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Foundations of Federal Housing Policy

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FOUNDATIONS OF 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. In the broadest strokes, these include

- The Federal Housing Administration (“FHA”), which provides mortgage insurance on loans made by FHA-approved lenders;
- The Government National Mortgage Association (“Ginnie Mae”), which insures mortgage-backed securities (“MBS”) backed by federally insured or guaranteed loans;
- The Federal National Mortgage Association (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”) and the Federal Home Loan Bank System (“FHLBS”), which issue MBS and invest in mortgages and mortgage-related products;
- Project-Based Rental Assistance, which provides supply-side funding to increase the stock of affordable housing;
- Section 8 Housing Vouchers, which delivers demand-side subsidies to individuals and families to seek out housing in the private market;
- Housing Counseling Assistance;
- Supportive Housing for the Elderly;
- Disabled Housing; and
- HOPE (Housing Opportunities for People Everywhere) VI Grants, which replaces dysfunctional public housing projects with mixed-income housing and vouchers.

And recently, the Department of Housing and Urban Development created “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

* This chapter is based in large part on David Reiss, *First Principles for An Effective Federal Housing Policy*, 35 BROOKLYN J. INT’L L. 795 (2010). Thanks to Michele Cotton for helpful comments and to Philip Tucker for superb research assistance.

assisted housing is concentrated.”¹ Indeed, each new administration, whether Democratic or Republican, makes its own additions to the federal housing edifice. HUD’s most recent Strategic Plan, for instance, incorporates an extraordinarily broad range of goals, including improving health, child development and economic security outcomes for various populations.²

On top of these direct expenditures on housing, the federal government makes hundreds of billions of dollars more in tax expenditures. 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. For instance, the deduction for mortgage interest on owner-occupied homes is a tax expenditure because it reduces income subject to the income tax by an amount equal to a taxpayer’s mortgage interest payments in order to encourage investment in housing. The main housing-related tax expenditures are the

- 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.

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.³ 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 negligible amount goes to those making less than \$40,000 per year.⁴

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

3. Adam Carasso et al., *The Trend in Federal Housing Tax Expenditures*, Tax Notes, Feb. 28, 2005, at 1081.

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

Given the size of federal housing expenditures (not to mention state, county and municipal programs), it is unsurprising that housing's regulatory web is also immense and intricate, including as it does:

- the newly-created Federal Housing Finance Agency;
- the newly-created Consumer Financial Protection Bureau;
- the Department of Housing and Urban Development;
- the Federal Reserve Board;
- the Federal Trade Commission;
- the Office of the Comptroller of the Currency; 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 task 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.

Indeed, it is difficult to provide a generally accepted definition of “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.”⁵ More typically, however, housing policy refers to government efforts to increase housing affordability.

This chapter aims to clarify debates in the housing policy 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 survey current opinion about housing policy in order to begin my inquiry into principles of federal housing policy. And second, I identify the particular principles that inform federal housing policy. To be clear, this chapter 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.

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

I. CATALOGUING CURRENT OPINION ON HOUSING POLICY

Identifying possible first principles for a field as complex and conflicted as housing policy is difficult. This chapter, however, will take a catholic approach to the categorizing of possible principles, setting forth all that are put forth in good faith by those who write about housing. By “principle,” I mean a rationale that is widely accepted to justify a particular policy. By “first principle,” I mean a rationale that is fundamental to the policy that it is meant to justify. In other words, a “principle” may treat housing policy as a means to another policy end, whereas a “first principle” treats housing policy as an end in itself. So we must roughly indicate what the goals of housing policy are.

I begin my inquiry by surveying current opinions regarding housing policy. From one useful perspective, the field may be surveyed via five broad “housing ethics.”⁶ The use of the term “ethics” is substantively similar to my use of the term “principles.” But such “ethics” are intended to be more descriptive, while my “principles” are intended to be used as tools of evaluation. As such, this ethics-view 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.

With this caveat in mind, the iteration of the five ethics is useful because they do reflect many of the broadly held intuitions that we have about housing policy. The five ethics identified 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.

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. The “Housing as Home” ethic explores the impact of policy on personal liberty, privacy and security. The “Housing as a Human Right” speaks to how a policy furthers the goal of making decent housing available to all. The “Housing as Providing Social Order” ethic speaks to how a housing policy will impact the community as it

6. Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511 (2007).

currently exists. 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.

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.

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. 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. 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. The affordability aspect of the “Housing as a Human Right” ethic is also imbued in housing policy debates. This ethic, however, is more of the guiding force behind federal *rental* housing policy than federal *homeownership* policy.

