Can Promise Enforcement Save Affordable Housing in the United States?

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For all those sprawled down stairs
with the work boot's crusted map
printed on the back,
the creases of the judge's face
collapse into a fist.
As we shut files
and click briefcases
to leave . . . . [1]

I. INTRODUCTION

Promise Enforcement is my original approach to the development of affordable housing. Promise Enforcement, as a system, includes three components: (1) contextual thinking; (2) valuing individuality, and (3) comprehensive responsibility.[2] Contextual thinking involves a sense of environmental, historical, and geographic context.[3] Valuing individuality allows residents of public housing to express themselves as unique individuals.[4] Comprehensive responsibility involves a complete understanding of the costs and benefits of affordable housing.[5] The theory was inspired in part by the work of Austrian activist, artist, and architect Friedensreich Hundertwasser and the writings of French social contract theorist Jean-Jacques Rousseau. My article that introduced the theory of Promise Enforcement compared and contrasted it with the United States federal government's HOPE VI affordable housing program,[6] proposing ways in which each of that initiative's three major components, (1) New Urbanist architecture, (2) income mixing, and (3) lease enforcement and community and supportive services, could be modified to comport with Promise Enforcement.

Since that time, the future of HOPE VI has become uncertain.[7] This

1. MARTÍN ESPADA, *City of Coughing and Dead Radiators*, *in* CITY OF COUGHING AND DEAD RADIATORS 39, 41 (1993). Martín Espada is a former legal services attorney.

2. Kristen D.A. Carpenter, *Promise Enforcement in Public Housing: Lessons from Rousseau and Hundertwasser*, 76 TUL. L. REV. 1073, 1076–77 (2002). This is my earlier article, providing a comprehensive explication of each component.

3. *Id.* at 1080–81.

4. *Id.* at 1081.

5. *Id.* at 1114–33.

6. *Id.* at 1075 n.3 (providing a comprehensive description of HOPE VI and a listing of resources for further information about the program).

7. The Bush Administration's renewal of the program, which was otherwise to expire in 2003, has been described as "grudging." Wayne Washington, *Bush Signs Anti-Spam E-mail Bill: Housing Law Lauded for Low-Income Plan*, BOSTON GLOBE, Dec. 17, 2003, at A2 (quoting Sheila Crowley, President of the Low Income Housing Coalition).

Article therefore examines the extent to which it is reasonable to expect that Promise Enforcement will be successful in the United States, in a post-HOPE VI era in which affordable housing is generally expected to be a matter of state and local governance, rather than federal law. Indeed, Hundertwasser-Haus, an Austrian affordable housing development designed by Hundertwasser, and after which Promise Enforcement was modeled, has been called a uniquely Viennese development.[8] The question of Promise Enforcement's adaptability to the United States is made more complex to the extent that the model was influenced by the very different environment of Vienna, Hundertwasser's hometown.[9] The strongly socialist background of the city, particularly with regard to the provision of affordable housing, may raise concerns as to the degree to which the principles Hundertwasser-Haus embodies can be translated to the United States.[10] The United States has not shown the same strong

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This seems to be an appropriate characterization, given that the Department of Housing and Urban Development itself recommended nonrenewal of the program. Frank Davies, *Martinez Leaves Post for "Vacancy in Florida,"* MIAMI HERALD, Dec. 12, 2003, at A18 ("HUD tried . . . to end funding for the HOPE VI urban renewal program for distressed neighborhoods.").

8. Carpenter, *supra* note 2, at 1077 n.8 (providing a description of the characteristics of Hundertwasser-Haus that inspired Promise Enforcement).

9. *See generally* EVE BLAU, THE ARCHITECTURE OF RED VIENNA 1919–1934 (1999) (describing the socialist influence on Viennese affordable housing).

> In 1919 the Social Democratic city council of Vienna initiated a radical program of municipal reforms designed to reshape the social and economic infrastructure of the Austrian capital along socialist lines. The centerpiece of this program and the most enduring achievement of "Red" Vienna was the construction of the Wiener Gemeindebauten, 400 communal housing blocks in which workers' dwellings were incorporated with kindergartens, libraries, medical and dental clinics, laundries, workshops, theaters, cooperative stores, public gardens, sports facilities, and a wide range of other public facilities. Distributed throughout the city, the *Gemeindebauten* provided Vienna with not only a large amount of new living space—64,000 units in which one-tenth of the city's population was rehoused—but also a vast new infrastructure of social services and cultural institutions.
>
> The building program was carried out by the first socialist city administration to govern a major European capital and metropolis of two million inhabitants. As that government's most visible achievement, the *Gemeindebauten* were understood to have been shaped by its political purposes, and they became its symbol.

