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FIRST PRINCIPLES FOR AN EFFECTIVE FEDERAL HOUSING POLICY

*David J. Reiss**

The federal government has a bewildering array of housing programs funded with tens of billions of dollars every year.¹ Just this year, the Department of Housing and Urban Development is creating “a new Energy Innovation Fund to catalyze private sector investment in the energy efficiency of the Nation’s housing stock” as well as a “a new Choice Neighborhoods Initiative to make a range of transformative investments in high-poverty neighborhoods where public and assisted housing is concentrated.”² And the federal government will continue, of course, to fund and operate a dizzying array of existing programs, including in the broadest strokes:

- The Federal Housing Administration (“FHA”);³
- The Government National Mortgage Association (“Ginnie Mae”);
- The Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”), and the Federal Home Loan Bank System (“FHLBS”);⁴
- Project-Based Rental Assistance;
- Section 8 Housing Vouchers;
- Housing Counseling Assistance;
- Supportive Housing for the Elderly;
- Disabled Housing; and

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1. See OFFICE OF MANAGEMENT AND BUDGET, A NEW ERA OF RESPONSIBILITY: RENEWING AMERICA’S PROMISE at 74 (2009), available at <http://www.gpoaccess.gov/usbudget/fy10/pdf/fy10-newera.pdf> (providing Fiscal Year 2010 budget overview).

2. *Id.*

3. The Federal Housing Administration was created during the Depression to incentivize lenders to originate mortgages with longer terms.

4. In addition to the FHA, the federal government created a variety of other specialized housing finance entities. Ginnie Mae is an instrumentality of the federal government. Fannie, Freddie and FHLBS are government-sponsored enterprises (“GSEs”). Fannie Mae and Freddie Mac, the two largest GSEs, are owned by private shareholders but have a public mission to create a liquid secondary market for residential mortgages.

- HOPE (Housing Opportunities for People Everywhere) VI Grants.⁵

On top of these direct expenditures on housing, the federal government makes hundreds of billions of dollars more in tax expenditures.⁶ The main ones are:

- deductibility of mortgage interest on owner-occupied homes;
- deductibility of state and local property tax on owner-occupied homes;
- capital gains exclusion on home sales;
- exclusion of net imputed rental income;
- exception from passive loss rules for certain rental loss;
- credit for low-income housing investments; and
- accelerated depreciation on rental housing.⁷

The Tax Policy Center estimates that tax benefits to homeowners in 2005 amounted to \$147 billion, while direct aid to renters amounted to \$41 billion in the same year.⁸ The greatest benefits for homeowners accrue to the wealthy, with 72 percent of all the income tax benefits accruing to those making more than \$75,000 per year, while only a tiny amount goes to those making less than \$40,000 per year.⁹

5. See DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FISCAL YEAR 2009 JUSTIFICATION FOR ESTIMATES, available at <http://www.hud.gov/offices/cfo/reports/2009/cjs/introduction.pdf>; see RICHARD K. GREEN & STEPHEN MALPEZZI, A PRIMER ON U.S. HOUSING MARKETS AND HOUSING POLICY 89–95 (2003).

6. A “tax expenditure” refers to a tax payment that would have been made in the absence of a special tax provision combined with a simultaneous and equal payment to the person benefiting from that special provision. See STANLEY S. SURREY, PATHWAYS TO TAX REFORM: THE CONCEPT OF TAX EXPENDITURES 6–7 (1973). For instance, the deduction for mortgage interest is a tax expenditure because the federal government is making an exception from its general tax on income that benefits homeowners in order to encourage homeownership. Tax expenditures are typically made “to achieve various social and economic objectives.” Stanley S. Surrey, Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures, 83 HARV. L. REV. 705, 706 (1970).

7. UNITED STATES CENSUS BUREAU, THE 2009 STATISTICAL ABSTRACT: THE NATIONAL DATA BOOK 307 tbl. 459 (2009), available at <http://www.census.gov/prod/2008pubs/09statab/fedgov.pdf>. In Fiscal Year 2006, the deduction for mortgage interest was the fourth largest tax expenditure for individuals, trailing only exclusions pertaining to pensions; dividends and capital gains; and employer contributions for health care. THOMAS L. HUNGERFORD, TAX EXPENDITURES: TRENDS AND CRITIQUES, CRS REPORT RL33641, 4 Tab. 1 (2006).

8. Adam Carasso et al., *The Trend in Federal Housing Tax Expenditures*, TAX NOTES, Feb. 28, 2005, at 1081.

9. Adam Carasso, *Who Receives Homeownership Tax Deductions and How Much?* TAX NOTES, Aug. 01, 2005 (using FY2004 data).

Given its size, it is unsurprising that housing's regulatory web is also immense and intricate, including as it does:

- the newly-created Federal Housing Finance Agency;¹⁰
- the Department of Housing and Urban Development;
- the Federal Reserve Board;
- the Federal Trade Commission;
- the Office of the Comptroller of the Currency;
- the Office of Thrift Supervision; and
- the National Credit Union Administration.

Trying to derive a principled understanding of federal housing policy in the face of such enormous expenditures and extraordinary complexity is no easy task. Indeed, my quest to identify one or a few "first principles" of American housing policy might even be described as quixotic. Nonetheless, I have undertaken this endeavor because our muddled housing agenda has left debates surrounding housing policy confused and unproductive. The vast housing policy literature—spread as it is through the economics, policy, legal, sociology, and other bodies of scholarship—reflects that confusion.¹¹

Indeed, it is difficult to even define "housing policy." At its broadest, it can refer to government efforts to shape "the dynamic relationships between housing markets and economic, demographic, and social trends."¹² More typically, however, housing policy refers to government efforts to increase housing affordability.¹³

This article aims to clarify the housing field by providing a taxonomy of principles that are relied upon explicitly and implicitly in debates regarding the proper goals of housing policy. I proceed as follows. First, I distinguish between first principles of federal housing policy, on the one

10. The FHFA replaced the Office of Federal Housing Enterprise Oversight (Fannie and Freddie's regulator) and the Federal Home Loan Board (the FHLB System's regulator).

11. *See generally* Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 *WAKE FOREST L. REV.* 511 (2007) (reviewing housing literature in various disciplines).

12. The Joint Center for Housing Studies of Harvard University, <http://www.jchs.harvard.edu/aboutus/index.html>.

13. *See, e.g.*, Center for Housing Policy, *Center Mission and Goals*, <http://www.nhc.org/about/Center-Mission-Goals.html> ("the Center helps to develop effective policy solutions at the national, state and local levels that increase the availability of affordable homes."); ALEX F. SCHWARTZ, *HOUSING POLICY IN THE UNITED STATES I* (2006) (looking at "primary policies and programs designed to make decent and affordable housing available to Americans of modest means."). The role of tax expenditures like the mortgage interest deduction is often underemphasized in discussions of housing policy, notwithstanding their budgetary impact.

hand, and parallel and subordinate policies, on the other. Second, I survey current opinion about housing policy in order to begin my inquiry into first principles of federal housing policy in particular. Finally, I identify the particular principles that inform federal housing policy. To be clear, this article does not take a position on which principles of housing policy are preferable; it merely seeks to set forth the options. I leave the development of a particular position on housing policy to a later day.

