Housing is a basic human necessity. The current approach to affordable housing in the United States is defined in large part by its complexity and technical details. Numerous programs, including tax credits, grants, and rent vouchers exist to incentivize the development and increase the affordability of housing. However, these programs fall short in several respects—in particular, access to affordable housing is limited and inconsistent among jurisdictions. Affordable housing policy must be simplified. A more coherent and comprehensive definition of affordable housing is necessary to ensure broad access to this necessity of life. The land use planning community has recognized the importance of building sustainable communities, but the web of affordable housing programs is inadequate to efficiently promote this objective. Affordable housing regimes in Austria and the Netherlands, which rely on housing associations, provide a novel framework for reforming affordable housing policy in the United States.
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I. INTRODUCTION

Providing affordable housing is a daunting task. In the United States, securing financing for the development of low-income housing is a labyrinthian endeavor on its own and one in which many developers rely on teams of sophisticated professionals to accomplish. There are numerous programs at the state and federal levels of government that promote affordable housing, and each presents its own set of requirements. As a result, technical issues, such as the minutiae of financing mechanisms, subsume much of the policy debate surrounding the future of affordable housing. This article does not focus on these narrow technical issues. Opting for a broad approach, this article asks whether this tangled web of programs is the best way to promote affordable housing in the United States. Before addressing this question, several urgent problems must be remarked upon. These problems are particularly concerning for the individuals and families who rely on these public and private actors to provide their housing.

Gentrification is often criticized for its effect on low income city residents. When deteriorating neighborhoods experience resurgence and redevelopment, more affluent residents move into those areas and the poorer residents are effectively priced-out of their homes and displaced. However, at least one commentator has recognized that “displacement is not a necessary result of gentrification . . . [m]ore accurately, it is an externality of gentrification—a side effect.” Indeed, another commentator has recognized that gentrification is actually good for the

2. See discussion infra Sections III.C.i, III.C.ii, III.C.iii.
4. For a comprehensive discussion of gentrification see YVONNE FRANZ, GENTRIFICATION IN NEIGHBOURHOOD DEVELOPMENT 67–100 (2015).
city, as well as poor and ethnic minorities. This argument suggests that the more affluent residents are within the city, the better the city is able to finance affordable housing. Nevertheless, city governments have largely failed to meet this challenge and have neglected to utilize the resources gained by redevelopment to provide affordable housing. For example, the large complex-style housing projects of the previous century have been criticized for creating areas of concentrated poverty and are often evocative of images of crime and violence. While these towering housing projects were viewed as misguided as early as thirty years ago, many of these projects have only been demolished and replaced this century, inviting a host of new problems. Current approaches also present their own shortcomings and difficulties. While

7. Id.
8. Id.
10. When a housing project is demolished, many of the previous residents become temporarily displaced before they are successfully relocated. See e.g., Sudhir Venkatesh & Isil Celimli, Tearing Down the Community, NAT’L HOUSING INST. (Nov. 1, 2004), https://shelterforce.org/2004/11/01/tearing-down-the-community/.
11. Id. One resident who left Chicago’s Robert Taylor Homes and was relocated to temporary housing while new mixed-income housing was under construction, found herself in a house plagued with rats and an unsympathetic landlord. Id. Interestingly, one former resident of Chicago’s Ida B. Wells projects who now lives in a mixed-income neighborhood stated that she felt more comfortable in Wells, and that she feels like she does not fit in to the mixed-income housing. Zach Mortice, When Public Housing Goes Private, CURBED CHICAGO (Sept. 28, 2016, 10:00 AM), http://chicago.curbed.com/2016/9/28/13063710/chicago-public-housing-cha. Her sense of
supporters argue that the federal voucher system\(^{12}\) enables greater access to housing in a greater number, and in areas of less concentrated poverty, many critics suggest that those benefits have not been realized.\(^{13}\) Adequately addressing gentrification will require lawmakers and policy analysts to develop a clearer sense of both the purpose and scope of affordable housing. Another specter haunts the American landscape.

Urban sprawl threatens to consume the American landscape with a never-ending span of suburban developments.\(^{14}\) Among the negative effects of urban sprawl is the “abandonment of urban centers, severe air and water pollution, and the loss of open green spaces.”\(^{15}\) Furthermore, sprawl also poses significant obstacles to transportation, as the distance between homes, jobs, and other destinations increases.\(^{16}\) As jobs move further away and the cost of commuting increases, the harm of sprawl is borne disproportionately by minorities, who tend, as a result of “past racism in the real estate industry and in federal housing initiatives,” to live “in impoverished, segregated, inner-city communities.”\(^{17}\)

Importantly, limiting future sprawl and addressing existing sprawl will require statewide coordination, although most land use controls operate at a local level.\(^{18}\) In fact, many of the land use planning and control tools available to municipalities can be used to outright preclude

nostalgia is not without basis, as there is some research indicating that “in difficult times feeling nostalgic can promote personal growth rather than a counterproductive preoccupation with the past.” Krystine Irene Batcho, Nostalgia: Retreat or Support in Difficult Times?, 126 AM. J. PSYCHOL. 355, 356 (2013) (discussing “whether nostalgia is associated with adaptive or maladaptive coping”). Nevertheless, this note takes the position that mixed-income housing is a better long-term solution, and must defer to experts in psychology in making the important determinations as to why former-projects residents feel attached to those projects, why they feel uncomfortable in mixed-income residences, and what can be done to address this unease.

\(^{12}\) See discussion infra Section III.C.ii.


\(^{14}\) Id. at 613.


\(^{16}\) Id. at 880.

\(^{17}\) Id. at 884.

\(^{18}\) Id. at 880. Increasing recognition that statewide coordination is relevant is evidenced by states implementing state regional zoning programs. JULIAN CONRAD JUERGENSMeyer & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 9:5 (3d ed. 2012).
affordable housing developments in the municipality.\textsuperscript{19} Because of these various competing interests, some degree of coordination between states at the federal level may also be necessary.\textsuperscript{20} Yet again, preventing the negative externalities of gentrification could present an answer in the form of smart growth, by encouraging higher-density housing development near urban centers.\textsuperscript{21} This mixed-use approach reduces obstacles to transportation by placing homes near jobs and creating new opportunities in municipal services employment.\textsuperscript{22} While air and water pollution issues are also aggravated by sprawl, those are largely outside the scope of this note. However, increased density could also remedy the loss of green space within the city;\textsuperscript{23} specifically, by building up, rather than out, cities might also preserve more land within the city for use as parks. A higher population density within the city could also retain more open land outside the city for state forest or wetland preserves, for example.\textsuperscript{24} The primary issue, then, is ensuring that resources are being utilized to promote these positive effects of gentrification, by

\begin{itemize}
  \item \textsuperscript{19} McStotts, supra note 5, at 140.
  \item \textsuperscript{20} The Standard State Zoning Enabling Act demonstrates one such form of widely utilized federal guidance for states. Juergensmeyer & Roberts, supra note 18, at § 2:9; see also A STANDARD STATE ZONING ENABLING ACT (ADVISORY COMM. ON ZONING, DEP’T OF COMMERCE 1926).
  \item \textsuperscript{21} Byrne, supra note 6, at 406 n.3. Smart growth is “an emerging concept designed to address planning capacity and quality, urban form, and infrastructure with a supportive decision-making process.” S. Mark White & Elisa L. Paster, Creating Effective Land Use Regulations Through Concurrency, 43 NAT. RESOURCES J. 753, 755 (2003). Some of the primary objectives of smart growth include:
    \begin{itemize}
      \item Planning capacity that anticipates and provides for development and growth, compact urban forms, protection of natural resources, infill development, mixed use, walkable neighborhoods, variety and choice in housing, balanced multi-modal transportation systems, maximization of existing infrastructure, timely and fairly funded new infrastructure, and improved development processes with reasonable and predictable results.
    \end{itemize}
  \item \textsuperscript{22} Byrne, supra note 6, at 419–20.
  \item \textsuperscript{23} See generally Maya, supra note 15, at 880, 884.
  \item \textsuperscript{24} See id.
\end{itemize}
implementing regulations that will align interests regionally—within the municipality, across the state, and among states.\textsuperscript{25}

While commentators have devoted considerable efforts to scrutinizing affordable housing, gentrification, and sprawl, American housing policy has remained relatively static.\textsuperscript{26} This article argues that a regulatory scheme that facilitates cooperation across socio-economic backgrounds and creates shared interests in a safe community, a strong economy, and a vibrant social scene could combat the social stigmas and economic interests that facilitate gentrification while harnessing its positive potential in redeveloping cities.

In the United States, cities, states, and the federal government have taken various approaches towards the difficult task of providing affordable housing.\textsuperscript{27} However, historically, those approaches have, in certain applications, actually contributed to the displacement of the urban poor and minorities and caused other deleterious effects.\textsuperscript{28} The American Constitutional framework has hindered development of affordable housing by permitting exclusionary zoning practices.\textsuperscript{29} Furthermore, the

\textsuperscript{25} “Local governments are often not well-equipped to deal with these trans-jurisdictional issues because their abilities and agendas are limited; therefore, a regional perspective is needed for effective planning.” JUERGENSMEYER & ROBERTS, supra note 18, § 9:5. “Regions have been defined as ‘geographic areas with problems of public policy or administration for which no existing unit of government is organized.’” Id.

“‘The necessity for a regional approach has been exacerbated and complicated by the development of megapolitan clusters or transmetropolitan areas which extend beyond traditional metropolitan areas and often cover several metropolitan areas and states.’” Id.

\textsuperscript{26} See discussion infra Sections III.C.i, III.C.ii.

\textsuperscript{27} See STUART MECK ET AL., REGIONAL APPROACHES TO AFFORDABLE HOUSING 3–4 (2003) (discussing fair-share programs, an incentive program, regional housing trust funds, state affordable housing appeals systems, as well as private-sector and other initiatives).

\textsuperscript{28} In the 1980s and 1990s, Chicago high-rise public housing units were in serious disrepair and housed “the most troubled families with nowhere else to go.” SANDLER, supra note 9, at 5. Furthermore, when the city began tearing these units down, violent crime rates decreased. Id. at 17.

“not in my backyard”\textsuperscript{30} attitude is perhaps the most significant obstacle to affirmative action that could promote the development of affordable housing.\textsuperscript{31} As a consequence, less intensive means such as subsidies and tax credits are most commonly relied on to incentivize such development—a trend that one commentator has called an “entrepreneurial” approach.\textsuperscript{32} The public housing system of the United States has been criticized by commentators both inside and outside the country.\textsuperscript{33} Indeed, while “the United States remains the wealthiest large industrialized nation, it devotes less of its income to welfare and the state is less involved in the economy than is true for other developed countries.”\textsuperscript{34}

In Western Europe, many countries have taken a more active approach to provide social housing.\textsuperscript{35} The diverse governmental, statutory, and constitutional frameworks within Europe have produced various solutions to a common problem.\textsuperscript{36} Section II of this article identifies two European countries that have taken active, yet distinct stances in providing social housing—Austria and the Netherlands. By examining the legal frameworks within these two countries and the United States, as well as the specific laws enacted to provide social


\textsuperscript{31} Williams, supra note 29, at 104.