Id. at 2.

10. Werner Hegemann, a German architect who was well versed in the housing situations in both Vienna and the United States, considered the applicability of the Viennese approach to the United States during his time. "In the first volume of *City Planning Housing*, which appeared just before he died in 1936, Hegemann devoted a chapter to the question: 'What hope or danger is there of seeing the Viennese housing

interest in affordable housing for the working poor that is commonly associated with the socialist tradition of government.[11] Vienna was also faced with a singular historical crisis—unmatched in the United States—that forced it to create affordable housing in large quantities in the early part of the twentieth century.[12]

The uncertain future of HOPE VI makes it even more critical that U.S. affordable housing policy be consistent with public mores and connected to the community.[13] Otherwise, there is little ground for confidence in reliable funding for affordable housing, assuming that this need must be met in the future only through localized expenditures. In the past, local public support for low-income housing has often been tenuous and grudging, at best. Some scholars have asserted that this pattern reflects the exclusion of low-income persons from effective citizenship in the United States.[14] Thus, the current shift in housing policy and concomitant shift in funding may force the issue of repair to the social contract, insofar as the provision of affordable housing is concerned.[15]

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experiment imitated in America?' His answer [was] 'not much . . . .'" *Id.* at 22.

11. *See* GRAHAM VICKERS, KEY MOMENTS IN ARCHITECTURE: THE EVOLUTION OF THE CITY 165 (1998) (citing author Tom Wolfe, in his book *From Bauhaus to Our House*, for the propositions that post-World War I America had "little interest in socialism" and that "[t]here was not even any interest [in the United States] in worker housing").

12. Eve Blau makes the following point:

> When they came to power in Vienna, the Social Democrats inherited not only a depleted municipal budget but an acute housing shortage. This was the result primarily of a long history of official neglect of the living conditions of Vienna's industrial workers, who were housed in quarters considered to be among the worst in Europe.

BLAU, *supra* note 9, at 5; *see also* ARTHUR B. GALLION & SIMON EISNER, THE URBAN PATTERN: CITY PLANNING AND DESIGN 114 (1950) ("Austria emerged from the Empire period and World War I financially bankrupt. Inflation had reduced to a minimum the capacity of private capital to produce housing. Municipal government was forced to take the major role and Vienna undertook an energetic program.").

13. MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 93 (1983) ("[T]he struggle against poverty (and against every other sort of neediness) is one of those activities in which many citizens, poor and not so poor and well-to-do alike, ought to participate.").

14. WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 174–75 (1996) (quoting an August 1977 *Time Magazine* article, *The American Underclass: Minority Within a Minority*, TIME, Aug. 29, 1977, at 14). Wilson quotes the article as follows:

> Affluent people know little about this world . . . except when despair makes it erupt explosively onto Page 1 or the seven o'clock news. Behind its crumbling walls lives a large group of people who are more intractable, more socially alien and more hostile than almost anyone has imagined. They are the unreachables: the American underclass.

Id.; BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 271 (1980) (describing the ways in which low-income persons have been "subordinated by the power structure" in a way that "cannot be tolerated in a world dominated by liberal statesmanship").

15. WALZER, *supra* note 13, at 65 ("The social contract is an agreement to reach

Promise Enforcement is intended to address these concerns and is a model of mutual contribution and participation, rather than charity. There is precedent for each of the three components of Promise Enforcement in the work of American architects such as Irving Gill[16] and Samuel Mockbee[17] and landscape architect Frederick Law Olmstead,[18] and in the work of American political theorists such as Bruce Ackerman,[19] Ronald Dworkin,[20] John Rawls,[21] Robert Solomon,[22] Michael Walzer,[23] and Iris Young.[24] Several of these architects and theorists, as shown below, are concerned with the relational and contextual nature of personhood as well as individuality.[25] In addition, several of these individuals support a more complex system of commodification than that with which American society is familiar; rather than totalizing all persons vis-à-vis a single commodity—money—these scholars assert that a successful American society must have a system of multiple commodities such that one person contributes money, another, time, another, talent, and perhaps another, potential.[26] As is discussed below, Walzer's model most closely approximates the workings of a prototype for American society to consider.[27] Finally, as is shown below, the theories that several of these individuals espouse demonstrate an understanding of the comprehensive costs and benefits of affordable housing in the United States, both at its worst and at its best.[28]

This Article generally is focused on affordable housing in the United States. Where relevant, however, to show that the issues facing public housing are not strictly American phenomena, this Article introduces similar problems, and proposed solutions, suggested by the experience

decisions together about what goods are necessary to our common life, and then to provide those goods for one another.").