I. FIRST, AND OTHER, PRINCIPLES

Identifying possible first principles for a field as complex and conflicted as housing policy is difficult. This article, however, will take a catholic approach to the categorizing of possible first principles, setting forth all principles put forth in good faith by those who write about housing. Aristotle took a similar approach in the *NICOMACHEAN ETHICS*, his study of politics.¹⁴ I find that the structure that Aristotle employed to study politics is useful in organizing my own thinking about contemporary housing policy

For Aristotle, the term “politics” has a broader meaning than it does for us: it means the things concerning the community and/or the state. This meaning is more in line with our definition of “government.”¹⁵ Aristotle writes that politics is a “master-art or master-science” that “prescribes which of the sciences a state needs . . . to [politics] we see subordinated even the highest arts, such as economy, rhetoric, and the art of war.”¹⁶ Housing policy, entailing, as it does, the spending of government monies on capital projects and operations, falls well within Aristotle’s definition of politics.

As Aristotle notes, when several arts or sciences are

subordinated to some one art of science—as the making of bridles and other trappings to the art of horsemanship, and this in turn, along with

14. ARISTOTLE, *NICOMACHEAN ETHICS* (Sarah Broadie and Christopher Rowe Trans., Oxford Univ. Press 2002). To be clear, my reliance on Aristotle in this article has a much more modest goal than one finds in the recent movement to adapt Aristotelian virtue ethics to discussions of real property policy questions. See, e.g., Eduardo Penalver, *Land Virtues*, 94 *CORNELL L. REV.* 821, 822 (2008–2009) (setting forth an approach to property “rooted in the Aristotelian tradition of virtue ethics”). My more modest goal is to adapt Aristotle’s approach to practical philosophy found in the *NICOMACHEAN ETHICS* to a modern policy question. This approach may be contrasted against that of Tim Iglesias. Iglesias’ work, discussed below, argues that housing ethics cannot be prioritized but must be seen as coexisting on an ever-shifting policy landscape.

15. M. T. Owens, Jr., *Aristotle’s Polis: Nature, Happiness, and Freedom*, Spring 1980 *REASON PAPERS* 69; ARISTOTLE, *supra* note 14, at 2–3.

16. ARISTOTLE, *supra* note 14, at 2–3.

all else that the soldier does, to the art of war, and so on,—then the end of the master-art is always more desired than the ends of the subordinate arts, since these are pursued for its sake.¹⁷

Housing policy, likewise, may be described as having within it several subordinate policies. Thus, we should take care to ensure that our inquiry does not confuse subordinate objectives with the primary objectives. As we review potential first principles, we should sort them into two categories: “one good in themselves, and the other good as means to the former.”¹⁸

At the same time, we must acknowledge that housing policy is not in and of itself a “supreme” art or science as Aristotle described politics—it is clearly an aspect of politics as Aristotle understood the term.¹⁹ So we must roughly indicate (i) what goal of politics housing policy is meant to follow from; (ii) what the goals of housing policy are; and (iii) what subordinate policies it is meant to include. And as with Aristotle’s study of politics, “[w]e must be content if we can indicate the truth roughly and in outline, and if, in dealing with matters that are not amenable to immutable laws, and reasoning from premises that are but probable, we can arrive at probable conclusions.”²⁰

Where to begin? Aristotle notes that, “[u]ndemonstrated facts always form the first step or starting-point of a science; and these starting-points or principles are arrived at some in one way, some in another—some by induction, others by perception, others again by some kind of training.”²¹ Thus, I begin my inquiry like that of Aristotle, by surveying “current opinions on the subject.”²²

One current opinion-maker in the field, Tim Iglesias, does a thorough job of setting forth five broad “housing ethics” that have informed housing policy in the United States.²³ His use of the term “ethics” is substantively similar to my use of the term “principles.” But his “ethics” are intended to be more descriptive, while my “principles” are intended to be used as tools of evaluation. As such, Iglesias accepts that even contradictory ethics can coexist as political priorities shift, while I argue that those seeking to shape housing policy should attempt to identify and resolve such conflicts so that housing policy does not work at cross purposes with itself.

17. *Id.* at 95.

18. *Id.* at 99.

19. *Id.* at 2.

20. *Id.* at 96.

21. *Id.* at 102.

22. *Id.*

23. Iglesias, *supra* note 11, at 511.

II. "CURRENT OPINION" OF HOUSING POLICY

With this caveat in mind, Iglesias' five ethics are useful because they do reflect many of the broadly held intuitions that we have about housing policy. The five ethics he identifies are:

1. Housing as an Economic Good;
2. Housing as Home;
3. Housing as a Human Right;
4. Housing as Providing Social Order; and
5. Housing as One Land Use in a Functional System.²⁴

The "Housing as an Economic Good" ethic treats housing as any other commodity and asks how government policies will distort the functioning of the market for housing.²⁵ The "Housing as Home" ethic explores the impact of policy on personal liberty, privacy and security.²⁶ The "Housing as a Human Right" speaks to how a policy furthers the goal of making decent housing available to all.²⁷ The "Housing as Providing Social Order" ethic speaks to how a housing policy will impact the community as it currently exists.²⁸ And the "Housing as One Land Use in a Functional System" ethic speaks to how a policy will impact the broader society, in particular the infrastructure, education and workforce sectors.²⁹

These five housing ethics are a useful survey of housing policy generally, but the "Housing as an Economic Good" and the "Housing as a Human Right" ethics play a greater role in *federal* housing policy in particular. Given the historic role that the states play in land use, law enforcement, and landlord/tenant law, it is not surprising that the federal government is not nearly as involved in implementing the other three ethics.³⁰

24. *Id.* Michael Diamond and J. Peter Byrne also attempt to provide some order to the vast literature about affordable housing. Michael Diamond & J. Peter Byrne, *Affordable Housing, Land Tenure, and Urban Policy: The Matrix Revealed*, 34 *FORDHAM URB. L.J.* 527 (2007).

25. Iglesias, *supra* note 11, at 519.

26. *Id.* at 531; *see also* Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of the Home*, 107 *MICH. L. REV.* 1093 (2009) (critiquing the view that a homeowner's home is critical to his or her personal and psychological well-being).

27. Iglesias, *supra* note 11, at 541.

28. *Id.* at 553.

29. *Id.* at 570.

30. *See generally* EDWARD L. GLAESER & JOSEPH GYURKO, *RETHINKING FEDERAL HOUSING POLICY* 29–32 (2008) (discussing various ways that localities regulate housing). It should be noted that post-Kelo, the "Housing as Home" ethic has taken on greater significance for the federal government than it had historically. *See generally* Ilya Somin,

The “Housing as an Economic Good” ethic is embedded throughout all federal housing policy discussions. Many past programs have come to be criticized for their unintended distortions of the housing market, which can reduce the supply and affordability of housing in the long-term even if they reduce the cost of housing in the short term.³¹ The affordability aspect of the “Housing as a Human Right” ethic is also imbued in housing policy debates, however, this ethic is more of the guiding force behind federal *rental* housing policy than federal *homeownership* policy.

Somewhat surprisingly, Iglesias does not emphasize what appears to me to be a completely separate sixth housing ethic: “Housing as a Bulwark of Democracy.”³² Reaching back at least as far as the time of Jefferson, the idea of the yeoman farmer who owns his homestead, is financially self-sufficient, and acts the part of a democratic citizen is central to America’s vision of itself.³³ Interestingly, other representatives of “current opinion” fail to highlight this ethic as well. I will argue below, however, that it is fundamental to an understanding of federal housing policy. Perhaps it is so deeply ingrained in the broader American ethic that it does not particularly surface in debates regarding housing policy.

As I survey “current opinions on the subject,” I will identify which of these ethics dominate political discourse today. It is worth quoting the

The Limits of Backlash: Assessing the Political Response to Kelo, 93 MINN. L. REV. 2100 (2009). Time will tell if this takes hold.