\textsuperscript{32} Charles L. Edson, Affordable Housing—An Intimate History, 20 J. AFFORDABLE HOUSING & COMMUNITY DEV. 193, 197 (2011).


\textsuperscript{34} Seymour Martin Lipset, AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD 33 (1996).


\textsuperscript{36} See id. at 10–13.
housing, and with reference to the unique social and historical contexts of these countries, Section III seeks to identify what motivates and enables successful social housing policy. Ultimately, Section IV presents a proposal for reform in the United States, by singling out which aspects of the Dutch and Austrian systems could be imported into the United States’ legal framework for providing affordable housing.

The regulatory systems of private housing associations in Austria and the Netherlands provide a unique approach to addressing the competing interests and values underlying gentrification by allying lower-income residents with the new, wealthier residents that might otherwise displace them. Private housing associations necessarily require the participation and cooperation of both lower-income residents and the higher-earning professionals who manage the associations. The Austrian and Dutch experiences can provide a framework for new federal and state law importing private housing associations into the United States.

II. WHY THE NETHERLANDS AND AUSTRIA WERE SELECTED FOR THIS COMPARATIVE STUDY

This analysis begins with the foundational premise that any developed country must implement some degree of regulation to stimulate the creation of affordable, or social, housing.37 This simple concept could be defined broadly as the spectrum of regulation.

37. “The definition of affordability varies among federal, state and local governments,” but is variously defined with reference to housing costs as a percentage of household income. MECK ET AL., supra note 27, at 22. The American Planning Association defines affordable housing as “housing that has a sales price or rental amount that is within the means of a household that may occupy middle-, moderate-, low-, or very low-income housing.” Id. (internal citation omitted). Likewise, there is “no common definition of social housing … available at the EU level, with different States adopting different definitions that translate into varying levels of public intervention within the sector.” BRAGA ET AL., supra note 35, at 6. There are, however, “three elements common across European social housing sectors: a mission of general interest, the objective of increasing the supply of affordable housing, and the identification of specific targets defined in terms of socioeconomic status or the presence of vulnerabilities.” Id. For the sake of uniformity, and consistent with the above discussion, this note will use “affordable housing” to refer to American approaches, as well as the notion of providing housing that is affordable, irrespective of geographic location; furthermore, this note will use “social housing” to refer broadly to European approaches to provide affordable housing.
Similarly, if this analysis is to produce any meaningful results, it must first be recognized that some legal systems or social backgrounds might simply be too different, such that aspects of those systems simply could not be meaningfully compared, let alone imported in the United States. Additionally, this article will not examine those countries that impose less regulation because the purpose of this analysis is to determine whether a new variety, and greater degree, of federal regulation might not only be possible, but also beneficial, in the United States.

There are numerous factors and considerations underpinning any regulatory scheme, including the scope and purpose of the housing and administration. For example, the housing might be lowest income, low and medium income, or universal housing. Administration of the housing may be overseen by public or private actors, or a combination thereof. Implementation might be accomplished by incentivization or mandate, depending on the legal framework. This article argues that each of these regulatory considerations is influenced by a country’s history, culture, social structure, and legal framework; accordingly, each of these aspects will be treated within the broader analysis.

For example, a country’s geography, population, and availability of land should influence the policy considerations underlying any system for providing affordable housing. The United States is a much larger country than either Austria or the Netherlands. Historically, in the United States, social commentators have referred to as “prairie psychology”—the notion that in a country as large as the United States, there will always be space for development elsewhere, particularly on the fringes and outside of the city. Yet, cities and suburbs can only sprawl so far. Western European countries and cities are more physically constrained

39. Inclusionary zoning is a form of mandated affordable housing. Juergensmeyer & Roberts, supra note 1, § 6:7. The Low-Income Housing Tax Credit is a form of affordable housing incentivization. See discussion infra Section III.C.i.
40. See generally John M. Quigley & Larry A. Rosenthal, The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?, 8 Cityscape: J. Pol’y Dev. & Res. 69, 72–75 (2005) (discussing categories of land use regulations and the policies behind them). Arguably, many of the same considerations at a local and regional level should also apply broadly at the national level.
by their geography; thus, these space issues are more immediately relevant in Austria and the Netherlands, and their approaches to urban land management could be instructive in the United States, which must address these issues as open land becomes more scarce.

Another significant factor that heavily influences housing policy considerations is the degree of recognition property rights, particularly whether a country affords protection to housing as a fundamental right. The Constitution of the United States does not recognize housing as a fundamental right. Although states and localities may recognize greater protection of housing, it is far from the degree afforded by some European countries. Certain housing rights have been identified as protected within the European Convention on Human Rights.

42. See Vienna, for example, has expanded to its geological boundaries. James A. Kushner, Growth for the Twenty-First Century: Tales from Bavaria and the Vienna Woods – Comparative Images of Urban Planning in Munich, Salzburg, Vienna, and the United States, 6 S. CAL. INTERDISC. L.J. 89, 90 (1997).

43. See Emily Ponder, Gentrification and the Right to Housing: How Hip Becomes a Human Rights Violation, 22 Sw. J. Int’l L. 359, 382–83 (2016) (calling for “large-scale policy reform” to address gentrification, guided by the right to housing, which is an “international standard”).

44. Id. at 382.

45. For example, “in 1975, the state supreme courts of New Jersey, Pennsylvania, and New York imposed regional responsibilities on local governments to open their land for the provision of affordable housing.” Juergensmeyer & Roberts, supra note 18, § 6:6. Several other states also “require that municipalities address housing needs in their comprehensive planning legislation,” including California, Florida, Connecticut, Massachusetts, and Rhode Island. Id. § 6:1. Several other states also “require that municipalities address housing needs in their comprehensive planning legislation,” including California, Florida, Connecticut, Massachusetts and Rhode Island. Id. at 215. Conversely, there are numerous UN documents that recognize a right to housing. Mayra Gomez & Bret Thiele, Housing Rights are Human Rights, 32 HUM. RTS. (2005) (“The Universal Declaration of Human Rights (1948), for example, explicitly recognizes the right to adequate housing, as does the International Covenant on Economic, Social and Cultural Rights (1966). Housing rights are also enshrined and protected within the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention on the Rights of the Child (1989), the Convention Relating to the Status of Refugees (1959), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).”).

46. European Court of Human Rights, Council of Europe, Eur. Conv. on H.R., Protocol, Art. 1. For a discussion of the issues surrounding housing as a human
Moreover, the European Social Charter expressly states that “[e]veryone has the right to housing.”

Broadly, European countries employ two systems of allocation criteria in determining the scope of availability of social housing. Under the universalistic approach, “housing is a primary public responsibility and the object of social housing is to provide the whole population with decent quality housing at an affordable price.” Under the targeted approach, “[s]ocial housing is only directed at those individuals and households whose demand for housing with decent quality at an affordable price is not satisfied by the market.”

There are two “sub-models” within the targeted approach—the generalist and residual models. The targeted-generalist approach allocates housing “to households with an income below a pre-identified ceiling,” while the targeted-residual model allocates housing to “the most vulnerable groups.”

The Netherlands has the largest stock of social housing in the European Union, comprising 32% of all Dutch housing. The Dutch system is also described as a universalistic approach to social housing. “The Netherlands is a constitutional monarchy” and a parliamentary democracy, and it is comprised of twelve provinces.


47. COUNCIL OF EUROPE, EUROPEAN SOCIAL CHARTER (REVISED), Part 1, ¶ 31.
48. BRAGA, ET AL., supra note 35, at 12.
49. Id. (emphasis added).
50. Id.
51. Id.
52. Id.
53. Id. at 9.
54. Id. at 13.
the Netherlands is both more unitary and centralized than that of Austria.\textsuperscript{58} In comparison, Austria has the second largest stock of social housing in the European Union, at 23\%.\textsuperscript{59} Austria’s housing regime is targeted-generalist.\textsuperscript{60} Austria is a regionalized federation of provinces, which is more closely related to the United States’ federal republic system of governance, insofar as the Austrian housing regime is legislated at the federal level, but administered at the provincial and municipal levels.\textsuperscript{61}

The various components of the affordable housing regime in the United States are representative of a targeted-generalist approach.\textsuperscript{62} Specifically, the various vouchers create income ceilings, which recipients must fall below to qualify for assistance.\textsuperscript{63} The tax credits and grants available to states and developers promote housing for those qualifying individuals, which also evidence a targeted-generalist approach.\textsuperscript{64} Because affordable housing in the United States is less centralized, it is difficult to quantify the total amount of affordable housing units available in the country.\textsuperscript{65}


\textsuperscript{59} BRAGA ET AL., supra note 35, at 9.

\textsuperscript{60} \textit{Id.} at 13.


\textsuperscript{62} See infra Section III.C.

\textsuperscript{63} See infra Section III.C.ii.

\textsuperscript{64} See infra Sections III.C.i, III.C.iii.

\textsuperscript{65} Affordability is generally defined in the United States as 30\% of income. JOINT CTR. FOR HOUS. STUD. OF HARV. U., \textit{AMERICA’S RENTAL HOUSING: EVOLVING MARKETS AND NEEDS} 6 (2013), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_americas_rental_housing_2013_1_0.pdf. The median gross rent in 2011 in the United States was $843, which by the 30\% standard, household income would have to exceed $33,700 to be classified as affordable, though that is several thousand dollars above median renter income. \textit{Id.} at 19. At full-time federal minimum wage pay, monthly rent would need to be less than $400. \textit{Id.}
III. FOREIGN REGULATORY HOUSING MODELS

This section examines, in turn, the approaches to affordable housing taken by Austria, the Netherlands, and the United States. For both Austria and the Netherlands, this examination includes a discussion of the historical context, the mechanisms and principles, and the social context underlying their approach to affordable housing. The examination of the United States follows a substantially similar format; however, as a consequence of the United States’ multifaceted approach, the discussion employs a broader design, as it must address a number of different programs.