16. *See infra* notes 118, 119–21, 189, 271 and accompanying text.
17. *See infra* notes 335, 348 and accompanying text.
18. *See infra* notes 360, 365–68 and accompanying text.
19. *See infra* notes 53, 61, 65, 106, 181, 191, 196, 209 and accompanying text.
20. *See infra* notes 57–58, 64, 67, 205, 206–07, 225, 227 and accompanying text.
21. *See infra* notes 66, 197, 208, 250 and accompanying text.
22. *See infra* notes 51–52, 56 and accompanying text.
23. *See infra* notes 42, 44, 62–63, 69–70, 103, 105, 198–200, 212–14 and accompanying text.
24. *See infra* notes 42, 54, 55, 60, 74, 77–78, 104, 110, 179, 201, 216, 226 and accompanying text.
25. *See infra* notes 42–55 and accompanying text.
26. *See infra* notes 212–16 and accompanying text.
27. *See infra* notes 212–14 and accompanying text.
28. *See infra* notes 285–89 and accompanying text.

of other cultures. In addition, this Article presents analogs, in American architecture, to much of the architectural vocabulary Hundertwasser employed, including his fanciful use of color,[29] his creative employment of mass-produced fixtures,[30] and his recycling of buildings.[31] These concrete similarities are intended to respond to the question of whether the ideals behind Hundertwasser-Haus, although suitable for Vienna, a city with both a strong socialist history and a formidable reputation for multifamily housing, might be ill-suited for export to the United States.

As this Article will discuss below, there is precedent for the importation of Hundertwasser's architectural vocabulary into the United States, as well.[32] Although the international architectural establishment has criticized Hundertwasser by accusing him of being merely a shameless self-promoter and claiming that his ideas were not unique, that his dramatic architectural embellishments were stolen from Barcelona's Antoni Gaudí, and that his efforts at ecological responsibility were nothing more than the typical Viennese greening of the urban environment,[33] these accusations, even if true, may be a strength of his work rather than a weakness. If Hundertwasser's work is not too fantastic for replication, it has greater potential as a model for affordable housing elsewhere. In addition, much of what was unique to his work was its vision, the way in which it brought everything together, rather than any single, characteristic component of his designs.[34]

Having shown that each of the three components of Promise Enforcement has significant support in American architectural tradition and philosophy, this Article considers the possibility that one critical piece of Hundertwasser's vision has only a limited place in American tradition and contemporary thought: Hundertwasser's conception of beauty for the sake of beauty as part of the fundamental dignity of personhood.[35] Rather, in the United States, beauty for the sake of beauty

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29. *See infra* notes 341–46 and accompanying text.

30. *See infra* notes 328, 341 and accompanying text.

31. *See infra* notes 318–23 and accompanying text.

32. *See infra* notes 228–50 and accompanying text.

33. HARRY RAND, HUNDERTWASSER 182–83 (1993) (acknowledging Hundertwasser's debt to Gaudí). The strong dislike was mutual. Wieland Schmied, *Hundertwasser and His Painting*, *in* FRIEDENSREICH HUNDERTWASSER, KUNSTHAUSWIEN 40, 40 (1999). Schmied describes the relationship between Hundertwasser and the professional art community as follows: "From the beginning Hundertwasser tried to reach a broad public directly and gain its acceptance without mediation and interpretation by others. He even refused wherever possible the assistance of the professional go-betweens, the critics, art historians and museum people, and often quite inexcusably ignored their appreciation." *Id.*

34. Gaudí's work did not involve the same sort of social vision or sense of utility as Hundertwasser's. Thus, "[i]n comparison to Hundertwasser's 'usefulness' of every part, Gaudí can seem overdone, and forced." RAND, *supra* note 33, at 182.

