Armstrong referred me to the *Bowers* case No. 85-140.

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## ACKNOWLEDGEMENTS

I thank the many people and institutions that have contributed both to the acquisition of materials and to my interpretation of them. I remain grateful to the many families in Mexico and Los Angeles who took me into their homes to do my ethnographic research. Most of the historic and legal research was done while I was a Rockefeller Fellow in Legal Humanities at the Stanford University Humanities Center. The research was also supported by Hatch Funding. National Fair Housing Alliance members provided many of the stories and many insights, in particular, Shanna Smith. I received important critiques on earlier versions from Bob Berman, Angela Harris, and, at the 1999 LatCrit VI conference, Keith Aoki, Margalyne Armstrong, and Gil Holmes. All shortcomings remain my own of course.

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Manuscript revisions completed 7 January 2002.