A. The Austrian Limited Profit Housing System

In setting the balance between public and private participation, the Austrian Limited Profit Housing system has tipped the scales in favor of the government. The system is unique in its reliance on government bureaucrats to audit and review housing associations. Furthermore, the Austrian federal government gives the provinces significant latitude in determining how to use federal funds, which developers significantly rely upon to construct and maintain housing developments. The following sub-sections will examine the history of social housing in Austria, the mechanics of Limited Profit Housing, and the Austrian social context.

i. History of Austrian Housing Policy and Law

Austrian social housing arose in the middle of the nineteenth century. At this time, Austria was experiencing a significant growth in population. The increase in population led to “distressing” and “unbelievably squalid living conditions” in Austria and presented an opportunity for social reformers to improve Austria’s housing stock. The early social housing endeavors were cooperatively minded and focused on constructing housing “for workers by workers.” By the late

67. Id.
68. Id.
69. Id.
nineteenth and early twentieth century, the idea of limited-profit housing associations that operated as a means of housing assistance within the housing market came to fruition.\textsuperscript{70} At the same time, government intervention and regulation of these associations began to be introduced.\textsuperscript{71} Established in 1908, the Public Jubilee Fund “linked the approval of housing loans to the distribution of limited profit shares, reasonable rents, the tie-up of assets and government auditing”—concepts that are all familiar in the modern conception of Austrian limited-profit housing.\textsuperscript{72} Limited-profit housing, as it is understood today, was first codified in 1938; notably, after Austria was occupied by the National Socialists.\textsuperscript{73} In 1945, Austria adopted the Limited-Profit Housing Act, removing any traces of influence by the National Socialists.\textsuperscript{74}

The Act “describes limited-profit housing associations as enterprises whose activities are directly geared towards the \textit{fulfillment of the common good} in the field of housing and residential matters, whose assets are dedicated to the fulfillment of such tasks and whose business operations can be \textit{regularly reviewed and monitored}.”\textsuperscript{75} The fundamental principles of the limited-profit associations has been described as “serving the common good, limitation of the scope of activities, limitation of the distribution of profit shares and the cost-covering principle, as well as the obligatory supervision and checks and balances.”\textsuperscript{76} Accordingly, limited-profit housing attempts to serve the public interest by permitting private sector organizations to participate in the creation and management of housing.\textsuperscript{77}

Article 11, section 1, subsection 3 of the Federal Constitution states that with regards to “social housing affairs except for the promotion of domestic dwelling construction and domestic rehabilitation,” the legislative power lies with the Federation, and the execution of such laws

\begin{itemize}
\item \textsuperscript{70} \textit{Id.} at 2–3.
\item \textsuperscript{71} \textit{Id.} at 3.
\item \textsuperscript{72} \textit{Id.} at 3–6.
\item \textsuperscript{73} \textit{Id.} at 3.
\item \textsuperscript{74} \textit{Id.} In Austria, the Act is called Wohnungsgemeinnützigkeitsgesetz. \textit{Id.}
\item \textsuperscript{75} \textit{Id.} (emphasis added).
\item \textsuperscript{76} \textit{Id.}
\item \textsuperscript{77} \textit{Id.}
\end{itemize}
lies with the provinces. 78 The Limited-Profit Housing Act, thus, is federal legislation, while its execution is the domain of the individual provinces. 79 Wholly within the realm of the provincial jurisdiction are those issues “pertaining to the legal relationship between the housing association and those entitled to accommodation in matters related to housing.” 80

\[ ii. \text{ Principles and Mechanisms of Limited-Profit Housing Association Regulation} \]

As discussed previously, the modern Austrian social housing regime traces its roots to the Post-World War II era, and it has remained relatively static over the years. 81 Initially, federal housing legislation was focused on reconstruction of “war-damaged urban areas.” 82 From the very beginning and throughout its existence, Austrian social housing has been heavily subsidized. 83 In particular, the system is unique in its reliance on “direct ‘object’ subsidies” to promote construction of new affordable housing developments. 84 These are also known as “supply-side subsidies,” so designated because they “provide assistance to producers or suppliers[...such as home builders or landlords].” 85 As a result of these object subsidies, it is argued, the availability of affordable housing reduces demand and accordingly the cost of housing, such that only 3–4% of the population receives housing allowances. 86 Moreover, there is a general reluctance to shift away from these direct object subsidies in the future. 87

78. Österreichische Bundesverfassung [B-VG] [CONSTITUTION] art. 11, § 1, cl. 3 (Austria), translated in CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Austria_2013?lang=en.
79. LUDL, supra note 66, at 3.
80. Id.
82. Id. at 272.
83. See id. at 272–73.
84. Id. at 273.
85. THE ENCYCLOPEDIA OF HOUSING, supra note 13, at 722.
86. LUDL, supra note 66, at 8.
87. Matznetter, supra note 81, at 279.
The cost-coverage principle is perhaps one of the most important features of the limited-profit housing association system. This is the requirement that housing associations may only charge a rent amount equal to that “necessary to cover the costs for managing the building, taking into account a justified amount to cover the costs of managing the housing association and to form reserves.”\textsuperscript{88} Another feature of Austrian housing associations is the concept of “tie-up of assets.”\textsuperscript{89} The objective of this is to ensure that the assets of the housing associations are “tied up” so that they may “be appropriated for the purpose of housing.”\textsuperscript{90} The tie-up ensures that profits are reinvested in the association, which ensures sustainability of the association.\textsuperscript{91} One way this is enforced is by requiring most profits realized by the association to be channeled into its reserves.\textsuperscript{92} Housing associations are permitted to make one distribution from profits per year, which “may not exceed the permissible interest rate for shareholders’ equity . . . in terms of the shares paid in.”\textsuperscript{93}

Another important aspect is the concept of limited business activities. Housing associations are permitted to undertake primary, secondary, and “connective” supplementary business activities.\textsuperscript{94} Primary business activities are those related to “construction and management of accommodation, private homes and homes in their own name, as well as the large-scale renovation and management of other limited-profit housing associations within the framework of their primary business activities.”\textsuperscript{95} Secondary business activities are defined by law and “may not become the sole nor the predominant part of the business activities.”\textsuperscript{96} Specific examples include: “construction of housing . . . for third parties, . . . construction of commercial premises, . . . urban and village renewal, [and] urban sanitation.”\textsuperscript{97} Connective supplementary

\textsuperscript{88} LUDL, \textit{supra} note 66, at 4.
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Id.}
\textsuperscript{91} See \textit{id.} at 4–5.
\textsuperscript{92} \textit{Id.} at 4.
\textsuperscript{93} \textit{Id.}
\textsuperscript{94} \textit{Id.} at 5.
\textsuperscript{95} \textit{Id.}
\textsuperscript{96} \textit{Id.}
\textsuperscript{97} \textit{Id.}
business activities require written approval of the provincial government.98

All limited-profit housing associations are required to belong to an associative organization that conducts regular audits.99 The standard for these audits is what is “in the ‘interest of the general public.’” 100 The audit looks not only to the financial health of the association, but also to compliance with applicable law.101 The completed audit is filed with the government—the general assembly has access to the whole document, and certain excerpts are also made available to the public.102 The provincial governments, as supervisory authorities, have the power to “order remedial action against any defects [in documents, conduct, or accounts] and, if this order is not complied with, they can give official notice to eliminate them.”103

iii. Austrian Social Context

Today, one-sixth of those living in Austria occupy an apartment that was built or is managed by a limited-profit housing association.104 Limited-profit housing associations manage 21.8% of the Austrian housing stock, while 30% of all new construction is undertaken by these associations.105 Renters occupy roughly 41% of Austrian housing stock, 59% of which is social housing.106 Interestingly, only 11% of limited-profit rental property tenants are considered low-income, while the vast majority are middle-income.107 Indeed, from the beginning, Austrian housing associations aimed to provide affordable housing to the working classes, and these facts indicate that this legacy continues today. Austria

98. Id.
99. Id.
100. Id. at 6.
101. Id. at 5–6.
102. Id. at 6.
103. Id.
104. LUDL, supra note 66, at 1.
105. Id. at 1, 7.
106. Christoph Reinprecht, Social Housing in Austria, in SOCIAL HOUSING IN EUROPE 61, 62 (Kathleen Scanlon et al. eds., 2014).
107. Id. at 70.
has developed other means for providing housing for the lowest-earning individuals and families.\textsuperscript{108}

Austrian society and policy tends to reflect traditional values.\textsuperscript{109} Accordingly, housing law and policy is largely pro-family and has been resistant to change.\textsuperscript{110} Housing policy reflects this “familialist” strain, and various subsidies and building code provisions exist primarily for the benefit of families with children.\textsuperscript{111} Austrian culture is significantly influenced by Catholicism, particularly compared to the “secular countries of Protestant Europe.”\textsuperscript{112} This has contributed to many of the identifying features of Austrian culture and politics: “consensual democracy, social partnership and a substantial dose of federalism.”\textsuperscript{113}

Austria has a strong corporatist tradition.\textsuperscript{114} This tradition is evidenced in the seventy-year history of the “Social Partnership” (Partnership), a term that refers to the “institutionalized relationship between the government, political parties and certain interest groups in the field of labor, social, and economic policy” within Austria.\textsuperscript{115} Significantly, the Partnership has no express basis in law; rather, its relevance depends upon the participation of a combination of voluntary and compulsory

\textsuperscript{108} Housing associations “tend to avoid the risks associated with lower income and more vulnerable tenancies. Nevertheless, municipal housing companies are more orientated to those unable to afford cost rent housing.” JULIE LAWSON & NICO NIEBOER, OTB RES. INST. FOR HOUS., URBAN & MOBILITY STUD., THE REGULATION OF SOCIAL HOUSING OUTCOMES: A MICRO EXAMINATION OF DUTCH AND AUSTRIAN SOCIAL LANDLORDS SINCE FINANCING REFORMS 9 (2009), http://repository.tudelft.nl/islandora/object/uuid:f950db5e-1cd4-4c5b-97b6-e453b7fe72d4?collection=research.

\textsuperscript{109} Matznetter, supra note 81, at 268.

\textsuperscript{110} Id. at 278–79.

\textsuperscript{111} Some provinces provide bonus subsidies for families with children, or young married couples who will soon have children. Id. at 278. Additionally, some provinces require “children-friendly equipment” to be installed on site. Id.

\textsuperscript{112} Id. at 272.

\textsuperscript{113} Id. at 279.