35. *See infra* notes 347, 349 and accompanying text. These priorities are not

is a luxury generally considered to be enjoyed by the privileged few; instead, the United States culture is exemplified by a mania for functionality.[36] This part of Hundertwasser's theory cannot be dismissed as tangential. Indeed, it is at the core of Hundertwasser-Haus, the development that inspired the concept of Promise Enforcement in American public housing.[37] Having found some support for each of these components but questioning the transferability of Hundertwasser's central motivating force, this Article will conclude that Promise Enforcement is both conceivable and sustainable as a model for American affordable housing, so long as it can be proven, as Hundertwasser and others argue, that aesthetics are functional; in other words, that beauty *matters*, both as a source of dignity and as a community asset.[38] Only then will low-income housing be consistent with the American spirit of utility.

II. CONTEXTUAL THINKING IN THE UNITED STATES

Contextual thinking is my term for a new way of thinking about residents of low-income housing as part of the larger community. It involves the physical and social integration of affordable housing into the rest of the community, through the creation of neighborhood resources, both concrete and cultural, to be shared by low-income and market-rate residents alike.[39]

A. Contextual Thinking and Community Membership

Valuing individuality, the second component of Promise Enforcement, will require that low-income persons be considered contributing members of society, through the device of multiple commodification and through increased access to resources.[40] Contextual thinking, as an

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unique to Hundertwasser or to Vienna, but are found in other cultures as well. Consider the women of the Tuareg culture in Africa who, in creating a tent dwelling for a newly married couple, take pains to make the sheet beautiful. Johannes Nicolaisen, *Tuareg*, *in* SHELTER 12, 12 (1973). The beauty of the structure is central to the effort. At the same time, note that this dwelling is practical; one woman can put up a single tent in about half an hour. *Id.*

36. *See infra* notes 353–58 and accompanying text.
37. *See infra* notes 347, 349 and accompanying text.
38. *See infra* notes 374–75 and accompanying text.
39. Carpenter, *supra* note 2, at 1085–99 (introducing the concept of contextual thinking).
40. *See infra* notes 196–227 and accompanying text.

initial matter, and as the first component of Promise Enforcement, requires that low-income persons be *considered*, rather than hidden.[41] As this section will show, this idea has support in contemporary American jurisprudence. Michael Walzer and Iris Young both emphasize the importance of community membership for all community residents,[42] a need that is perhaps most critical for residents of affordable housing because they most need the security, welfare, and inclusion that membership affords.[43] Acknowledging that the United States has never taken even the preliminary step of recognizing a right to housing—much less a right to community membership in the comprehensive sense that contextual thinking requires—Walzer acknowledges that this matter is a controversial one.[44] Instead, affordable housing is often an afterthought:

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41. Pre-*Gemeindebauten* workers' housing in Vienna, for example, hid the poor living conditions of the inhabitants and in some ways hid the inhabitants themselves:

> It is significant (in the light of later developments) that the true character of the living spaces within the buildings—confined, fetid, dank—was not visible from the street. In general, the street facades of the tenements built in the latter part of the nineteenth century—in terms of massing, proportions, and ornamentation—were indistinguishable from the middle-class apartment blocks built at the same time in other parts of the city. . . . The deception involved in this combination of exterior propriety, even modishness, with interior squalor and human degradation (characterized locally as 'aussen hui, innen pfui': outside wow! inside phew!) was due in part to antiquated government regulations regarding the design of street facades, in effect since the early nineteenth century, which called for a certain degree of elaboration and allowed the practice to persist.
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> . . . [I]n the case of the tenements, the deception served not only to disguise the true character of the dwellings within but also to marginalize, by hiding from view, an entire social class.

BLAU, *supra* note 9, at 68–69.

42. WALZER, *supra* note 13, at 64 ("Membership is important because of what the members of a political community owe to one another and to no one else, or to no one else in the same degree. And the first thing they owe is the communal provision of security and welfare."). Young states as follows: "Marginalization is perhaps the most dangerous form of oppression. A whole category of people is expelled from useful participation in social life and thus potentially subjected to severe material deprivation and even extermination." IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 53 (1990).

43. Affluent members of society carry the greatest responsibility in ensuring that these needs of membership are met. ROBERT C. SOLOMON, A PASSION FOR JUSTICE: EMOTIONS AND THE ORIGINS OF THE SOCIAL CONTRACT 23 (1990). Solomon states, "What is wrong is not our obsession with material goods and comforts but the moral perspective within which we enjoy them. Along with wealth and affluence come obligations and responsibilities . . . ." *Id.*

44. Walzer states as follows:

> The Athenian drama and the Jewish academies were both financed with money that could have been spent on housing, say, or on medicine. But drama and education were taken by Greeks and Jews to be not merely enhancements of the common life but vital aspects of communal welfare. I want to stress again that these are not judgments that can easily be called incorrect.