31. Rent control is the most commonly discussed example of a policy with a negative unintended distortion of the housing market, with housing economists nearly universal in their judgment that rent control ultimately reduces the supply of rental housing, particularly for low-income families, thereby increasing the aggregate cost of such housing. GLAESER & GYOURKO, *supra* note 30, at 58–62. Rent control was first implemented as a temporary measure during World War II. While very popular with those in rent regulated units, the policy has fallen out of favor as it appeared that rent regulation did not keep down rents generally but, rather, just for those in rent regulated units. Indeed, it is now commonly understood to depress the creation of new housing, thereby increasing average rents for the rental sector as a whole. *Id.* at 58–62. As there are only a few jurisdictions that even allow rent regulation, it is no longer considered a tool to be employed on behalf of tenants. *But see*, Arlo Chase, *Rethinking the Homeownership Society: Rental Stability Alternative*, 18 BROOK. J. L. & Pol. 61 (2009) (arguing that modest rent regulation should be resurrected as a housing policy tool to provide for housing stability in market economy).

32. Iglesias does note in passing that this ethic may be a subset of the “Housing as Providing Social Order” ethic, but just in passing. Iglesias, *supra* note 11, at 584. He also discusses a “housing as a focal point of self-governance” ethic in the context of common interest communities, like homeownership associations and condominiums, which touches on related themes. *Id.* at 518, n.28.

33. THOMAS JEFFERSON, *THE ESSENTIAL JEFFERSON* xvi (Jean M. Yarbrough ed., 2006) (discussing Jefferson’s idealization of the “yeoman farmer” in Query XIX of Jefferson’s NOTES ON THE STATE OF VIRGINIA).

national housing platforms of the Democratic and Republican parties in full because those two documents reflect two of the dominant housing ethics at play today in federal housing policy. I **bold** possible references to the “Housing as a Human Right” ethic and I *italicize* possible references to the “Housing as an Economic Good” ethic.

The 2008 Democratic National Platform states that

We will ensure that the foreclosure prevention program enacted by Congress is implemented quickly and effectively so that at-risk homeowners can get help and hopefully stay in their homes. We will work to reform bankruptcy laws to *restore balance between lender and homeowner rights*. Because we have an obligation to prevent this crisis from recurring in the future, we will *crack down on fraudulent brokers and lenders* and *invest in financial literacy*. We will pass a Homebuyers Bill of Rights, which will include establishing new lending standards to **ensure that loans are affordable** and fair, provide adequate remedies to make sure the standards are met, and ensure that homeowners have *accurate and complete information* about their mortgage options. We will support **affordable rental housing**, which is now more critical than ever. We will implement the newly created **Affordable Housing Trust Fund** to ensure that it can start to support the **development and preservation of affordable housing** in mixed-income neighborhoods throughout the country, restore cuts to public housing operating subsidies, and fully fund the Community Development Block Grant program. We will work with local jurisdictions on the problem of vacant and abandoned housing in our communities. We will work to end housing discrimination and to ensure equal housing opportunity. We will **combat homelessness** and target homelessness among veterans in particular by expanding proven programs and launching innovative preventive services.³⁴

This platform is imbued with two of the main federal housing ethics, but especially “Housing as a Human Right.” This ethic is seen in the efforts to promote the development and support of affordable rental housing and to combat homelessness. The “Housing as an Economic Good” ethic is seen, to a lesser extent, in efforts to correct for various market failures caused by information asymmetries between homeowners and lenders and unlawful practices by mortgage market players.

The Republican platform echoes many of the concerns of the Democratic platform, but emphasizes the “Housing as Economic Good” ethic:

Homeownership remains key to creating an *opportunity society*. We support timely and **carefully targeted aid** to those hurt by the housing

34. DEMOCRATIC NATIONAL CONVENTION COMMITTEE, THE 2008 DEMOCRATIC NATIONAL PLATFORM: RENEWING AMERICA’S PROMISE at 25.

crisis so that affected individuals can have a chance to trade a burdensome mortgage for *a manageable loan that reflects their home's market value*. At the same time, government action must not implicitly encourage anyone to borrow more than they can afford to repay. We support energetic federal investigation and, where appropriate, *prosecution of criminal wrongdoing in the mortgage industry and investment sector*. *We do not support government bailouts of private institutions*. *Government interference in the markets exacerbates problems in the marketplace and causes the free market to take longer to correct itself*. *We believe in the free market as the best tool to sustained prosperity and opportunity for all*. We encourage potential buyers to work in concert with the lending community to educate themselves about the responsibilities of purchasing a home, condo, or land.

Republican policy aims to make owning a home more accessible through *enforcement of open housing laws, voucher programs, urban homesteading* and—what is most important—*a strong economy* with low interest rates. Because **affordable housing is in the national interest**, any simplified tax system should continue to **encourage homeownership**, recognizing the tremendous social value that the home mortgage interest deduction has had for decades. In addition, sound housing policy should recognize the needs of renters so that apartments and multi-family homes remain important components of the housing stock.³⁵

As noted, the Republican platform emphasizes the “Housing as an Economic Good” ethic most of all, with its reliance on the free market; its wariness of government interference in the market; and its promise to punish those who illegally interfere with the market. But the Republican platform does not completely ignore the “Housing as a Human Right” ethic, with its reference to vouchers and affordable housing for owners and renters alike. While the two platforms reflect other housing ethics as well, to some small extent, it is clear that each party has chosen to identify itself with one main housing ethic.³⁶

Continuing our survey of “current opinion,” we see that the major special interest groups representing the housing industry echo these two main ethics, with a particular emphasis on “Housing as a Human Right.” This may be seen as a moral position, but it is also certainly consistent with the financial interests that these groups represent as well. The Na-

35. REPUBLICAN NATIONAL COMMITTEE, 2008 REPUBLICAN NATIONAL PLATFORM at 28.

36. The “Vision Statement” of the National Council of State Housing Agencies (which includes as members the housing finance agencies of every state) focuses on the affordability ethic: its concise vision is of an “affordably housed nation.” National Council of State Housing Agencies, About NCSHA, <http://www.ncsha.org/about-us>.

tional Association of Home Builders strives to create an environment in which:

- All Americans have access to the housing of their choice and the opportunity to realize the American dream of homeownership.
- Builders have the freedom to operate as entrepreneurs in an open and competitive environment.
- Housing and those who provide it are recognized as the strength of the nation.³⁷

And the Mortgage Bankers Association “invests in communities across the nation by ensuring the continued strength of the nation’s residential and commercial real estate markets; expanding homeownership and extending access to affordable housing to all Americans and supporting financial literacy efforts.”³⁸ The National Housing Conference, which draws its membership from every segment of the housing industry, promotes “policies, programs and legislation that help to provide affordable and suitable housing in a safe, decent environment.”³⁹ Unsurprisingly, housing advocates share this vision, but they come to that conclusion directly from their mission. The National Low Income Housing Coalition, for instance, “is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes.”⁴⁰

III. A TAXONOMY OF POSSIBLE FIRST PRINCIPLES

Now that we have surveyed some of the leading “current opinions on the subject,” let us return to the three questions posed by our Aristotelian inquiry. The first question that such an inquiry asks is, what goal of politics is housing policy meant to flow from? In other words, what is the

37. National Association of Home Builders, Mission and Vision, <http://www.nahb.org/page.aspx/generic/sectionID=88> (last visited September 12, 2010); National Association of Realtors, <http://www.realtor.org/realtororg.nsf/pages/NAROverview> (last visited September 12, 2010).