\textsuperscript{114} Reinprecht, supra note 106, at 61. Corporatism is defined by “a high degree of centralisation in wage-bargaining, a highly unionised labour force, or a low wage dispersion across industries.” Matznetter, supra note 81, at 272. Neo-corporatism “widens the view to the involvement of interest associations in general in the formulation and implementation of public policy.” Id.

membership organizations. In 1987, one commentator noted that “Austria’s federal government consistently adopts and implements the economic and social policy decisions reached by these groups through consensus.” However, developments in the latter part of the twenty-first century have eroded the influence of the Partnership—globalization and the integration of Europe evidenced by the consolidation of power in the European Union have displaced some of the powers previously exercised by the Partnership. Nevertheless, the Partnership was influential in establishing two primary features of the Limited-Partnership scheme: “relatively low rent levels and housing that was affordable for the vast majority of the population.” While the influence of the Partnership may be lessening, housing is still viewed as a basic necessity that must be protected from an entirely free market. Furthermore, while the Partnership itself is not a creature of the law, the interaction of private-industry and government in the housing market has been institutionalized through the various provisions of the Limited-Profit Housing laws.

iv. Concluding Thoughts

For over a century, Austrians have recognized affordable housing as an important objective of the state; however, early on, they also realized that private-sector involvement would be necessary. Indeed, the Limited-Profit Housing Act declares that these associations must pursue the common good through regular review and monitoring. In striking the balance between public and private interests, Austria has carved out a significant role for the state. The system is highly bureaucratic and involves significant regulations at both the provincial and federal level. The degree of bureaucracy in the Austrian housing market has incited criticism by at least one commentator, who referred to the system as

116. Id.
118. Steiner, supra note 115.
120. Id.
121. LUDL, supra note 66, at 3.
overregulated.122 Perhaps, unsurprisingly, this considerable degree of
government involvement is accompanied by a continued reliance on
supply-side subsidization for the development of this housing. Also
noteworthy is the fact that residences operated by housing associations
tend not to be heavily occupied by the low or lowest income groups, who
instead rely on other forms of government housing; rather, the
associations serve primarily middle-class dwellers. While the
government plays a large role in the regulation of housing associations,
this may be predicated upon the strong relationship between government,
business, and labor evidenced by the Partnership. Specifically, the
participating parties may be willing to accede to a greater degree of
government regulation because their interests are being considered
through the Partnership.

B. The Dutch Housing Association System

Over the course of the past one-hundred years, and through a process
of constant and careful deliberation, the Dutch have continuously
reimagined and refined their concept of affordable housing and housing
associations. Slowly and steadily, an increasingly larger role has been
carved out for private interests, such that the Netherlands possesses the
most commercialized affordable housing market of these three countries.
The Dutch have also taken a divergent path from Austria and the United
States, undertaking a novel enterprise to finance their housing
associations. The following three sections will examine the history of
social housing in the Netherlands, will examine the mechanisms
underlying the operation of Dutch housing associations, and will also
introduce some related concepts within the social context of the
Netherlands.

i. Historical Context of Dutch Social Housing

The Dutch housing system traces its roots to the building societies of
the mid-1800s during which groups of well-to-do middle- and upper-
class individuals set out to provide rental dwellings for the working

122. FRANZ, supra note 4, at 193.
Although these organizations did not construct a large number of buildings, they set an important example—the goal was to build dwellings for a reasonable return while promoting the social good. This movement was supported by both the Liberal Party as well as two trade unions. The Housing Act of 1901 provided a legal foundation and financial support for these early incarnations of housing associations, thereby encouraging the creation of new cooperative housing associations. From 1914 to 1922, the number of housing associations increased from less than 300 to 1,350. During this period, housing associations were small, owning less than sixty units each, on average. In 1934, the Act was amended so that housing associations would have to repay future financial grants from the State.

Much like Austria, after the close of World War II, the government’s focus shifted to rebuilding housing destroyed during the war, and local governments took a more active stance in constructing and managing housing, in relation to the housing associations. This period produced large quantities of “austere, large-scale, often monotonous housing.” Much of the new construction was commissioned by local authorities and then transferred to housing associations once construction was complete. The general position of the housing associations was weak compared to the government. Critically, there was a debate over what the proper scope for housing associations should be—whether it should be limited to serving low-income earners or whether it should also

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124. Id.
125. The two trade unions were Algemeen Nederlands Werklieden Verbond and Patrimonium, both of which “endeavoured to uplift the working class materially and spiritually.” Id.
126. Financial support for associations was conditioned upon the association’s promotion of social housing and the government’s approval to do so; indeed, the Act stated that the association must work “exclusively in the interests of the improvement of social housing and as such have been permitted by Us so to do.” Id. at 9.
127. Id. at 10.
128. Id.
129. Id.
130. See id.
131. Id. at 11.
132. Id. at 10.
133. Id. at 11.
provide middle-class dwellings. During the 1950s, housing association interest groups, private builders, local authorities, and the State worked to develop broad policy guidelines that would determine the fate of housing associations. In 1965, this debate was conclusively resolved—the Housing Act of 1965 and later amendments both restored and secured the position of housing associations with the creation and maintenance of affordable housing.

From the 1970s through the early 1980s, housing associations constructed “hundreds of thousands more dwellings” to address a housing shortage. However, by the early 1980s, the Dutch economy was strained, and the State wished to further limit its involvement in the affordable housing market. State contributions to the associations were reduced, and associations were encouraged to reinvest their own funds. Perhaps the single most significant development in this history was the untethering of the housing associations from government that occurred in the 1990s, when State loans to the housing associations were cancelled. Thereafter, a sea change occurred, as housing associations became more self-sufficient, relying instead on their own resources, and direct government participation was even further withdrawn. Furthermore, since 1990, the proportion of municipal owned housing associations has steadily decreased. The trend toward commercialization has continued, such that in 1995 one commentator asked whether housing associations actually engage in social housing. Note, with reference to the discussion in Section II, that even if housing in the Netherlands is nearly completely commercialized, the government has still provided a legal framework and sanctioned the operation of these associations, thereby engaging in regulation.

134. Id.
135. Id. at 12.
136. Id.
137. Id.
138. Id. at 13.
139. Id.
140. Id.
141. See id.
142. See id. at 15.
144. See supra Section II.
ii. Mechanisms and Principles of the Dutch Housing Association Regulation

The Dutch system is unique in its complete rejection of supply-side subsidies as a source of funding for affordable housing. The subsidies that remain are limited in scope and application. For example, some demand-side subsidies are still provided to aid individuals in covering the cost of rent. In 2000, roughly one-third of tenants within housing associations received rent subsidies, covering, on average, 40% of their total rent. The primary purpose of the rent subsidy is to ensure that a low income does not preclude a person from seeking quality housing. Notably, the Dutch system has created an incentive for these individuals to seek more costly residences, by providing larger rent subsidization for those individuals. While perhaps facially illogical, these larger subsidies prevent significant concentrations of poverty that would occur if low-income individuals only resided in the least expensive available dwellings. In this way, the larger rent subsidy ensures a greater degree of socio-economic diversity within neighborhoods.

Rather than relying on object subsidies, as in Austria, Dutch housing associations finance their operations by investing their own funds in new construction and improvements. This concept is known as the “Revolving Fund Principle.” Where additional funding is required by the associations, it may be obtained from a bank at a reduced interest rate through a guaranteed loan system administered by the Social Housing Guarantee Fund (WSW), a private organization. The WSW is a non-profit organization to which housing associations pay a membership fee.

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145. See Ouwehand & Van Daalen, supra note 123, at 79.
146. See id. at 45, 79.
147. Id. at 45–45.
148. Id. at 45.
149. Id.
150. Id.
151. But cf. id. at 46.
152. Id.
153. Id. at 87.
154. Id. at 79–80.
to belong to and additional fees to secure guarantyship.156 However, “[t]he State does play a part in providing a financial safety net for [it].”157 The WSW’s suretyship is conditioned on the applicant association’s satisfaction of a number of financial requirements.158 If an association is unable to satisfy those requirements, it may make an appeal to the Central Housing Fund (CFV) for financial assistance.159 All housing associations are required to contribute to the CFV, and these contributions enable it to offer such assistance.160 The support provided by the CFV may be in the form of either an interest-free loan or a grant made in lump sum payments.161 The CFV also operates in a supervisory capacity for the government.162 By identifying “financially weak housing associations,” the government can then step in and work with the association to correct its policy and re-secure its financial stability.163

The traditional administrative model of Dutch housing associations relies on significant participation by the tenants and members of the community at large.164 At the top of the hierarchy is a supervisory board—the “council of commissioners.”165 The law requires the council to seat at least five members, and two seats are reserved for persons nominated by the tenants of the association.166 The non-tenant commissioners are professionals in the community, and they are required to hold a job outside of the housing association.167 They are generally selected by the director for their specific expertise to satisfy the needs of the association—“management, finance, the social sphere, [and] the technical sphere” are all areas of expertise that the members of the

156. OUWEHAND & VAN DALEN, supra note 123, at 83.
157. Id. at 85.
158. Id. at 84.
159. Id.
160. Id.
161. Id.
162. Id. The CFV issues biannual reports that identify the solvency and liquidity of each housing association. The CFV issues biannual reports that identify the solvency and liquidity of each housing association. CECODHAS HOUS. EUR. OBSERVATORY, supra note 155, at 16.
163. OUWEHAND & VAN DALEN, supra note 123, at 84–85.
164. See id. at 36–38.
165. See id. at 36–37.
166. Id. at 37.
167. Id.
council should be versed in. At the bottom of the hierarchy, there are eleven tenants committees, together forming the tenants council, which advises the director on general concerns and policy. The tenants council selects two commissioners for the supervisory counsel. In practice, a council of commissioners is comprised of seven or nine commissioners.