WALZER, *supra* note 13, at 83.

Whole communities in the United States currently are being built without any provision for low-income housing whatsoever.[45] The United States historically has had an uncomfortable relationship with low-income housing; as Walzer has noted, the extent of appropriate communal provision has been a subject of continual debate, and not just in the United States, even when the fact of such provision is accepted.[46] The European experience, by contrast, has been less hostile.[47] Some scholars urge the adoption of policies that would go beyond providing a bare right to shelter.[48] Instead, however, U.S. efforts at affordable housing historically have been directed toward those who are sometimes termed the "deserving poor"[49] and have tended to avoid any form that might be deemed inappropriately luxurious for the low-income individuals who are to live there.[50]

Consistent with the ideals of contextual thinking, a number of contemporary U.S. theorists have recognized the need for comprehensive

45. GALLION & EISNER, *supra* note 12, at 119 (listing "notable subdivisions in this country" that "were intended for the upper income group and were promoted accordingly").

46. WALZER, *supra* note 13, at 73 (describing the view of a medieval Jewish community that "[y]ou must help the poor in proportion to their needs, but you are not obligated to make them rich"). As Walzer acknowledges, the appropriate extent of provision is disputed. *Id.* at 75 (acknowledging the question, "What is their rightful share?"). Walzer also asserts that the means of provision are important: He states, "Goods must be provided to needy members because of their neediness, but they must also be provided in such a way as to sustain their membership." *Id.* at 78. This is in contrast to a system that would exclude needy persons, because of their neediness, from full participation in citizenship. In attempting to answer the question, "Fair shares of what?" Walzer suggests, as a reference point, "Justice, tranquility, defense, welfare, and liberty: . . . the list provided by the United States Constitution." *Id.* at 79–80. He acknowledges, however, that, because "the terms are vague . . . they provide at best a starting point for public debate." *Id.* at 80.

47. SAM DAVIS, THE ARCHITECTURE OF AFFORDABLE HOUSING 1 (1995) ("[T]he term used by most Europeans . . . is 'social housing,' which expresses both the intention and the need. 'Social housing' implies that a responsible and humane society has an obligation to assist those of its members who could not otherwise have decent housing.").

48. DONALD MACDONALD, DEMOCRATIC ARCHITECTURE: PRACTICAL SOLUTIONS TO TODAY'S HOUSING CRISIS 7 (1996) ("[E]very human being has a right to a home—not just shelter but a private, secure, and congenial place to live at an affordable cost or, in the case of the destitute, no cost at all.").

49. *Id.* at 17–18 (noting that the term "deserving poor" generally can be translated as applying only to the "lower middle class").

50. *Id.* at 11 (citing psychologist Robert Sommer for the following quote: "[With regard to] public housing tenants it [was often said], 'If you provide good architecture, they won't appreciate it.' There is the same denigrating we/they dichotomy in all these assessments of people's response to their surroundings").

inclusion of low-income people as members of society. Robert Solomon has argued persuasively that it is not the gross inequality of wealth in the United States that is unjust, but rather the attitude of the privileged toward the poor in society.[51] His focus on interpersonal awareness and recognition demonstrates that he views humans as essentially social creatures.[52] Like Solomon, Bruce Ackerman views humankind as inherently social;[53] Iris Young, too, fits into this framework, given her assertion that rights are appropriately conceived of as relationships, not merely as things.[54] This Article, while embracing the social nature of humankind, will also argue that this characteristic is consistent with, rather than at odds with, Promise Enforcement's second component, valuing individuality. In this way, Promise Enforcement is consistent with Young's ideal of city life, a richly diverse community that she proposes as a healthy alternative to communitarianism, which she views as overly rigid.[55] Solomon, too, recognizes the need to ensure that community does not erase difference.[56] His model is consistent with the

51. SOLOMON, *supra* note 43, at 177. After posing the questions, "But is the gap between the rich and the poor the injustice in question? Or is it the indifferent and merely abstract attitudes of the rich themselves?" Solomon answers the questions as follows: "I want to argue the latter, that inequality is not as such injustice. The real injustice is indifference . . . ." *Id.*

52. Solomon asserts that theories of justice that focus too wholly on the individual "falsely ontologize our independence, and . . . falsify the very essence of our existence, which is not to be individuals with interests but to be social beings who define ourselves in terms of our attachments, affections, and social identities." *Id.* at 61. Solomon goes on to state that

> [o]ur affiliations in society and with each other are not rational or a matter of self-interested calculation but a product of natural feelings and affections. It is selfishness and not society that is unnatural, and justice should not be conceived as a rational corrective to our natural human emotions.