Somewhat surprisingly, largely missing from the current discourse on housing policy is what appears to me to be a completely separate sixth housing ethic or principle: “Housing as a Bulwark of Democracy.” 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. 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.

An insight into the contemporary dialogue on housing policy may be gleaned from the national housing platforms of the Democratic and Republican parties. It is worth quoting the platforms 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 **home-owners 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.⁷

This platform is imbued with the two 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 crisis so that affected individuals can have a chance to trade a burdensome mortgage for a *manageable loan that reflects their home’s market*

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

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.⁸

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 of the two main federal housing ethics.

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

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

- 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.⁹

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.”¹⁰ 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.”¹¹ 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.”¹²

II. FEDERAL HOUSING POLICY PRINCIPLES

Now that we have surveyed some of the leading current opinions regarding housing policy, let us return to the question posed in Section I: what are the goals of housing policy? But before reaching that question we must first answer a threshold question: what broader social policy is housing policy a part of?

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

9. 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).

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

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

12. National Low Income Housing Coalition, <http://www.nlihc.org/template/index.cfm> (last visited September 12, 2010). Other advocacy organizations emphasize similar goals.

merely attempt to redistribute income. Rather they typically tie the income redistribution to the households' housing consumption. 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. Thus, while a housing policy may flow from broader social policies, it necessarily has elements that are intrinsically related to housing.

This brings us back to the main question that I seek to answer: what are the goals 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 the "Housing as an Economic Good" ethic, then such a housing policy goal would be a means to a more general 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. 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 general redistributive end.

What then is the aim of a housing policy? The answer to this is not immediately clear. 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 that housing policy should promote a specialized form of income redistribution that ensures that the income transferred is consumed in increased housing. This view may be derived from the "Housing as an Economic Good" ethic in its recognition that the political decision to redistribute funds should be made within a market framework. 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.

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. The right to adequate housing is enumerated in the United Nation's "Universal Declaration of Human Rights," and closer to home, the U.S. Congress has enshrined the "goal of a decent home and a suitable living environment for every American family" as part of its national housing policy.¹³

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.¹⁴ 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."¹⁵ 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-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. And while inadequacies remain for too many American in terms of dangerous wiring, poor heating, vermin infestation and exposure to lead paint and mold, as a whole, physical housing conditions have seen a transformation for the better. 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.

13. Universal Declaration of Human Rights, art. 25, § 1, Dec. 10, 1948 G.A. res 217A (III), U.N. Doc. A/810; 42 U.S.C. §1441 (2009) (setting forth 1949 Congressional declaration of national housing policy).

14. JACOB RIIS, *HOW THE OTHER HALF LIVES* (Garrett Press 1970) (1890) (introduction by Francesco Cordasco).

15. *Id.* at viii (introduction).

The concept of “affordable” has also changed over time. As Edward L. Glaeser and Joseph 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 policy.¹⁶ But until the early 1980s, these very same federal programs set a 25% ceiling for housing costs for various federal programs.¹⁷ In contrast, 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.

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 person can exercise their rights of “Life, Liberty and the pursuit of Happiness.”¹⁸ 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.”¹⁹

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. Another 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).

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. Indeed, in 2005 housing expenses accounted for nearly 32% of all consumer spending by homeowners and nearly 36% for renters.²⁰ Congress

16. EDWARD L. GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY 29–32 (2008).

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

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

19. Iglesias, *supra* note 6, at 542 (summarizing views of Chester Hartman).

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

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. Thus, 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 like housing are a necessary palliative for households as they face the unexpected challenges posed by the economy.

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.

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 that low-income households' housing choices are particularly bad.²¹ They also challenge the belief that many Americans under-consume housing. That being noted, there is no question that much of housing policy is premised on the notion that people (indeed, people of all classes) should receive assistance in offsetting the large expense that housing entails.

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. 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.²²

21. GLAESER & GYOURKO, *supra* note 16, at 55.

22. John M. Quigley, *Just Suppose: Housing Subsidies for Low-Income Renters*, in *REVISITING RENTAL HOUSING: POLICIES, PROGRAMS, AND PRIORITIES*, *supra* note 20, at 300, 308.

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. 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. 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. This principle served as a motivating force behind the earliest tenement laws, “to protect the nonpoor who were living in” neighborhoods near to tenement slums, and despite changing standards of political correctness, very much remains in effect today.²³ It 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). 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 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 public health measures are not implemented.