38. Mortgage Bankers Association, <http://www.mbaa.org/AboutMBA> (last visited September 12, 2010).

39. National Housing Conference, <http://www.nhc.org/> (last visited September 12, 2010).

40. National Low Income Housing Coalition, <http://www.nlihc.org/template/index.cfm> (last visited September 12, 2010). Other advocacy organizations emphasize similar goals. *See, e.g.*, Neighborworks America, <http://www.nw.org/network/aboutUs/mission/default.asp> (last visited September 12, 2010) (stating that mission of this Congressionally-created not-for-profit is to create “opportunities for people to live in affordable homes, improve their lives and strengthen their communities.”).

end that housing policy is a means toward? In broad brush, housing policy typically involves the redistribution of income either to lower-income households or to a politically favored class of households such as homeowners. But housing policies do not merely achieve those ends. Rather they typically tie the redistribution to the households' housing status. Contrast, for instance, the Earned Income Tax Credit to the Section 8 voucher program. Whereas the former redistributes income to lower-income households with no strings attached, the latter only redistributes income to a similar population in the form of a housing subsidy. While housing policy may flow from broader policies, it also has elements that are intrinsically related to housing.

This brings us to the second Aristotelian question: what is the goal of housing policy? We must first ask whether there are goals of housing policy that are goods in themselves, and we must distinguish them from those that are means to other ends. For example, if a goal is to ensure that Americans live in safe, well-maintained, and affordable housing, such a goal would be a good in itself. On the other hand, if a goal of housing policy is just a particular application of the general principle of promoting economic efficiency, as suggested by Iglesias' "Housing as an Economic Good" ethic, then such a housing policy goal would be a means to an end. As we seek to identify what is unique to housing policy, we can set aside goals that treat housing as a means to a more general end. This does not mean that we ignore them in our policy discussions, just that we ignore them as we attempt to systemize our thinking about housing policy as a distinct field. As such, I reject "Housing as an Economic Good" as a candidate for a first principle of federal housing policy, at least in its purest form.⁴¹ I also reject straightforward income redistribution as a candidate because a housing policy intended to achieve that end would see housing as a mere means to that redistributive end.

What then is the aim of a housing policy? The answer to this is not nearly as clear cut as Aristotle found the answer to his question— what is the aim of politics (to be happy, to live well).⁴² As noted, many assert that a fundamental goal of housing policy is to assist Americans to live in a safe, well-maintained, and affordable housing unit. Such a view would be consistent with a rights-based view of "Housing as a Human Right." Another similar, but more modest, expectation is housing policy as a specialized form of income redistribution that ensures that the income

41. To be clear, Iglesias is certainly right that considerations of his "Housing as an Economic Good" ethic are reflected in nearly every policy discussion regarding housing. That just happens to be a different discussion than the one intended in this article.

42. ARISTOTLE, *supra* note 14, at 97.

transferred is consumed in increased housing. This is how a housing economist might approach the question applying a modified version of the "Housing as an Economic Good" ethic. Finally, one might argue that homeownership and stable housing is fundamental to the American notion of citizenship; and, indeed, that is how many politicians have approached the question, applying the "Housing as a Bulwark of Democracy" ethic. There are, of course, many other principles that impact housing policy debates but I begin the discussion with these three broad and broadly-held ones.⁴³

Safe, Well-Maintained and Affordable Housing. Let us start with the principle that Americans should live in well-maintained, safe, and affordable housing. What does that mean? What is the actual function of housing? Many consider it to be as fundamental as food and clothing as it addresses basic survival needs.⁴⁴

Our analysis cannot end there, however, as the concept of "well-maintained" and "safe" housing has changed over time. Reaching back at least as far as Jacob Riis's *HOW THE OTHER HALF LIVES*, society has taken an active interest in raising the minimum standard of decent housing for all.⁴⁵ The advocacy of Riis and others led to the Tenement Housing Law of 1901, which was "the first major advance in the fight against the tenement slum."⁴⁶ Over time the quality of the housing stock has improved because of increases in the standard of living as well as the implementation of construction and housing codes that imposed pro-

43. Arthur P. Solomon attempted a similar project in *A National Policy and Budgetary Framework for Housing and Community Development*, 5 AREUEA J. 147 (1977) (providing "an analytic foundation for a national policy and budgetary framework for housing, housing finance, and community development.").

44. See, e.g., Universal Declaration of Human Rights, art. 25, § 1, Dec. 10, 1948 G.A. res 217A (III), U.N. Doc. A/810:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(emphasis added); 42 U.S.C. §1441 (2009) (setting forth 1949 Congressional declaration of national housing policy: "The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require . . . the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family"); see also Bo Bengtsson, *Housing as a Social Right: Implications for Welfare State Theory*, 24 SCANDINAVIAN POL. STUDIES 255 (2001) (distinguishing between universal and selective "right to housing").

45. JACOB RIIS, *HOW THE OTHER HALF LIVES* (Garrett Press 1970) (1890).

46. *Id.*

consumer standards on developers. And as the housing stock has improved, the meaning of “safe” and “well maintained” housing has also evolved.

Whereas indoor plumbing could not be taken for granted 100 or even 50 years ago, it can now.⁴⁷ But whereas an inquiry into the quality of the housing stock was once limited to the condition of individual units, a comparable inquiry today would look to the housing stock as part of the fabric of its broader environment: being safe in one’s home is no longer considered sufficient if one’s community is unsafe; education, work and healthcare opportunities are scarce; and the residents cannot access a reliable transportation network.⁴⁸

The concept of “affordable” has also changed over time. As Glaeser and Gyourko have noted, “a consensus seems to have arisen that housing becomes ‘unaffordable’ when costs rise above 30% of household income,” a consensus that serves as the basis for federal housing policy⁴⁹ But until the early 1980s, these very same federal programs set a 25% ceiling for housing costs for various federal programs.⁵⁰ And much of the debate surrounding anti-foreclosure efforts focuses on determining what maximum percentage of adjusted family income spent on housing can be sustained by a household, with guidelines ranging from 31% to 38% for loan modifications.⁵¹

In evaluating whether housing is safe, well-maintained, and affordable in the context of contemporary American society, we then might view a primary function of housing to be to provide an environment where a

47. GLAESER & GYOURKO, *supra* note 30, at 29–32 (citing U.S. CENSUS BUREAU, DECENNIAL CENSUS, LONG FORM HOUSING CHARACTERISTICS (1940-2000)). *But see*, Rachel G. Bratt *et al.*, *Why a Right to Housing Is Needed and Makes Sense: Editors’ Introduction*, A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 1, 3, 5 (Rachel G. Bratt *et al.* eds., 2006) (noting that poor housing “quality is still a problem facing millions of Americans” in terms of dangerous wiring, poor heating, vermin infestation and exposure to lead paint and mold and that HUD found in 2003 that about 5% of households have incomes less than 50% of Median Area Income; pay more than 50% of income in rent; and live in severely inadequate quarters).

48. Rachel G. Bratt *et al.*, *supra* note 47, at 2; *Cf.* EDUARDO M. PENALVER & SONIA KATYAL, *PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTERS IMPROVE THE LAW OF OWNERSHIP* 115 (2010) (noting that thinkers from Aristotle to Adam Smith to Amartya Sen acknowledge that each society has “different material preconditions for participation in society” based on its own material circumstances).

49. GLAESER & GYOURKO, *supra* note 30, at 29–32 (identifying various HUD and other federal policies that incorporate this figure).