The administration of housing associations requires the cooperation of a diverse group, including tenants, community professionals, and housing association employees. This diversity of participation has the potential to create shared interests in a strong and successful community and neighborhood. Significantly, this cooperation is both a product of, and possible because of, a "consultation culture"—one "in which reaching consensus [is] more highly prized than getting one's own way." There are concerns that ethnic minorities may be underrepresented, as they are generally less familiar with this culture of consultation. Additionally, there may still be conflicts between the interests of the housing association administration and the interests of the tenants. This is particularly concerning, where, as is the current trend, small to mid-size housing associations are merging and larger associations are managing more and more developments while simultaneously becoming more market oriented. As housing associations grow larger, there is a risk that these large corporations will be less in touch with the interests and concerns of the tenants and community. This will be an area to watch out for future developments, as there is some apprehension that the associations will attempt to shift power away from the tenants and consolidate it with the director and the larger umbrella associations. One response has been to offer certification

168. Id.
169. Id.
170. Id.
171. Id.
172. Id. at 78.
174. See OUWEHAND & VAN DAALEN, supra note 123, at 78.
175. Id. at 25, 73.
to housing associations based on their service and responsiveness to tenants.176

iii. Social Context within the Netherlands

In the Netherlands, housing associations own 32% of the total housing stock.177 Furthermore, housing associations provide more than 75% of rented dwellings.178 Notably, “[t]he Netherlands is a country dominated by single-family houses,” and 45% of the dwellings rented by housing associations are single family homes.179 In the Netherlands, far more of the housing association-owned dwellings are occupied by low-income residents compared to Austria.180 Dutch history is demonstrative of various competing ideological strains. From the late 1800s through early 1900s, there was a shift away from the rigid dichotomy between working class and the “traditional culture of dignitaries.”181 This period evidenced an expansion of the role of the middle-class professionals, particularly in promoting the social welfare through increased involvement in education and housing.182 During this period, Dutch “society was organized on a rational basis, strongly determined by free-market relations, grounded in legal equality and ruled by government bureaucracy.”183 Accordingly, Dutch history, much like that of Austria, has a strong neo-corporatist strain.184

Yet, Dutch society and politics have historically also embraced a humanitarian strain.185 From the 1950s through the 1970s, the Dutch

176. Id. at 73.
177. Marja Elsinga & Frank Wassenberg, Social Housing in the Netherlands, in SOCIAL HOUSING IN EUROPE 25, 25 (Kathleen Scanlon et al. eds., 2014).
178. Id.
179. Id. at 25–26.
180. See id. at 35. Compare at least 40% low-income residents in the Netherlands to a mere 11% in Austria. Id.; Reinprecht, supra note 106, at 70.
182. Id. at 188.
183. Id.
184. Id. at 187. See supra note 114 for a brief definition of corporatism and neo-corporatism.
185. DE ROOY, supra note 181, at 188.
economy enjoyed a period of growth. During these two decades, the government invested heavily in social policies such as social security, public housing, healthcare, and education. Between 1973 and 1981, this growth decreased and even contracted as the government’s financial position worsened. The exigent nature of this economically stagnant period was a significant motivation for the shift towards suretyship as a means to decrease the financial burden of housing on the government.

This juxtaposition of corporatism and humanitarianism in Dutch history sheds light on the housing associations, which are, essentially, regulated corporations that act to promote social welfare by providing affordable housing. While the government is less involved, the humanitarian strain in Dutch society is still witnessed in the mission of the housing associations.

Additionally, the consultation culture is also influential in the political sphere. The “polder model” refers to “the Dutch practice of policymaking by consensus between government, employers and trade unions.” Consensus-building is further facilitated by the broad desire for consultation, the small size of the Netherlands, sensible trade unions, and the fact that there are numerous political parties resulting from proportional representation. The Social and Economic Council (SER) is similar to the Austrian Partnership, and its membership includes representatives on behalf of employers, employees, and the government; moreover, the SER strengthens the relationship between commercial interests and labor by promoting consultation. The purpose of the SER

186. Id. at 232. Note that the U.S. economy also prospered during the same period. See also introduction infra Section IV.
188. Id. at 260.
189. See supra Section III.B.i.
190. For example, Vestia, a housing association in the Netherlands, states that its purpose is to promote “good quality homes in pleasant neighbourhoods, for households with a low (middle) income and/or a vulnerable position in society.” About Us, Vestia, https://www.vestia.nl/#!PageID=8613&content=&contentid1=&contentid2= (last visited Sept. 24, 2017).
192. Id.
193. See discussion infra Section III.A.iii.
194. See discussion infra Section III.A.iii.
is to provide advice and guidance in policymaking, which is often highly persuasive to lawmakers, although not binding.\footnote{See discussion \textit{infra} Section III.A.iii.}

\textbf{iv. Concluding Thoughts}

Dutch culture has long emphasized the importance of acting to promote the public welfare. While private actors were the first to recognize housing for the working class as a critical issue and to take up the cause, the government soon responded and provided a framework within which housing associations could operate to achieve their objectives. The Dutch approach has also been reactive to changing circumstances and has undergone significant reform over time. The experience of the past one-hundred-odd years has been an exercise in striking the proper balance between public and private interests, evidencing a trend of increased privatization. The loan guarantee method of financing and the reinvestment of funds, along with the low reliance on subsidization, show that after a period of government involvement, the scales are again tipped towards the private sector. The Dutch housing associations are also unique in their assistance to lower income residents. Specifically, by providing a mechanism whereby lower income residents can afford to reside in nicer neighborhoods, the Dutch approach ensures the presence of various socio-economic backgrounds in each community. Furthermore, consultation culture and the importance of consensus-building promotes broad participation in the affairs of housing associations, as tenants directly contribute to their management.

\textbf{C. Affordable Housing in the United States}

The history and trajectory of American affordable housing initiatives may be indicative of how viable of an option housing associations could be in the United States. One commentator has noted, with respect to affordable housing in the United States:

\begin{quote}
Affordable housing is not deemed to be an end in itself, but a way to serve another purpose—for example, to house defense workers during the world wars, to create jobs during the Depression, to provide an
\end{quote}
antidote to civil unrest in the 1960s, or to stimulate the economy in today’s Great Recession. 196

This stands in stark contrast to the beginnings of Austrian and Dutch social housing endeavors, which were primarily altruistically motivated and were representative of a popular desire to ensure that all Austrian and Dutch individuals and families could obtain adequate housing.197 In these two countries, affordable housing is an end in itself. The following sections contain a brief history of affordable housing policy in the United States.

i. Historical Development of Affordable Housing in the United States

The National Housing Act of 1934 (NHA), a product of the New Deal, created the Federal Housing Administration (FHA), which served the initial purpose of “insur[ing] single-family housing loans.”198 Single-family homes occupied the apex of the pyramid of the Euclidean zoning scheme.199 Indeed, in the beginning, the FHA was “an insurance company with middle-class housing its prime concern.”200 The United States Housing Act (USHA), enacted in 1937 under President Franklin D. Roosevelt, was “the nation’s prime affordable housing effort.”201 Notably, however, the preamble to the USHA states that its goal of

196. Edson, supra note 32, at 194.
197. See supra Sections III.A, III.B.
199. Charles Ten Brink, Gayborhoods: Intersections of Land Use Regulation, Sexual Minorities, and the Creative Class, 28 GA. ST. U.L. REV. 789, 794 (2012). Euclid was decided 1926, less than ten years prior to the passage of the NHA. Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926). After Euclid, municipalities widely adopted use-based zoning classifications that offered significant protection to owners of single-family homes. Ten Brink, supra, at 794. Courts, confronted with these schemes, often referred to apartment-style housing in a vocabulary like that used to describe a common-law nuisance. Id.; Euclid, 272 U.S. 388 (Confronted with a village zoning plan that regulated and restricted apartment houses, among other things, the Supreme Court famously stated “A nuisance may be merely a right thing in the wrong place, -- like a pig in the parlor instead of the barnyard.”). It is unsurprising, then, that the NHA promoted single-family housing.
201. Id.
providing decent housing is second to its first purpose of job creation. As noted by Seymour Martin Lipset, with reference to much of the New Deal legislation, “Roosevelt clearly wanted to maintain a capitalist economy.” Presumably, it would have been easier to justify the USHA as a jobs creation program—seemingly much more capitalist than government-funded housing projects. The program was administered by local authorities after the Sixth Circuit ruled Public Works Administration ownership of government housing unconstitutional. At this early stage, the primary beneficiaries of the USHA were predominantly nuclear families struggling to make ends meet during the Great Depression.

A major sea change occurred in the mid-1960s as “[r]elatively easy home-ownership terms” enabled middle-class families to depart from government subsidized housing. At the same time, the trend was the development of large multistory developments. After this great departure, the population of these projects was comprised largely of single-parent households on welfare. By the early 1980s, there was an urgent need for public housing available specifically to lower-income and very poor families. Accordingly, what resulted was large public housing developments occupied by a significant and concentrated population of low-income residents. As discussed previously, by the early 1980s these large projects were being criticized for their dehumanizing architecture and warehouse-like conceptualization.

202. *Id.*
203. LIPSET, *supra* note 34, at 37–38 (referring broadly to the aims of New Deal legislation).
205. *Id.* at 196.
206. *Id.*
207. *Id.* at 197–98.
208. *Id.* at 196.
209. *Id.*
210. See *id.* at 196–98.
211. See Venkatesh & Celimli, *supra* note 10. However, many long-term residents of these now-demolished projects say that they miss the sense of community they felt while living there. Mortice, *supra* note 11; see also discussion *supra* note 11.
In 1986, Congress introduced the Low Income Housing Tax Credit (LIHTC)—a dollar for dollar tax liability reduction. The LIHTC is a form of supply-side subsidy. The LIHTC ensures that Congress’ interest in creating housing for low-income people is served by establishing area median incomes (AMIs) to limit tenancy. To illustrate, “federal law requires that 40% of new public housing entrants and 75% of Section 8 voucher recipients must have incomes at or below 30% of AMI.” Furthermore, the LIHTC achieves its goal by “limiting the credit to qualified low-income units, and recapturing the credit if units are not occupied by low-income persons.” Many consider the LIHTC to have been a major success, and despite a number of obstacles, the LIHTC is still available today. Indeed, the LIHTC has been utilized to provide 90% of all affordable housing since its introduction, and a very sophisticated industry has grown around investing in such projects.

In 1993, the HOPE VI program was implemented, with the dual-purpose of demolishing distressed housing and constructing improved residences. Proponents of the HOPE VI program broadly regarded the existing large housing developments as a failure. Accordingly, these new developments physically evidenced the popular rejection and perceived


213. THE ENCYCLOPEDIA OF HOUSING, supra note 13, at 722.


215. Id. Note that there is a significant disparity between the typical mortgage payment for a home (15%) and the typical monthly rent for a home (30%). Id.

216. Edson, supra note 32, at 205–06.

217. See id. at 205–07.


220. Edson, supra note 32, at 197.
failure of the towering complexes of the 1950s and -60s. \(^{221}\) Specifically, the new developments emphasized “low-rise, less dense units.” \(^{222}\) These aims are generally accomplished by partnering a public housing association (PHA) with a developer in a limited partnership. \(^{223}\) PHAs with “severely distressed public housing units” can apply for HOPE VI grants, which are of two varieties. \(^{224}\) The Revitalization grants fund costs associated with demolition of distressed public housing and the relocation of those residents, as well as site acquisition necessary for construction. \(^{225}\) Main Street grants are targeted at smaller communities undertaking efforts to revitalize “older, downtown business districts.” \(^{226}\) Moreover, the new HOPE VI developments embraced mixed-income

\(^{221}\) See id. at 197–98.

\(^{222}\) Id. at 197. The HOPE VI program draws heavily upon principles and objectives of New Urbanism, including:

> [N]eighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions; urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.


\(^{223}\) Edson, supra note 32, at 197.


\(^{225}\) Id.