Id. at 62. Indeed, Solomon goes so far as to state that "[o]ur selves, our desires and their satisfaction, are themselves communal and communally defined." *Id.* at 93.

53. ACKERMAN, *supra* note 14, at 331 (describing humankind as "social beings—whose identities and objectives are defined through interaction with other concrete individuals").

54. YOUNG, *supra* note 42, at 25 ("Rights refer to doing more than having, to social relationships that enable or constrain action.").

55. Young rejects the ideal of community as "express[ing] a desire for the fusion of subjects with one another which in practice operates to exclude those with whom the group does not identify." *Id.* at 227. "Commitment to an ideal of community tends to value and enforce homogeneity." *Id.* at 234. As an alternative, she proposes "an ideal of city life as a vision of social relations affirming group difference." *Id.* at 227. Young describes the ideal as follows: "By 'city life' I mean a form of social relations which I define as the being together of strangers. In the city persons and groups interact within spaces and institutions they all experience themselves as belonging to, but without those interactions dissolving into unity or commonness." *Id.* at 237.

56. His initial statements regarding the nature of justice may sound communitarian in a way that challenges this notion of difference: "Justice is, first of all, a matter of individual virtues and feelings, but both justice and the individual are defined within community, and justice ultimately has to be the concern of the community." SOLOMON,

thick conception of self for which this Article advocates.

Promise Enforcement is also consistent with Ronald Dworkin's concept of the "association of principle" as a model for community.[57] In an association of principle, members accept even those individual decisions that might not inure to their immediate benefit, because they feel a sense of connectedness to, and experience inclusion in, the process generally.[58] Dworkin acknowledges the possibility of societal unfairness to outsiders of an association of principle, in the same way that Promise Enforcement is particularly concerned with protecting those who have historically been outside the social contract.[59] Young expresses the same concern for those whom she calls "dependents."[60] For similar reasons, Ackerman believes all persons must be recognized as having a right to citizenship.[61] Walzer reaches the same conclusion, using the example of

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supra note 43, at 94. In addition, Solomon states, "The truth . . . is that there are no individuals, there is no autonomy and no real freedom, outside of a social context." *Id.* at 98. Solomon goes on, however, to decry "the unreal and destructive dichotomy of the individual and the community, the phony ideal of the wholly autonomous man or woman and the potentially totalitarian image of a coherent, single-minded state." *Id*. Instead, Solomon argues, "[t]he locus of justice is neither the isolated individual nor the fixed and rigid community but the complex confluence and interrelated and mutually dependent individuals who move in and out of various relationships and communities." *Id.* at 99.

57. RONALD DWORKIN, LAW'S EMPIRE 213 (1986). The model of principle "insists that people are members of a genuine political community only when they accept that their fates are linked in the following strong way: they accept that they are governed by common principles, not just by rules hammered out in political compromise." *Id.* at 211.

58. Dworkin goes on to state as follows, in describing why the system is effective:

> Members of a society of principle accept that their political rights and duties are not exhausted by the particular decisions their political institutions have reached, but depend, more generally, on the scheme of principles those decisions presuppose and endorse. So each member accepts that others have rights and that he has duties flowing from that scheme, even though these have never been formally identified or declared. Nor does he suppose that these further rights and duties are conditional on his wholehearted approval of that scheme; these obligations arise from the historical fact that his community has adopted that scheme, which is special to it, not the assumption that he would have chosen it were the choice entirely his.

Id.

59. *Id.* at 202 (acknowledging that an association of principle "may be unjust to people who are not members of the group").