50. ALEX F. SCHWARTZ, *HOUSING POLICY IN THE UNITED STATES* 23 (2006).

51. FEDERAL DEPOSIT INSURANCE CORPORATION, *FDIC LOAN MODIFICATION PROGRAM* 8–9, *available at* <http://www.fdic.gov/consumers/loans/loanmod/FDICLoanMod.pdf>.

person can, in the words of Aristotle, exercise her “vital faculties,” or soul, as “happiness plainly requires external goods too . . . for it is impossible, or at least not easy, to act nobly without some furniture of fortune.”⁵² In more familiar lingo, we might say that the function of housing is to provide an environment where people exercise their rights of “Life, Liberty and the pursuit of Happiness.”⁵³ And indeed, leading right-to-housing activists use language that has echoes of Jefferson’s, with one “characterizing housing as the foundation for life and a launching pad which is fundamental to human development.”⁵⁴

In sum, providing safe, well maintained and affordable housing has consistently remained a broadly-held principle of housing policy even if the standards for such housing has changed over time.

Specialized Income Redistribution. A second widely-held “first principle” of housing policy is that many low and moderate-income households should receive a specialized form of income redistribution that ensures that the income transferred is consumed in increased housing. One of the main arguments in favor of such a specialized form of income redistribution is that low-income children benefit from policies that require their legal guardians to consume more housing (as opposed to other goods and services).⁵⁵

There are additional rationales for privileging housing expenditures over other household expenditures. First of all, housing is the largest budget item for all households, those of both renters and homeowners.⁵⁶ Indeed, in 2005 housing expenses accounted for nearly 32% of all consumer spending by homeowners and nearly 36% for renters.⁵⁷ Congress may believe that left to their own devices, people will under-consume housing as a proportion of their income in a manner which is bad for them or, perhaps, bad for their children and their communities.⁵⁸ Thus,

52. ARISTOTLE, *supra* note 14, at 104.

53. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

54. Iglesias, *supra* note 11, at 542 (summarizing views of Chester Hartman).

55. GLAESER & GYOURKO, *supra* note 30, at 55–56. One might argue that this first principle is just a watered down version of the first candidate discussed above. While that argument is not without some merit, this redistributionist first principle treats housing less as a right and more like a commodity. As such, it is worth separating the two of them out for the purposes of this analysis.

56. Anthony Downs, *Introduction: Why Rental Housing Is the Neglected Child of American Shelter*, in REVISITING RENTAL HOUSING 2 (Nicolas P. Retsinas & Eric S. Bel-sky, eds., 2008).

57. *Id.*

58. Many economists would likely disagree with such a belief. *See, e.g.*, GLAESER & GYOURKO, *supra* note 30, at 54 (“Economists generally prefer pure income redistribution to redistribution in-kind.”).

Congress may use subsidies and tax expenditures to encourage the greater consumption of housing.

Second, given the strong commitment in the United States to a market economy, as compared to other developed nations, some argue that government policies which smooth out the impact of market forces on such a key component of well-being such as housing are a necessary palliative for households as they face the unexpected challenges of the current financial environment.⁵⁹

Third, and particularly after the homelessness crisis that began in the 1980s, government has also taken a particular interest in preventing homelessness and addressing the housing situation of the neediest in society: the developmentally disabled; the mentally ill; very low-income families and individuals; and the elderly.⁶⁰

Glaeser and Gyourko rightly point out that policies that require low-income people to consume redistributed income on housing (which is just the flip side of privileging housing over other expenditures) are paternalistic and unsupported by any studies that convincingly demonstrate how low-income households' housing choices are particularly bad.⁶¹ They also challenge the belief that many Americans under-consume housing.⁶² That being noted, there is no question that much of housing policy is premised on the notion that people (indeed, people of all

59. Rachel G. Bratt et al., *supra* note 47, at 8 (“Housing problems are deeply ingrained in the operation of our economic system and in the ways in which society functions”); Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of the Home*, 107 MICH. L. REV. 1093, 1132–33 (2009) (arguing that “major stumbling block to adopting a minimal approach to home protection has been the fear that homeowners will founder on the shoals of the free market.”).

60. *See, e.g.*, JOEL BLAU, *THE VISIBLE POOR: HOMELESSNESS IN THE UNITED STATES* 175–76 (1993) (reviewing government responses to homelessness in the 1980s); Stern, *supra* note 59, at 1133 (reviewing reasons to provide special protection to elderly). The irony of this government interest in homelessness is that the 1980s homelessness crisis was caused in part by government policies that disfavored single room occupancy hotels that were often residences of last resort for very low-income individuals. BRENDAN O’FLAHERTY, *MAKING ROOM: THE ECONOMICS OF HOMELESSNESS* 176 (1996) (noting that New York City’s 1961 zoning amendments were designed explicitly to “discourage subdividing apartments and buildings into small units”). While these programs are typically geared toward renters, there are also programs that target members of special needs populations that own their homes. *See, e.g.*, HUD, *Home Equity Conversion Mortgages for Seniors*, <http://www.hud.gov/offices/hsg/sfh/hecm/hecmhome.cfm> (describing FHA-insured Home Equity Conversion Mortgages (reverse mortgages) for senior citizens).

61. GLAESER & GYOURKO, *supra* note 30, at 55.

62. *Id.* at *passim*.

classes) should receive assistance in offsetting the large expense that housing entails.⁶³

This holds particularly true for renters as they tend to be quite a bit poorer than homeowners: in 2005, the median income of renter households was less than half that of owner-occupant households.⁶⁴ John Quigley writes that

'Affordability' is clearly the most compelling rationale for policies [sic] subsidizing rental housing. The high cost of rental housing, relative to the ability of low-income households to pay for housing, means that these households have few resources left over for expenditures on other goods—food, clothing, medicine—that are also necessities.⁶⁵

As such, affordability rationales frequently predominate in the rental housing policy arena.

A variety of programs implement this principle. In addition to programs like housing vouchers that reduce household rent payments for low-income families, the federal government has also implemented a variety of initiatives to make housing more affordable and sustainable for particular renters such as the special needs populations noted above.⁶⁶ If members of these populations are not able to secure and maintain housing because of their inability to earn an income, some argue that society is responsible for providing needy members of these populations with affordable housing.⁶⁷

63. If housing policy was based on a principle of straightforward income redistribution, then it would really be a means to an end, the end being decreased income inequality or the provision of a basic standard of living. Moreover, if it were merely intended to be a way of implementing income redistribution, housing policy would be an incredibly inefficient way to achieve that end. This is because it would limit to housing the ways that the recipients of the income redistribution could spend that money. This would lead to some recipients over-consuming housing when their preference would be to consume other goods (e.g., food) and services (e.g., education) instead. All of this is not to say that income redistribution concerns do not play a role in housing policy. Rather, it is to say that we should be careful not to lose sight of what makes housing policy *housing policy*.

64. Downs, *supra* note 56, at 2.

65. John M. Quigley, *Just Suppose: Housing Subsidies for Low-Income Renters*, in *REVISITING RENTAL HOUSING: POLICIES, PROGRAMS, AND PRIORITIES* 300, 308 (Nicholas P. Retsinas & Eric S. Belsky eds., 2008).

66. See generally LIBBY PERL, SECTION 811 AND OTHER HUD HOUSING PROGRAMS FOR PERSONS WITH DISABILITIES (2008), available at http://assets.opencrs.com/rpts/RL34728_20081103.pdf (also noting support services funding for such programs are intended to sustain long-term residency).