\(^{226}\) HOPE VI Main Street Program, HUD.GOV, U.S. DEP’T OF HOUS. & URBAN DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/grants/mainstreet (last visited Sept. 25, 2017). Qualifying local governments must have a population of 50,000 or less and 100 or fewer public housing units. FY 2016 Main Street Funding Information, HUD.GOV, U.S. DEP’T OF HOUS. & URBAN DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/grants/fy16 (last visited Sept. 25, 2017). In fiscal year 2016-2017 approximately $500,000 in awards was available. Id. In 2016, only three applications were received and one municipality was awarded funds. Id.
arrangements. These mixed-income developments continue to be the trend. These mixed-income developments continue to be the trend.

ii. The Primary Source of Affordable Housing in the US—
the Housing Voucher System

There seems to be a “general consensus in the housing field that if there is an adequate supply of existing housing in an area, vouchers should be utilized to make the units affordable for low-income families.” Vouchers are a form of demand-side subsidy. Under the Section 8 certificate system, the development or unit owner enters into a housing assistance payment contract with, most commonly, the local public housing authority. The contract identifies a Fair Market Rent for the area, established by the United States Department of Housing and Urban Development (HUD). The tenant family then pays an amount equal to 30% of the family income for rent and utilities. The owner receives the remainder of the rent payment from the local public housing authority. The voucher system is substantially similar to the certificate system and differs primarily insofar as the tenant is able to choose a residency with a rent payment greater than the previously discussed payment standard. If the tenant so chooses, then the tenant must pay 30% of the family income plus the difference between the payment

229. Edson, supra note 32, at 210. Recall that in the Netherlands, subsidies are also utilized to make housing affordable for the low-income families. See supra Section III.B.i.
232. Id.
235. See id.
standard and the actual rent. In this case, the public housing authority pays the same amount under the voucher program as under the certificate program. However, a “family may not pay more than 40[%] of its adjusted monthly income for rent.”

By 2010, over 2 million units were participating in the voucher program. Proponents of vouchers claim that residents can use them to live in the neighborhood of their choice, yet these aims have not been fully realized. Specifically, “the fair market rent cut-off point often consigns voucher-holders to impoverished neighborhoods.” This means that families would have to elect to pay the difference in rent at a more expensive location; however, in practice, these families generally elect to stay in familiar neighborhoods. For this reason, demand-side subsidies such as vouchers are unlikely to reduce gentrification. Furthermore, the lengthy waiting lists alone could deter applicants.

Earlier in this article, the notion of municipalities using land controls to preclude low-income developments was introduced. In a similar vein, many landlords may reject Section 8 housing vouchers to preclude low-income residents from entering their communities. Under the Federal Fair Housing Act, landlords are not required to accept Section 8 vouchers. However, state or local laws may afford tenants additional

236. Id.
237. Id.
238. Housing Choice Vouchers Fact Sheet, supra note 233.
239. Edson, supra note 32, at 211.
240. The Encyclopedia of Housing, supra note 13, at 124.
243. Id.
244. Id. For example, in Lansing, Michigan, the Section 8 waiting list is only open periodically, for as few as several days or one week at a time. Lansing Housing Commission, Affordable Housing Online, http://affordablehousingonline.com/housing-authority/Michigan/Lansing-Housing-Commission/MI058/ (last visited Sept. 25, 2017). This information was accurate at the time of writing, January 28, 2017. Even then, only those applicants who were selected by a random lottery are placed on the waiting list. Id.
245. See supra Section I.
246. Semuels, supra note 241.
247. 42 U.S.C. §§ 3601–3619, 3631. Moreover, a factor contributing to areas of concentrated poverty is the reality that “landlords in low-income areas aggressively
protection by prohibiting discrimination based on payment by voucher. As of 2015, only nine states have passed legislation that limits the landlord’s ability to refuse payment by voucher. Some counties and municipalities have enacted similar ordinances to prohibit discrimination on the basis of payment by voucher. Nevertheless, for those families living in jurisdictions in which such legislation does not apply, this unfortunate consequence of the voucher is yet another obstacle to affordable housing that leads to a concentration of poor families in the poorest neighborhoods.

Today, some 1.1 million units of public housing are owned by 3,148 local authorities. While new legislation and ordinances may continue to limit voucher discrimination, private landlords will likely still be plagued by the same fears that Section 8 tenants could have the effect of repelling market-rate paying tenants. While it may be reprehensible that a landlord would reject a voucher tenant merely because he can only afford the residence with the assistance of the voucher, it is still worthwhile to consider this situation from the landlord’s perspective. Landlords may be concerned about causing property values to decrease—the voucher system does little, if anything, to improve the stigma against the poor or racial minorities. The local and state governments, as well as the federal government, should strive to do better than merely provide a home. The goal should be to foster the development of sustainable communities. To be sure, the federal government should continue to assist in providing low-income families access to housing. Though tax credits aid in the construction of new affordable housing development and voucher subsidies assist in filling these units, the current system leaves something to be desired. Merely placing a low-income tenant into a home does little or nothing to foster a

recruit voucher-holders, as the vouchers are a much more reliable source of rent than other low-income tenants have available.” Semuels, supra note 241.


249. See, e.g., Section 5-8-030, Chicago Municipal Code.

250. See Semuels, supra note 241.

251. Edson, supra note 32, at 195.

252. See THE ENCYCLOPEDIA OF HOUSING, supra note 13, at 126.
sense of community. Perhaps by embracing more economically diverse tenants and creating a shared interest in community among broader income groups, this stigma against the poor could be mitigated.

iii. Other Sources of Federal Support for Affordable Housing

HUD also administers two other grant programs—the HOME Investment Partnerships Program (HOME)\textsuperscript{253} and the Housing Trust Fund (HTF).\textsuperscript{254} Additionally, there are two other relevant developments in affordable housing: Community Development Financial Institutions (CDFI)\textsuperscript{255} and Community Development Corporations (CDC).\textsuperscript{256}

1. HOME Investment Partnerships Program

HOME is a block grant program that provides 40% of its funding to states and 60% to localities (participating jurisdictions) for “building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people.”\textsuperscript{257} The primary feature of HOME is the flexibility that it affords States and localities in determining how to utilize the funds, including uses such as “grants, direct loans, loan guarantees or other forms of credit enhancements, or rental assistance or security deposits.”\textsuperscript{258} Notably, participating jurisdictions are required to match $0.25 of every dollar of funding provided by HOME.\textsuperscript{259} In the context of rental housing, HOME funds, typically in the form of long-term, non-interest-bearing loans, are often utilized in conjunction with the LIHTC.\textsuperscript{260} HOME assistance requires that a minimum of 90% of renters have incomes equal to or less than 60% of the HUD-adjusted median family income for the

\begin{thebibliography}{9}
\bibitem{253} See 42 U.S.C. § 211 (2012).
\bibitem{258} HOME Investment Partnerships Program, supra note 257.
\bibitem{259} Id.
\bibitem{260} Edson, supra note 32, at 203.
\end{thebibliography}
area, whereas the income of all homeowners receiving HOME assistance must be equal to or less than 80% of the HUD-adjusted median.  

2. Housing Trust Fund

In the Economic Recovery Act of 2008, Congress created the HTF, yet another grant program. The HTF is targeted specifically at providing housing to the poorest Americans as part of a plan to eliminate the “Worst-Case Housing Crisis.” It was not until 2016 that HUD allocated funds to the HTF. The funds are allocated to states by formula, and a minimum of 80% is required to be utilized for rental housing while a maximum of 10% may be used for homeownership housing and grantee’s administrative and planning costs. Much like the HOME grant, the HTF permits flexibility in using the funds to produce or preserve affordable housing. However, industry commentators have suggested that the Fund would be used primarily to create new housing. Because the HTF has only been funded so recently, this will be an area that should be continually monitored for new developments.

261. Home Investment Partnerships Program, supra note 257.
265. National Housing Trust Fund Factsheet, supra note 262.
266. Id.
267. Capps, supra note 263.
3. Community Development Financial Institutions

A relatively recent innovation, CDFIs were introduced with the passage of the Riegle Community Development and Regulatory Improvement Act of 1994. CDFIs are private organizations that draw on community resources to generate the money necessary to finance community projects. CDFIs are not purely affordable housing mechanisms; rather, they can be used to finance entrepreneurs including small businesses and microenterprises, individuals, and nonprofit organizations. Broadly, CDFIs further pursue community development and economic development therein. In the context of housing, CDFIs operate primarily in underserved, economically distressed markets. CDFIs obtain capital from a diverse set of sources including: “national and community banks, socially-motivated individuals, religious institutions, foundations and corporations.” This money is loaned to the CDFI at below-market interest rates. For the term of the loan, the CDFI makes regular interest payments and repays the capital at the end of the term. The Department of the Treasury also administers the CDFI Fund, which consists of seven programs that assist CDFIs in financing their loans.


271. Id.

272. Id. One such CDFI “only provides loans to socially responsible, affordable housing developers in support of their mission to create stable, vibrant and healthy communities for families, seniors and people with special needs who lack the economic resources to access quality, safe housing opportunities.” Id.

273. Id.

274. Id.

275. Id.

4. Community Development Corporations

A CDC is “a nonprofit, community-based urban development organization that engages in economic development activities such as housing production, commercial property development, business development, and/or job creation for the benefit of community residents.”\(^{277}\) CDCs have played a role in providing affordable housing since the 1960s.\(^{278}\) The CDC is recognized as a “hybrid legal form that allows it to function as a quasi-business and quasi-nonprofit.”\(^{279}\) Financing for CDCs relies largely upon federal grants and the other mechanisms for providing affordable housing discussed above. There is a concern that as CDCs expand, they will lose sight of their community-oriented mission.\(^{280}\) Accordingly, federal law has attached conditions to certain CDC grants to ensure that they continue to promote their mission.\(^{281}\) CDCs are not nationally certified, though some states have endeavored to create certification processes.\(^{282}\) Furthermore, CDCs are required to keep records as well as publish accounting policies and procedures necessary for the CDC to exercise “effective control over and accountability for all funds, property and other assets.”\(^{283}\) However, one commentator has called for “more consistency and greater accountability for how [federal] funding is distributed.”\(^{284}\) Moreover, while CDCs operate throughout the country, they are primarily found within the Northeast and Midwest.\(^{285}\) CDC’s share a similar mission and organizational structure as housing associations. These are perhaps the closest relatives of the Dutch and Austrian housing associations, and any attempt to reform affordable housing in the United States based on housing associations should consider the parallels between these organizations.


\(^{278}\) *Id.* at 239.

\(^{279}\) *Id.* at 243.

\(^{280}\) *Id.*

\(^{281}\) *Id.*

\(^{282}\) *Id.* at 245.

