

## OCCUPANCY BY WHO'S STANDARD, PART II

By Jo Becker

In Part I of this two-part series, we reviewed Tim Iglesias' work on the legal implications and disparate impact of overly restrictive occupancy standards, including two-people-per-bedroom policies. Two-plus-one policies aren't much better – in fact, any simplistic, formulaic policy is suspect; housing providers are advised to draft thoughtful policies for each unique floor plan using the Keating Memo's factors as a guide. You can find the Memo here: [https://www.hud.gov/sites/documents/DOC\\_7780.PDF](https://www.hud.gov/sites/documents/DOC_7780.PDF)

In this article we'll look at the historic origins and cultural perspectives of occupancy policies. Ellen Pader, an anthropologist and Professor Emeritus at the University of Massachusetts Amherst, has done extensive research on the matter.

Pader's *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land* was published in the Journal of Architectural and Planning Research in the winter of 2002. Despite its age, it is packed with (what for me was) stunning revelations about the deep and particularly contrived history of occupancy standards in the US.

As you read along with me, I ask that you do so with an open mind. I invite you to step outside the lens of your role as a housing provider to gain greater perspective.

And, please note: Ms. Pader's vocabulary is rich but dense; I hope the excerpts I have selected here are not too arduous. That said, I strongly suggest you download the entire document (available at [https://jobecker.weebly.com/uploads/2/8/2/0/282044/2012-05-01\\_ellen\\_pader\\_1.pdf](https://jobecker.weebly.com/uploads/2/8/2/0/282044/2012-05-01_ellen_pader_1.pdf)) and read it over a cup of something yummy. I'll start you off with Pader's verbose preface:

### THE PREMISE

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... It concludes that the regulations drive from a combination of upper-class English ideals and outdated scientific knowledge, with concomitant moralistic and assimilationist aspirations on the part of the policy makers.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."

### 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... familial status... 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... This directly influences where households with restricted means and more than four or five household members can live.

I am retheorizing the definition of "national origin" away from its legal definition of the place of origin of one's self or one's ancestors – and toward an anthropological definition of what it means to be from... a particular geographic locale. 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?"

...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?

...This is not a call to remove occupancy standards altogether...; this is a call for a reappraisal of currently accepted standards.

...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...

...Current occupancy standards and their rationales are historical and cultural artifacts that have been accorded the status of universal truth. ...The basic strands of my argument... are:

First: The general justification for current standards presume [they are] 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 [what] 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.

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...

[It should be noted that it] ...is not just people who cannot afford more who share bedrooms. 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...

...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.

...[And], what might have been justifiable on health grounds early in the twentieth century... has become antiquated due to modern medicine and technology. ...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... 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... 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.

## **THE HISTORY**

...[W]hile 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.

...In large part, occupancy standards derive from the tenement conditions of 19<sup>th</sup> / early 20<sup>th</sup> 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... 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. ...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?

[For h]ousing reformers – who came from the middle- and upper-class establishment – ...[t]he 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.

A 1905 survey [found] about 50% of the apartments housed three or four people per room, while 25% had five or more people... 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.

...[W]hat 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.*

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 [other] 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... it should be private sleeping rooms with their closeable and lockable doors.

## **THE STANDARD**

...The first occupancy standard in the U.S. was enacted in 1870 [in] San Francisco [and] 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.

...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... that one's own breath contained poisonous carbonic acids. 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... 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?

...Progressive concerns with the design and use of low-income immigrant housing were not simply altruistic. ...Overcrowded and unsanitary apartments in urban neighborhoods also made 'productive' living very difficult... [H]ousing 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.*

...In the 1939 publication, *Principles for Healthful Housing*, the [American Public Health Association] 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.*

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

...In 1950 the APHA published: "privacy in the home should be one of the fundamental objectives of design..." 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"... making explicit that one sector of society, the high-income primarily white northern European Protestant, had become the marker for all.

...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".

...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.

[An unpublished 1940 paper for the APHA explicitly states], "The health justification is to prevent interruption of sleep, but the moral argument is more commonly used" (APHA Archives).

...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.

...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."

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...

...[The moral 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.

### **RECENT DEVELOPMENTS**

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... 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, *Brisefio v. the City of Santa Ana*, the lawyer for Mr. Brisefio claimed the city had racist intentions and was trying to rid the city of the growing number of people of Mexican origin... 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 SUMMARY**

...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 bound 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 20<sup>th</sup> century upper-class and mostly northern European reformers, transposed and naturalized into the late 20<sup>th</sup> / early 21<sup>st</sup> 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.

...Sometimes I wonder what current debates would look like if the dominant mindset was [different]. 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?

...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 connections 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 a 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.

I told you Ms. Pader was loquacious! That said, her paper uncovers a lot of ground, little-known history, and some compelling arguments.