67. This argument obviously includes elements of the "Housing as a Human Right" ethic as well.

A related principle (although rarely stated because of its plainly instrumentalist nature) of some aspects of housing policy is to ensure that low-income people do not cause harm to other members of society.⁶⁸ This principle is based on the belief that society benefits from low-income households consuming more and better housing, just as it may benefit from them consuming more food (via the Food Stamp program) and medical care (via Medicaid).⁶⁹ Society's benefit from increased housing consumption by low-income households may take the form of reduced homelessness and increased social cohesion. It may also take the form of the increased public safety that results from minimal building and housing standards that protect the housing stock from casualties such as fire and earthquake damage and protect communities from diseases that more easily spread where certain health measures are not implemented.⁷⁰

Housing as a Bulwark of Democracy. While predominantly relating to homeownership (as opposed to rental) policy, the importance of this principle in American housing policy cannot be overstated. The centrality of homeownership to America's vision of itself as a society of equal citizens reaches at least as far back as Jefferson's idealized "yeoman farmer" and continued through to Lincoln's Homestead Act of 1862, which granted 160 acres to settlers.⁷¹ Jefferson's yeoman farmer was his ideal citizen because he was self-sufficient, earned his own keep, considered himself the equal of anyone else, and jealously protected his liberty and unalienable rights.

The "yeoman farmer" transformed into the "homeowner" in the 20th Century with presidents as varied as Herbert Hoover, Lyndon Johnson, Bill Clinton and George W. Bush making homeownership a key element of their agendas.⁷² Indeed, the extraordinary lengths that the Bush and

68. Rachel G. Bratt et al., *supra* note 47, at 1, 2–3 (arguing that one of the goals of tenement laws was "to protect the nonpoor who were living in" neighborhoods near to tenement slums).

69. GLAESER & GYOURKO, *supra* note 30, at 55.

70. RIIS, *supra* note 45, at viii.

71. JAMES M. MCPHERSON, *ABRAHAM LINCOLN AND THE SECOND AMERICAN REVOLUTION* 12 (1992).

72. Lawrence J. Vale, *The Ideological Origins of Affordable Homeownership Efforts*, in *CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP* 31–32 (William M. Rohe & Harry L. Watson eds., 2007) (discussing Hoover's efforts to increase the homeownership rate while Commerce Secretary and President); Rachel G. Bratt, *Homeownership for Low-Income Households: A Comparison of the Section 235, Nehemiah, and Habitat for Humanity Programs*, in *id.*, at 46–47 (discussing Johnson initiatives); *Political Perspectives*, in *id.*, at 67 (discussing Clinton and

Obama administrations have taken to stabilize the housing market during the credit crisis bears witness to the importance that both parties place on homeownership.⁷³

While a first principle of housing policy is to make people into better citizens by making them homeowners, the possible non-economic benefits of homeownership are not necessarily limited to the political sphere. As a result, homeownership policy has also been designed at times to encourage these other benefits. The connection between homeownership and these non-economic benefits has not, however, been clearly demonstrated.

There is a significant amount of research that argues that there are a range of other non-economic benefits from homeownership. These include better outcomes for residents in education, health, and employment.⁷⁴ These also include increased civic engagement, as demonstrated through higher levels of volunteerism and participation in community

Bush efforts); *See also* WILLIAM H. SIMON, SOCIAL-REPUBLICAN PROPERTY, 38 UCLA L. REV. 1335 (1990-1991) (noting that homeownership is consistent with republicanism).

73. *See, e.g.*, Edmund L. Andrews, *U.S. Sets Big Incentives to Head Off Foreclosures*, N.Y. TIMES, Mar. 5, 2009, at A1 (reporting \$75 billion Obama Administration to head off foreclosures); Stephen Labaton & Edmund L. Andrews, *In Rescue to Stabilize Lending, U.S. Takes Over Mortgage Finance Titans*, N.Y. TIMES, Sept. 8, 2008, at A1 (reporting Bush Administration takeover of Fannie Mae and Freddie Mac).

74. Downs, *supra* note 56, at 9 ("high-poverty neighborhoods adversely affect the life chances of person living here, most of whom are renters, high rates of poverty, crime, drug abuse, broken homes, unemployment, and gang activity combine with low-quality public schools and lack of health care to make living in such areas much more harmful than living in most middle-income neighborhoods."). A related argument is that children benefit from living in homes owned by their legal guardians. Empirical research has not, however, convincingly demonstrated that this benefit results from such policies, notwithstanding the fact that numerous studies have been conducted in this area. *See, e.g.*, GLAESER & GYOURKO, *supra* note 30, at 56; David Barker & Eric A. Miller, *Homeownership and Child Welfare*, 37 REAL ESTATE ECON. 279 (2009) (finding that homeownership has little or no effect on children's welfare based on several indicators of well-being); Scott Holupka & Sandra J. Newman, *The Effects of Homeownership on Children's Outcomes: Real Effects or Self-Selection?*, (Working Paper presented to the Colloquium on the Law, Economics, and Politics of Urban Affairs, NYU School of Law and Wagner School of Public Service, March 9, 2009) (on file with author) (finding no clear effects); Grace W. Bucchianeri, *The American Dream or The American Delusion? The Private and External Benefits of Homeownership*, available at <http://real.wharton.upenn.edu/~wongg/research/The%20American%20Dream.pdf> (after controlling for household income, housing quality and health, finding female homeowners are no happier than renters by a number of different measures and, indeed, derive more pain from their house and home).

activities.⁷⁵ Thus, an additional principle of homeownership policy is to achieve better outcomes regarding these non-economic benefits.

Some also argue that homeownership encourages wealth accumulation and forced savings (through principal repayment of the mortgage).⁷⁶ These goals are consistent with the principle of making contemporary Americans self-sufficient like Jefferson's yeoman farmers. There is plenty of evidence that homeowners have more wealth than renters, although researchers have only recently attempted to demonstrate the extent to which homeownership actually causes that greater wealth accumulation.⁷⁷ And while it might come as no surprise that historically homeowners accumulated greater wealth, recent events have at least temporarily put an end to that trend. The boom in housing prices that began in the 1990s along with easy access to credit for homeowners set them up for a fall when housing prices tumbled in the late 2000s. Indeed, more than a third of homeowners were underwater on their mortgages (that is, they owed more than their houses were worth) in 2009.⁷⁸

Other Principles. There are additional rationales for certain housing policies that are clearly not first principles of a housing policy, but rather are parallel goals, ones that reflect other aspects of politics (as an Aristotelian understands the term). It is not surprising that quite a few other social principles are enmeshed with housing policy, given the size of the housing sector and its role in the economy. The most important are:

- ending segregation and other racial inequities which are present in the housing market;
- increasing socio-economic diversity;
- promoting green construction practices and energy efficiency;
- promoting community and economic development; and
- preventing sprawl and promoting Brownfield (environmentally contaminated property) development.

1. Ending Segregation and Other Racial Inequalities. Racial segregation and racial discrimination have always permeated, and continue to permeate, the housing market. Racial discrimination is a harm in itself,

75. Bucchianeri, *supra* note 74, at 3–4 (reviewing literature).

76. See, e.g., Rachel G. Bratt et al., *supra* note 47, at 1, 4.

77. See, e.g., Zhu Xiao Dia et al., *Do Homeowners Achieve More Household Wealth in The Long Run?*, 6 J. HOUS. ECON. 274 (2007) (providing “first empirical evidence that homeownership, after controlling for other drivers of wealth accumulation, is positively and significantly associated with wealth accumulation over time.”); Thomas P. Boehm & Alan M. Schlottmann, *Wealth Accumulation and Homeownership: Evidence for Low-Income Households*, 10(2) CITYSCAPE 225 (2008) (finding “household wealth generally appears to be positively affected by homeownership”).

78. Bob Tedeschi, *The Depths of Mortgage Debt*, N.Y. TIMES, Aug. 30, 2009, at RE9 (providing second quarter 2009 data).

obviously inconsistent with fundamental American values. But racial discrimination in the housing market is also seen as having a pernicious influence on many other aspects of social welfare: education, health, and workforce issues being three of the most important.⁷⁹ Therefore, it is of the greatest import that racial discrimination be swept from the housing market. That being said, ending racial discrimination is not so much a principle of housing policy *per se* as it is a fundamental and parallel principle that must be implemented in housing and throughout the rest of society.