\(^{283}\) *Id.*

\(^{284}\) *Id.* at 247.

\(^{285}\) *Id.* at 240.
iv. Concluding Thoughts

The history of the American approach to affordable housing is noteworthy in several respects. From the outset, the promotion of affordable housing was not a primary purpose of federal housing legislation. While early housing legislation aimed at increasing the affordability of single-family homes, during the middle- to late-twentieth century the purpose shifted to primarily encouraging the development and maintenance of housing for America’s poorest residents. Moreover, efforts to promote affordable housing have consistently relied on grants and subsidies. With respect to rental housing, the bulk of the funding comes from demand-side programs, such as the voucher system.

New affordable housing developments are only possible insofar as developers or housing finance firms are willing to navigate the labyrinth of state and federal financing opportunities. One major downside of the current approach, because these projects are only financially feasible insofar as credits, subsidies, and grants are available, is that an entire project can fall apart if one of these financing mechanisms is not obtained. As a result, these projects may be abandoned long after beginning the planning and application process and considerable expenses have already been paid.

One of the benefits of the federalist system of government in the United States is that it gives states wide latitude in formulating highly individualized plans to address the needs of their residents. At the same time, the federal government may ensure a degree of uniformity among states. In the context of housing, federal policy has embraced flexibility in planning and implementation at the state level. While this flexibility is useful for states that have sophisticated affordable housing programs, this decentralized approach is less helpful in states that do not have a sophisticated affordable housing industry.286

IV. REFORMING AFFORDABLE HOUSING IN THE UNITED STATES

Perhaps the American approach to affordable housing is a product of traditional notions of American exceptionalism and a “pull oneself up by one’s bootstraps” mentality. At the same time that Austria and the Netherlands were concerned about providing housing for the working classes, Americans were concerned with eliminating working-class radicalism. When Austria and the Netherlands were working to provide post-World War II housing, America was experiencing an “economic miracle”—the period between 1945 and the 1980s, during which the economy grew and flourished. Perhaps what differentiates the Austrian and Dutch experiences is that the United States has embraced a more self-reliant culture. In the US, housing assistance is primarily aimed at getting the lowest-income individuals and families off the streets and into homes. Conversely, the Austrian and Dutch experience has embraced as its object providing quality homes to the poor and working classes. For this reason, adopting any aspect of Austrian or Dutch housing association law will require Americans to broaden their understanding of affordable housing to include more than merely the low-income.

Additionally, housing associations rely on a careful balance between public and private interests, through which corporations are entrusted to pursue the public good. Much of the discussion herein implicates corporations and their perceived role within society. One relevant development in the area of American corporate law is the creation of public benefit corporations (PBCs). These companies are not solely

288. LIPSET, supra note 34, at 33.
289. Id. at 38.
290. See discussion supra Sections III.A.i,iii, III.B.i,iii, III.C.i.
291. See discussion supra Sections III.A.ii,iii, III.B.ii,iii.
292. See State by State Status of Legislation, BENEFIT CORP., http://benefitcorp.net/policymakers/state-by-state-status (last visited Sept. 26, 2017). At this time, thirty-three states have passed laws recognizing public benefit corporations, and another eight are working on passing such laws. Id.
beholden to the purpose of maximizing the shareholders’ value. Rather, a PBC expressly binds itself to further an additional social duty, which theoretically gives it more decisional flexibility. Implicit in the understanding of the PBC is the notion that the benefits of the corporate form—its efficiency and efficacy—should be permitted to create social value. Moreover, the demand for socially conscious companies is growing. A recent study found that 70% of millennials were willing to spend more on brands that support causes, and 81% “expect companies to make a public commitment to good corporate citizenship.” With millennials representing a significant and growing share of the consumer market, millennials “represent the consumer market of the future.” Millennials’ willingness to entrust corporations to promote the social good by creating and managing affordable housing is critical if housing associations are to have any place in the United States.

The notion that the corporate form can be entrusted to promote the social good is precisely the notion underlying Dutch and Austrian housing associations. While the United States has taken a largely divergent path in providing affordable housing thus far, millennials may be the key to reform. The recognition of PBCs, as well as the pressing urgency of gentrification and urban sprawl, could present an opportunity for a change in policy. Together, these developments could be indicative of a coming sea change in United States affordable housing policy.

294. Id. “For example, Delaware’s PBC statute requires a PBC to simultaneously consider its shareholders’ return on investment, its impact upon those materially affected by its operations, and the specific public benefit or benefits set forth in its certificate of incorporation.” Id. at 1.
295. See generally id.
298. Id.
299. See discussion supra Sections III.A.ii, III.B.ii.
United States’ legislators should look to these two countries—and particularly the Netherlands—as models for reform.

A. Lessons from the Austrian and Dutch Experiences

In balancing the scale between public and private control, the Dutch and Austrians have set the scale differently. The Dutch model, particularly since implementing the guaranteed loan, has emphasized a partnership that tips the scale towards private interests. While Dutch housing associations operate within a state regulatory framework, they are private corporations and have wide latitude to pursue their objectives. The Social Housing Guarantee Fund, which administers the guarantee, is a non-profit organization. All housing associations belong and make monetary contributions to the Central Housing Fund, which is a private support network for housing associations. The Dutch regulatory framework is both the most commercialized, yet its universalistic policy is the broadest allocation criteria among these three countries.

The organizational hierarchy of the Dutch housing association ensures broad participation among its various stakeholders. In this way, both tenants and housing association professionals within the community are united in a common purpose of providing quality, affordable housing. Moreover, this unity of interests should extend to the promotion of the safety and welfare of the neighborhood and community. Furthermore, the long history of private support for social housing development and the current absence of reliance on object subsidization demonstrate a longstanding societal interest in developing attractive, safe, and marketable social housing.

The most noteworthy aspect of the Dutch approach is its novel approach to funding its housing associations. The guaranteed loan system

300. See discussion supra Section III.B.ii.
301. See discussion supra Section III.B.ii.
302. CECODHAS HOUS. EUR. OBSERVATORY, supra note 155, at 16.
303. Id. at 15–16.
304. See discussion supra Sections II, III.B.ii.
305. See discussion supra Section III.B.ii.
306. See discussion supra Section III.B.ii.
307. See discussion supra Section III.B.ii.
ensures that the government does not have to bear so significant of a financial burden as it would under a grant or subsidy approach. By permitting limited profits, the government has ensured that housing associations are able to protect the financial security and stability of the housing association through the reinvestment of profits above and beyond what is permitted. Accordingly, the guarantee, along with the Revolving Fund Principle, ensure that housing associations are self-sustaining, such that government aid in the form of large grants or subsidies is not required.

The Austrian methodology is more similar to American affordable housing policy, insofar as both rely on government subsidization, particularly in the construction and maintenance of housing. Also familiar is the Austrian federalist form of government and tendency toward decentralization. Under this system, federal policy and regulations are instituted at the provincial level, and the individual provinces are provided a degree of latitude in determining how to best utilize federal funds.

However, there is considerable bureaucracy surrounding Austrian housing associations. In addition, Austria’s Social Partnership evidences a scope of cooperation between government, private, and labor not seen in the United States. Because there are already concerns that the administrative state in America has grown too large and too powerful, it could be difficult to implement a system with the same degree of auditing and supervision as the Austrian system. Particularly so where that amount of participation is largely dependent upon longstanding social norms within Austria.

308. See discussion supra Sections III.B.i, III.B.ii.
309. OUEHAND & VAN DAALEN, supra note 123, at 79–80; see supra Section III.B.ii.
310. OUEHAND & VAN DAALEN, supra note 123, at 79–80; see supra Section III.B.ii.
311. See discussion supra Sections III.A.ii, III.C.ii.
312. See discussion supra Section III.A.ii, III.A.iii.
313. See generally HAUSMANINGER, supra note 61.
314. See discussion supra Section III.A.ii.
315. See discussion supra Section III.A.iii, III.C.i.
316. See generally Christopher DeMuth, Can the Administrative State be Tamed?, 8 J. LEGAL ANALYSIS 145 (2016).
317. See discussion supra Section III.A.iii.
Indeed, the Dutch polder model is also characterized by the same tripartite cooperation as Austria’s social partnership.\textsuperscript{318} Nevertheless, the Dutch have embraced an approach to affordable housing that does not afford the government bureaucracy such a large role as in Austria.\textsuperscript{319} Indeed, most aspects of social housing in the Netherlands has been commercialized.\textsuperscript{320} One reason why this significant degree of commercialization is possible in the Netherlands is the consultation culture.\textsuperscript{321} The Dutch are wont to reach consensus in areas of policymaking, such as housing.\textsuperscript{322} While consensus rules in the Netherlands, compromise and accommodation seem to prevail in the United States.\textsuperscript{323} Whether Americans would be able to institute such a degree of privatization in affordable housing could hinge on Americans’ willingness to engage in meaningful debate and to create consensus.\textsuperscript{324}

The Dutch and Austrian experiences both rely heavily on a corporatist model of management.\textsuperscript{325} As one commentator of the Dutch system remarked, “[w]hile it is a company with social objectives, it must nevertheless be just as efficiently organized and effective as any other commercial company in the fulfilment of its social objectives.”\textsuperscript{326} Both the Dutch and Austrian methods recognize that it should not be solely government in the business of housing.\textsuperscript{327}

The bedrock of the Dutch and Austrian approaches to housing is the notion that cooperation between public and private interests are necessary to provide adequate housing. Housing is a public good, and

\textsuperscript{318}. See discussion supra Section III.B.iii.
\textsuperscript{319}. See discussion supra Section III.A.ii, III.B.ii.
\textsuperscript{320}. See discussion supra Sections III.B.i, III.B.ii.
\textsuperscript{321}. See discussion supra Section III.B.iii.
\textsuperscript{322}. See discussion supra Section III.B.iii.
\textsuperscript{324}. Compromise is defined as “to adjust or settle by mutual concessions,” while consensus is defined as a “general agreement.” Merriam-Webster’s Collegiate Dictionary (11th ed. 2014). The implication of compromise seems to be that both sides are giving something up to accommodate each other, while there is not necessarily such an exchange implicated by consensus.
\textsuperscript{325}. OUWEHAND & VAN DAALEN, supra note 123, at 36; Matznetter, supra note 81, at 279.
\textsuperscript{326}. OUWEHAND & VAN DAALEN, supra note 123, at 36.
\textsuperscript{327}. See discussion supra Sections III.A, III.B.
private companies will not be able to wholly satisfy the demand for housing and low-income housing, in particular. Nevertheless, the corporate organizational form is capable of a measure of efficiency surpassing that of the government’s capability. Both systems, then, evidence an attempt to balance the benefits and disadvantages of public and private participation in housing.