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. Jefferson’s yeoman farmer was his ideal citizen because he was self-sufficient, earned his own keep, consi-

23. 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 11, 2–3 (Rachel G. Bratt *et al.* eds., 2006).

dered 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. Indeed, the extraordinary lengths that the Bush and Obama administrations have taken to stabilize the housing market during the Great Recession, taking over the privately-held mortgage finance giants Fannie Mae and Freddie Mac and committing \$75 billion to head off foreclosures, respectively, bear witness to the importance that both parties place on homeownership.

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 potential benefits. The connection between homeownership and these non-economic benefits has not, however, been clearly demonstrated.

There is a significant amount of scholarship 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. These also include increased civic engagement, as demonstrated through higher levels of volunteerism and participation in community activities. Thus, homeownership policy is often justified by the claim that it helps to achieve better outcomes regarding these non-economic benefits as well.

Some also argue that homeownership encourages wealth accumulation and forced savings (through principal repayment of the mortgage). These goals are consistent with the principle of making contemporary Americans self-sufficient like Jefferson’s idealized 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. And while it might come as no surprise that homeowners historically 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 set homeowners 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 2009.²⁴

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 strands of broader social policy. It is not surprising that quite a few other social policies are enmeshed with housing policy, given the size of the housing sector and its role in the economy. The most important are:

1. ending segregation and other racial inequities which are present in the housing market;
2. increasing socio-economic diversity;
3. promoting green construction practices and energy efficiency;
4. promoting community and economic development; and
5. 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, 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. 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 also 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. 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.

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

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

replace them with buildings designed for businesses or higher-income residents. 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. The existence of 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.

Another classist policy that bears ongoing examination is the manner in which tax expenditures on homeownership greatly favor wealthy homeowners over less wealthy homeowners and renters. 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. 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. Socio-economic diversity may also be seen as necessary for a community to function in a healthy manner. 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.” One of the major rationales for the demonstration is that very low-income families would benefit from living among higher-income families. 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). 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 families.”²⁵ In one program then, HOPE VI encompasses many of the rationales for increasing socio-economic diversity. This parallel principle, like the first one, goes way beyond the scope of a housing policy to touch upon key politi-

25. 42 U.S.C. § 1437v (2009).

cal goals relating to educational and work opportunities as well as economic development, 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. 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 are responsible for about 20 percent of total U.S. CO₂ emissions.²⁶ 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. But construction costs for green projects are typically higher, at least at present, which raises the cost of construction for each unit. The affordable housing sector is, with its low margins, particularly sensitive to increased cost. And 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.

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, federal housing policy may also encompass this principle. Federal activity in this area has not been exceptional—after all, there is no question that, historically, federal transportation, housing finance and infrastructure policies have had the effect of actually increasing sprawl.

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

26. D&R INTERNATIONAL, LTD., U.S. DEP’T OF ENERGY, 2009 BUILDINGS ENERGY DATA BOOK 2–24 (2009) (2006 data).

present. Addressing sprawl and Brownfields as part of a housing policy reflects a commitment to sustainable growth. But as with community and economic development initiatives, sustainable growth initiatives are generally much broader than just housing as they reflect environmental, energy and quality of life concerns as much as housing policy concerns.

* * *

Subordinate Principles. While the five parallel principles outlined directly above are best characterized as “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. These subordinate principles 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. This has never been clearer than in the Great Recession where stabilizing mortgage lenders was identified as one of the key elements of the government’s response to the crisis.

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. Housing and housing finance industry representatives, therefore, argue for policies that are intended to stabilize the construction and housing sectors during the recent financial crisis.

III. CONCLUSION

HUD’s recently released Strategic Plan is notable for its incorporation of just about all of these first, parallel and secondary principles. 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, isolating first principles helps us identify what is intrinsic to housing policy so that we may clearly analyze potential policy choices. And imposing some analytic structure here is of key importance because federal housing policy is a morass.

In order to work through 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 housing 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

each new presidential administration seeks to put its own stamp on this field.

I have argued that the three 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 and social self-sufficiency as well as a jealous regard for one's liberty

A housing policy primarily guided by each of these three first principles would look very different from one guided by the other two. One guided by the first would emphasize housing for very low-income households which 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. And one guided by the third would seek to maximize the homeownership rate for the nation as a whole at whatever income levels are the most efficient for achieving that goal.

The goal of this chapter was not to argue that all housing programs can be rationalized into one coherent whole—obviously, the three first principles can be in tension with one another within a particular housing policy initiative and across initiatives. This chapter has the much more limited goal of developing a more systematic approach to the evaluation of housing policy. We now have an answer to the question posed at the beginning of this chapter: what are the main goals of housing policy? With this rough outline, we can now move to fill in the details of a study of housing policy.

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