It must be noted that housing policies have often been used to *implement* racist and classist agendas. In the past, these policies were often explicitly racist, as with redlining policies implemented by the Federal Housing Administration.⁸⁰ Redlining, the practice of refusing to lend in certain communities, particularly African-American communities, was pioneered by the federal government through the Home Owners' Loan Corporation and the FHA in the 1930s and continued on for decades.⁸¹

Other housing policies only thinly veiled their discriminatory aims. Urban renewal, sometimes characterized as a policy to improve the life of low-income households, was implemented in such a way as to force low-income households from their admittedly substandard homes and replace them with buildings designed for higher-income residents or businesses.⁸² More recently, facially acceptable programs like Housing Opportunities for People Everywhere ("HOPE") VI (discussed below) have been criticized for effectively dispersing poor communities of color and replacing them with higher income residents.⁸³ The existence of such racist and classist policies, whether implicit in the design of the policy or its implementation, must be acknowledged in order to prevent them from being executed.

79. Nancy A. Denton, *Segregation and Discrimination in Housing*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 61, 71 (Rachel G. Bratt et al. eds., 2006).

80. There are also local government policies that can implement racist policies, such as exclusionary zoning. I do not reach such policies in this article. *See generally* Keith R. Ihlanfeldt, *Exclusionary Land-use Regulations Within Suburban Communities: A Review of the Evidence and Policy Prescriptions*, 41 URBAN STUDIES 261 (2004).

81. Denton, *supra* note 79, at 66.

82. Peter Marcuse & W. Dennis Keating, *The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 139, 144-45 (Rachel G. Bratt et al. eds., 2006).

83. SUSAN J. POPKIN et al., A DECADE OF HOPE VI RESEARCH FINDINGS AND POLICY CHALLENGES 3 (2004) ("there is substantial evidence that the original residents of HOPE VI projects have not always benefited from redevelopment, even in some sites that were otherwise successful.").

Another classist policy that bears ongoing review is the manner in which tax expenditures on homeownership greatly favor wealthy homeowners over less wealthy homeowners and renters.⁸⁴ As noted above, 72 percent of all the income tax benefits accruing to homeowners go to those making more than \$75,000 per year, and only a tiny amount go to those making less than \$40,000 per year.⁸⁵ Such a policy is not innately repugnant like a racist policy, but it should give pause to those who believe that the tax system should be progressive and not regressive.

2. *Increased Socio-Economic Diversity.* A related principle is that increased socio-economic diversity should be incentivized in housing policy. It may be seen as a principle that respects the low-income residents of a gentrifying community and the fabric of the community itself.⁸⁶ Socio-economic diversity may also be seen as necessary for a community to function in a healthy manner.⁸⁷ Finally, it may be seen as something that particularly benefits residents of high poverty areas. One major federal initiative, the Moving to Opportunity for Fair Housing demonstration, gave rent vouchers to residents of poor urban areas to move to “low-poverty areas.”⁸⁸ One of the major rationales for the demonstration is that very low-income families would benefit from living among higher-income families.⁸⁹ Another major federal initiative, HOPE VI, demolishes dysfunctional public housing and replaces it with mixed-income housing (as well as providing housing vouchers to some of the original tenants who were displaced).⁹⁰ Congress’ stated objectives for HOPE VI included (1) improving “the living environment for residents of severely distressed public housing;” (2) revitalizing “sites on which such public housing projects are located and contribut[ing] to the improvement of the surrounding neighborhood;” and (3) providing “housing that will avoid or decrease the concentration of very low-income

84. See *infra* notes 7–10 and accompanying text.

85. Adam Carasso, *supra* note 9.

86. LORETTA LEES ET AL., *GENTRIFICATION* 215 (2007).

87. See, e.g., ALYSSA KATZ, *OUR LOT: HOW REAL ESTATE CAME TO OWN US* 192–93, 200 (Bloomsbury 2009) (arguing that the creative classes “who made [New York City] what it is” are being forced out by Wall Street real estate investors); John Ingram Gilderbloom et al., *Why Cities Need Affordable Housing: A Case Study of Houston*, in JOHN INGRAM GILDERBLOOM, *INVISIBLE CITY: POVERTY, HOUSING AND NEW URBANISM* 203 (2008) (arguing that lack of affordable housing policy jeopardizes Houston’s future).

88. See generally LARRY ORR ET AL., *HUD: OFFICE OF POLICY DEV. & RESEARCH, MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION: INTERIM IMPACTS EVALUATION* (2003), available at <http://www.huduser.org/Publications/pdf/MTOFullReport.pdf>.

89. *Id.*

90. See generally POPKIN ET AL., *supra* note 83.

families.”⁹¹ In one program then, HOPE VI encompasses many of the rationales for increasing socio-economic diversity.⁹² This principle, like the first, goes way beyond the scope of a housing policy to touch upon key political goals relating to education, workforce development, and healthcare, to name a few.

3. *Promoting Green Construction Practices and Energy Efficiency.* Promoting green construction practices and energy efficiency has taken on a greater importance in housing policy in the last ten years.⁹³ Indeed, it is considered the cutting edge issue throughout the entire construction industry, including the affordable housing sector. Bringing environmental concerns to this sector of the economy makes particular sense given that heating and powering residential buildings is responsible for about 20 percent of total U.S. CO₂ emissions.⁹⁴ To some extent, the principle of housing affordability aligns well with that of green construction as operating costs (energy costs in particular) may be lower with green buildings.⁹⁵ But construction costs for green projects are typically higher, at least at present, which raises the cost of construction for each unit.⁹⁶ The affordable housing sector is, with its low margins, particularly sensi-

91. 42 U.S.C. § 1437v (2009).

92. In wealthy communities, there is often the opposite problem: not enough affordable housing for the local workforce of civil servants (e.g., teachers, firefighters, police officers). This is typically a more pressing issue for state and local governments than for the federal government. *See generally* RICHARD M. HAUGHEY, ULI LAND USE POLICY FORUM REPORT, WORKPLACE HOUSING: BARRIERS, SOLUTIONS, AND MODEL PROGRAMS 1–13 (2002). That being said, federal monies may be used to fund the creation of workforce housing if federal criteria are met by a particular affordable housing project. *Id.* at 4. Another tool used by state and local governments to increase socio-economic diversity is inclusionary zoning, although the federal government has no role to play in implementing this tool. *See generally* DANIEL R. MANDELKER, LAND USE LAW §§ 7.26–7.31 (5th ed. 2003 & 2009 Supp.).

93. *See* JERRY YUDELSON, THE GREEN BUILDING REVOLUTION 3–6 (2008) (reviewing history of green building movement from promulgation of Leadership in Energy and Environmental Design (LEED) standards in 2000).

94. D&R INTERNATIONAL, LTD., U.S. DEP'T OF ENERGY, 2009 BUILDINGS ENERGY DATA BOOK 2–24 (2009) (2006 data); *see* William McNerney & Elizabeth Mattern, *Greenhouse Gases and Commercial Real Estate*, THE PRACTICAL REAL ESTATE LAWYER 35, 35–36 (May 2009).

95. Piet Eichholtz et al., *Doing Well by Doing Good? Green Office Buildings*, AM. ECON. REV. (forthcoming), available at <http://ssrn.com/abstract=1480215> (noting that while “hard evidence on the financial performance of green buildings is limited and consists mainly of industry-initiated case studies,” green buildings appear to have slightly higher construction costs and lower operating costs); Norm Miller et al., *Does Green Pay Off?*, 14 J. REAL EST. PORTFOLIO MGMT. 385, 385 (2008) (arguing that “payoff from wise green investment is easy to justify even if it is based on purely profit motivations”).