In the United States’ housing industry, the distinction between public and private is definite. While the grant and subsidy mechanisms have sought to create a public-private partnership, it is a strained relationship.\textsuperscript{328} Developers and municipalities navigate an obstacle course of requirements in an attempt to make otherwise largely unprofitable ventures profitable for the developers.\textsuperscript{329} In the next section, drawing on historical social, political, and regulatory norms, this article proposes that the United States recalibrates the balance between public and private housing by introducing federal law that would allow housing associations to operate in the United States, while recognizing states’ individual interests and various approaches to addressing housing concerns.

\textbf{B. Proposal for Implementing Housing Associations in the US}

This section of this article will first revisit some of the general concepts discussed in Section II, including the spectrum of regulation and the notion of balancing public and private interest in housing. Afterwards, a brief proposal for reform is presented, along with the justifications behind it.

\textit{i. Primary Considerations}

Early on in this note, the notion of a one-dimensional spectrum of regulation was discussed.\textsuperscript{330} While that simple analogy makes sense when thinking about how much regulation a country employs, the model is too simplistic to cover the various approaches of regulation that a country might engage in. The one-dimensional model fails to

\begin{footnotesize}
\begin{enumerate}
\item See discussion \textit{supra} Section III.C.
\item See discussion \textit{supra} Sections III.C.ii, III.C.iii.
\item See discussion \textit{supra} Section II.
\end{enumerate}
\end{footnotesize}
demonstrate the nuances of different regulatory schemes. At this point, it might be more useful to think in terms of a three-dimensional framework. Each system as a whole, and each subset—a single subsidy, for example—of that system, of affordable housing balances a number of considerations, chiefly among them: (1) where to source financing in a spectrum ranging from pure-public to pure-private; (2) where to place control in a spectrum ranging from pure-public to pure-private control; and (3) where to place the objective in a spectrum ranging from universal housing to no affordable housing. It is important to note that none of the countries examined within this note falls into any of the “pure” categories, although the Netherlands is regarded as having a universal housing allocation criteria. Nevertheless, this framework is useful for visualizing how these various mechanisms and purposes for providing affordable housing interact. The graph below demonstrates this three-dimensional framework:

331. See discussion supra Section II.
Determining where on the spectrum to place financing for housing associations could be the most puzzling question that must be answered before importing housing associations into the United States. Indeed, control is already placed largely in the hands of capable developers, while financing is largely undertaken by the federal and state governments. The second most difficult consideration is whether Americans are willing to broaden the objective of affordable housing to encompass something nearer to universal housing. The past century demonstrates powerful capitalist and self-reliant strains, though it is not

\[332. \text{ See discussion } \textit{supra} \text{ Sections III.C.ii, III.C.iii.}\]
entirely clear that will continue to be the case. Much of the past presidential election in the United States was waged over the role of administrative agencies within the federal government. The current administration seems poised to rein in agency power. However, many in America would expand social services, thereby granting agencies more power and more discretion.

This article takes the position that somewhere closer on the spectrum to the Netherlands would be best received in the United States. Even for those who are in favor of expanding social services and promoting public welfare, importing housing associations would be a major departure from the current approach. The significant degree of bureaucracy within Austria may not be received well by liberals, let alone conservatives, both of which would likely find it overbearing and out of place in the United States. Moreover, conservatives may appreciate the Dutch approach for the amount of freedom and discretion that the housing

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333. See discussion supra Section III.C.i.


336. See, e.g., Poverty to Prosperity Program and the CAP Economic Policy Team, Expanding Opportunities in America’s Urban Areas, CTR. FOR AM. PROGRESS (Mar. 23, 2015, 9:10 AM), https://www.americanprogress.org/issues/poverty/reports/2015/03/23/109460/expanding-opportunities-in-americas-urban-areas/ (discussing steps the government can take to improve American cities, and pertinent to this discussion, placing “greater emphasis on leveraging private investment.”).
associations are provided under Dutch law. Liberals may welcome a broader approach to affordable housing aimed at more than merely the poorest, although there may be some distrust of the ability of the private sector to effectively create affordable housing. The following paragraphs examine what specific mechanisms might be imported and how.

\textit{ii. The Proposal}

Austria and the United States, in their approaches to affordable housing, both employ a decentralized federalist system. At least superficially, there appears to be a correlation between federalism, subsidization, and bureaucracy, which feature predominantly in the context of the housing markets of the United States and Austria. Nevertheless, this decentralized federalist approach offers significant benefits—namely flexibility—and should be preserved. However, one downside of the decentralized federalist approach is that it provides the most benefit to states with sophisticated affordable housing markets and states without such sophisticated industry lag behind. If an industry organization, such as Aedes in the Netherlands or GVB in Austria, were established in the United States to provide guidance, auditing services, and oversight, it may help to close this gap. The grants and subsidies currently available afford states and municipalities, along with the input of private developers, the ability to make highly individualized

\begin{enumerate}
\item See discussion supra Sections II, III.A, III.C.
\item See discussion supra Section III.C.ii.
\item States, as laboratories of democracy could experiment with different tools and methods for utilizing CDCs, and a national industry organization would be a useful means for collecting and analyzing all of the data generated by unique state approaches. As discussed throughout the note, because the United States relies on so many different programs to provide affordable housing, meaningful analysis is difficult because it necessarily implicates so many different variables. Aedes and GBV issue frequent reports on the business of housing associations that makes it easier to aggregate the data and quantify the services provided by housing associations.
\end{enumerate}
determinations as to what their communities need—be it demolition and new construction or maintenance. Subsidization is not the only means to ensure flexibility, as the Dutch experience indicates.

The Dutch guarantee method of financing is a novel approach to affordable housing and one that should be considered for application in the United States. The government already provides credit opportunities to “help college students afford tuition, first-time homebuyers access affordable mortgages, and budding small businesses get the capital they need to expand.” Moreover, these other endeavors place a low burden on taxpayers—roughly $0.94 per $100 loaned or guaranteed. “On average, every $1 allocated to loan and guarantee programs generates more than $99 of economic activity....” Financing procured by a guaranteed loan could be utilized in a manner that would preserve the same degree of flexibility as under current housing law.

Both Austria and the Netherlands have recognized that some degree of subsidization is necessary to ensure that the lowest-income group is adequately served. Accordingly, the United States should continue to use rent subsidies for the lowest-income earners because housing associations are best at supplying available housing for low to middle classes. If the guaranteed loan system is efficient, then there could be comparatively more money available for subsidizing the lowest income brackets. As in the Netherlands, this could be an effective means of reducing the concentration of poverty and promoting mixed-income communities.

343. See supra Section III.C.ii, III.C.iii.
345. Id.
346. Id.
347. Both the Netherlands and Austria do limit the types of business that housing associations can be involved in, and municipalities and provinces still play a role in determining where affordable housing needs must be addressed. See discussion supra Sections III.A, III.B.
348. See discussion supra Sections III.A.ii, III.B.ii.
349. Id.
Moreover, in the Netherlands, the shift to a guaranteed loan method of financing did not occur overnight, and it need not occur overnight in the United States. Rather, any reforms should recognize incremental change as its objective to promote stability and ensure continuing access to housing. In this sense, the most relied upon supply-side subsidies should be preserved, but phase-out periods should be seriously considered. These sunset provisions could ensure that housing would continue to be created and maintained while housing associations are formed and get on their feet. It would also discourage continued reliance on these subsidies so as to encourage the shift towards housing associations.

In some ways, US CDCs have already begun to lay a foundation for importing housing associations into the United States. It may be possible, as a matter of expediency, to reform and expand CDC law rather than creating an entirely new entity. A specialized form of CDC, recognized for the express purpose of promoting affordable housing, could be the American equivalent of housing associations. The reforms discussed above—a national certification program through an industry organization, a national guaranteed loan system with favorable interest rates, increased subsidization for the lowest-income families, and a broader allocation criteria—would place CDCs on similar footing to housing associations in Austria and the Netherlands.

Undoubtedly, there will be challenges if this reform is pursued. However, developers are already struggling with arguably the most significant of these challenges—as one developer noted, “trying to build

350. See discussion supra Sections III.A.i, III.A.ii.
351. “A statute under which a governmental . . . program automatically terminates at the end of a fixed period unless it is formally renewed.” Sunset Law, BLACK’S LAW DICTIONARY (10th ed. 2014). In this sense, current subsidies could be assigned fixed termination dates, and if Congress determined that the subsidies were still necessary for transition, it could extend the termination date into the future.
352. See generally Erin Dewey, Sundown and You Better Take Care: Why Sunset Provisions Harm the Renewable Energy Industry and Violate Tax Principles, 52 B.C. L. Rev. 1105 (2011) (discussing how sunset provisions are inefficient for promoting new policy objectives). Conversely, for the same reason that sunset provisions are not helpful for promoting new policy goals, they could be useful for eliminating the old subsidies and grants.
353. See discussion supra Section III.C.iii.4.
[a] community[ is] the hardest part." The Dutch experience, in particular, demonstrates the positive role that housing associations can play in reducing the stigma against affordable housing and low-income residents. Moreover, if developers are already struggling with community building, then importing housing associations would not present a new obstacle in this regard. Rather, it could present a unique way to address existing concerns and provide a framework by which these same developers can reform their operations as housing associations and successfully engage in community building.

V. CONCLUDING THOUGHTS AND THE FUTURE OF AFFORDABLE HOUSING IN THE US

Housing reform represents an elephant in the room. While the various approaches to affordable housing in the United States have been written upon and critiqued extensively, attempts at reform appear markedly familiar—more or new grants and subsidization. HUD programs and the other mechanisms for providing affordable housing could perhaps be best characterized as the numerous heads of a hydra—the many-headed serpentine beast of Greek and Roman mythology. The sheer number of different programs operating to promote overlapping purposes could explain the reluctance towards consideration of more simplified approaches to affordable housing. This article takes the position that the time is rapidly approaching at which the hydra must be slain.

At the outset, this article recognized that unchecked gentrification and urban sprawl threaten the wellbeing of both the American people and landscape. Advocates of smart growth are working within various levels of state government to ensure that planning, zoning, and development are performed with an eye towards the future. Efficiency and sustainability are the keystone of that endeavor. Efficiency and sustainability should be the keystone of affordable housing reform—how to achieve those objectives is the question. Adopting aspects of the Dutch and Austrian housing association systems could be the answer.

354. Mortice, supra note 11.
355. See discussion supra Section I.
356. See supra note 21 and Section I.
357. See supra note 21 and Section I.
This article is a call for more data collection and for more research and analysis. While the current administration seems poised to dismantle, or at least significantly alter aspects of, the regulatory state, now could be the perfect time to devise a new and improved plan for the future.