96. Eichholtz et al., *supra* note 95, at 8.

tive to increased cost. As with the two previous parallel principles, green building is not so much a principle of housing policy, but a parallel principle that seeks to implement environmentally sound practices throughout broad swaths of the economy.

4. *Promoting Community and Economic Development.* Promoting community and economic development is often intertwined with housing policy, although not integral to housing policy itself. Community and economic development policy usually sees housing as one element of a broader strategy to ensure the long term health of a community. Typically, other important elements of a community and economic development policy include transportation, education, and infrastructure objectives, as well as “soft” elements such as developing social capital in low-income communities.⁹⁷

5. *Preventing Sprawl and Redeveloping Brownfields.* While preventing sprawl has become an issue of great concern for state governments with their historical responsibility for land use regulation,⁹⁸ federal housing policy may also encompass this principle.⁹⁹ Federal and state governments have also looked to Brownfield redevelopment as an element of housing policy, although they have trodden with care because of the environmental hazards that these properties present.¹⁰⁰ Addressing sprawl and Brownfields as part of a housing policy reflects a commitment to sustainable growth.¹⁰¹ But as with community and economic development initiatives, sustainable growth initiatives are generally much broad-

97. See generally WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* (2001).

98. See Regina C. Gray, *Ten Years of Smart Growth: A Nod to Policies Past and a Prospective Glimpse into the Future*, 7 *CITYSCAPE* 109 (2007) (reviewing state and local smart growth strategies).

99. See, e.g., Bruce Katz, Director, Brookings Institution Metro. Policy Program, *A New Generation of Federal Housing Policy* (June 29, 2009) (transcript available at http://www.brookings.edu/speeches/2009/0629_housing_katz.aspx) (arguing for “energy wise and environmentally friendly” investments in housing). There is no question that, historically, federal transportation, housing finance, and infrastructure policies have had the effect of increasing sprawl. See generally KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985).

100. See *Responsible Housing*, NAT’L. CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/?TabId=16767> (last visited April 16, 2010) (advocating that to make Brownfields “available for housing, Congress needs to give states flexibility to immunize project providers from future federal cleanup liability and provide the necessary funding to assist states in the clean-up of these sites”).

101. See generally John C. Dernbach, & Scott Bernstein, *Pursuing Sustainable Communities: Looking Back, Looking Forward*, 35 *URB. LAW.* 495 (2003).

er than just housing as they reflect environmental, energy and quality of life concerns as much as housing policy concerns.¹⁰²

* * *

Subordinate Principles. While the five parallel principles outlined directly above are best characterized as Aristotelian “goods in themselves,” there are also some subordinate principles of housing policy that relate to the size of the housing sector, particularly the mortgage and construction industries, and its importance to the overall economy that are clearly means to other ends. For instance, finance industry representatives argue for policies that stabilize the mortgage markets, also noting the impact that the mortgage industry has on the health and stability of the overall economy.¹⁰³ This has never been clearer than in the ongoing crisis where stabilizing mortgage lenders was identified as one of the key elements of the government’s response to the crisis.¹⁰⁴

Others argue that affordable housing expenditures by the government can also be counter-cyclical and help to smooth out the boom and bust cycle that characterizes the construction sector.¹⁰⁵ Housing and housing finance industry representatives, therefore, argue for policies that are intended to stabilize the construction and housing sectors during the financial crisis.¹⁰⁶

102. *Id.*

103. David Reiss, *Fannie Mae and Freddie Mac and the Future of Federal Housing Finance Policy: A Study of Regulatory Privilege*, 61 ALA. L. REV. (forthcoming 2010), available at http://works.bepress.com/david_reiss/25 [hereinafter Reiss, *Regulatory Privilege*].

104. *See, e.g.*, Reiss, *supra* note 103 (discussing government attempts to stabilize mortgage finance giants Fannie and Freddie).

105. *See* Iglesias, *supra* note 11, at 548 n.186 (arguing that “[a] primary purpose of the public housing program was to act as an employment program to stimulate the construction industry” during and after the Great Depression).

106. *See, e.g.*, MORTGAGE BANKERS ASSOCIATION, 2009 MBA POLICY AGENDA TO STABILIZE THE HOUSING AND MORTGAGE MARKETS; National Multi Housing Council, <http://www.nmhc.org/Content/ContentList.cfm?NavID=424> (last visited Sept. 12, 2010) (proposing policy responses to stabilize industry during credit crisis); Press Release, NAHB, Builders Ready To Work With White House, Congress To Extend Home Buyer Tax Credit (Oct. 6, 2009), *available at* http://www.nahb.org/news_details.aspx?newsID=9809 (quoting NAHB Chairman Joe Robson, “Housing is the best opportunity to put this country back to work. Prompt congressional action on the tax credit is a crucial first step to shoring up the fragile housing recovery and leading the economy to higher ground”).

CONCLUSION

HUD's recently released Strategic Plan is notable for its incorporation of most of these first, parallel, and secondary principles.¹⁰⁷ The fact that it does not focus solely on first principles does not undercut its legitimacy—it is important to remember that first principles are not necessarily more important goals of government than parallel or secondary principles at any given time. Rather, they identify what is intrinsic to housing policy in order to analyze potential policy choices. And imposing some structure here is of key importance because federal housing policy is a morass.

In order to make sense of the morass, it is necessary to identify legitimate first principles of housing policy, then to evaluate housing programs to see whether they are designed to achieve goals consistent with some or all of those principles. Finally, it is necessary to evaluate the effectiveness of these programs individually and taken together in order to ensure that they do not work at cross purposes. Such an exercise should help to clarify debates surrounding American housing policy as the Obama Administration seeks to put its own stamp on this field.

I have argued that the three major first principles that inform federal housing policy are (i) allowing all Americans to live in a safe, well-maintained and affordable housing unit; (ii) providing a specialized form of income redistribution that ensures that the income transferred is consumed in increased housing; and (iii) incentivizing Americans to take on the key attributes of Jefferson's yeoman farmer; economic self-sufficiency and a jealous regard for one's liberty. I have also identified a number of parallel principles and subordinate principles that may be explicitly or implicitly at play in any given housing program.

The goal of this article was not to argue that all housing programs can be rationalized into one coherent whole—obviously, the major three principles can be in tension with one another within a particular housing policy initiative and across initiatives. It has the much more limited goal of developing a more systematic approach to the evaluation of housing policy.

And, of course, a housing policy primarily guided by each of these three first principles would look very different. One guided by the first would emphasize housing for very low-income households who would not be able to pay market rates for safe, well-maintained, and affordable housing. One guided by the second would likely contemplate some kind of progressive housing subsidy for a range of low- and moderate-income households. One guided by the third would seek to maximize the home-

107. HUD, HUD STRATEGIC PLAN FY 2010-2015 (2010).

ownership rate for the nation as a whole at whatever income levels are the most efficient for achieving that goal.

We now have a rough answer to the three questions posed at the beginning of this article: (i) what broader goal of politics is housing meant to follow from; (ii) what the main goals of housing policy are and (iii) what parallel and subordinate policies inform housing policy? With that rough outline, we can now move to fill in the details of a study of housing policy. As Aristotle noted, once we have developed such an approach, "it requires no extraordinary genius to fill up the gaps" that remain.¹⁰⁸ This gives me hope for some further work on this topic.

108. ARISTOTLE, *supra* note 14, at 17.