60. YOUNG, *supra* note 42, at 54 ("Today the exclusion of dependent persons from equal citizenship rights is only barely hidden beneath the surface."). Young further explains her concern as follows: "Dependency in our society . . . implies . . . a sufficient warrant to suspend basic rights to privacy, respect, and individual choice." *Id.*

61. ACKERMAN, *supra* note 14, at 88 (rejecting the analogy of a just society to a private club with its own, rigid rules for admission). Ackerman goes on to state, "In ideal theory, *all* people who fulfill the dialogic and behavioral conditions have an

the "guest worker" to illustrate the undemocratic nature of a nation that excludes some residents from the polity, even those individuals who presumptively agree to the arrangement freely.[62] As Walzer acknowledges, the concept of membership is particularly important for low-income persons because membership is a necessary precondition for participation in the distribution of social goods.[63]

Like Dworkin's association of principle, Promise Enforcement stops short of requiring altruism (Dworkin calls it "love";[64] Ackerman calls it "brotherhood";[65] Rawls reaches the same conclusion by asserting that

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unconditional right to demand recognition as full citizens of a liberal state." *Id.* For participation in what Ackerman calls "liberal dialogue," a concept that is referenced elsewhere in this Article, *see infra* note 106. Rawls accomplishes a similar move through his own approach to social justice, which he describes as "the traditional theory of the social contract as represented by Locke, Rousseau, and Kant," but "carr[ied] to a higher order of abstraction." JOHN RAWLS, A THEORY OF JUSTICE viii (1971). As Rawls states, in his theory, "The compact of society is replaced by an initial situation that incorporates certain procedural constraints on arguments designed to lead to an original agreement on principles of justice." *Id.* at 3. "In order to do this," as Rawls states, "we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement." *Id.* at 11. It is these principles that "regulate all further agreements," including those to establish any particular form of government or society. *Id.* Walzer asserts, similarly, "Hungry men and women don't have to stage a performance, or pass an exam, or win an election." WALZER, *supra* note 13, at 75. Instead, "[w]hen we give out food, we [should] attend directly to the purpose of the giving: the relief of hunger." *Id.*

62. WALZER, *supra* note 13, at 297 (asserting that the position of "guest worker[] . . . is not a status compatible with democratic politics"). In fact, both Walzer and Ackerman place limits on a nation's ability to exclude outsiders who wish to become members, even if they are not already residents of the nation in which they seek membership. *Id.* at 45 (citing Henry Sidgwick for the proposition that "the citizens can make some selection among necessitous strangers, but they cannot refuse entirely to take strangers in so long as their state has (a great deal of) available space"); *see also* ACKERMAN, *supra* note 14, at 95 ("The *only* reason for restricting immigration is to protect the ongoing process of liberal conversation itself.").

63. WALZER, *supra* note 13, at 64 ("If we did not provide for one another, if we recognized no distinction between members and strangers, we would have no reason to form and maintain political communities.").

64. DWORKIN, *supra* note 57, at 215 ("If we felt nothing more for lovers or friends or colleagues than the most intense concern we could possibly feel for all fellow citizens, this would mean the extinction not the universality of love.").

65. ACKERMAN, *supra* note 14, at 347 ("What is forged . . . is a bond that ties citizens together without forcing them to be brothers."). Ackerman clarifies as follows: "Not only is each citizen of a liberal community free from any obligation to love his neighbor; he is even free to believe that his neighbor is a despicable creature who is wasting his own life and corrupting the lives of those stupid enough to call him friend." *Id.* In explaining how this concept relates to that of communal provision, Ackerman asserts that "each citizen's right to material resources *does not depend on whether he tries to make himself lovable to his fellows.*" *Id.* at 82–83. This is an important limitation, as Ackerman states: "[T]here is only one word to describe a relationship in which my rights are secure only to the extent to which you find me a sympathetic character: slavery." *Id.* at 83.

individuals in the Original Position are "rational and mutually disinterested"[66]) among citizens; Dworkin rejects this goal, although it may seem laudable at first blush, as disruptive of the valuing of individuality.[67] In addition, Promise Enforcement is suspicious of any scheme of distribution that relies on altruism as being too easily reversible and as too easily generating resentment.[68] As Walzer acknowledges, systems of communal provision are sometimes used to stigmatize those who are in receipt of community largesse.[69] Walzer goes on to discuss the cycle of dependency and resentment that can result from the provision of charity.[70] Thus, it is important that low-income persons receive social goods from the community due to their status as members, not as objects of altruism.

B. Contextual Thinking and Regional Collaboration

Contextual thinking requires that the low-income members of society be deemed part of the larger community. One means of accomplishing this goal is by locating, within the low-income community, services that

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66. RAWLS, *supra* note 61, at 13 ("This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests.").

67. Dworkin states that "nothing in this argument suggests that the citizens of a nation state, or even a smaller political community, either do or should feel for one another any emotion that can usefully be called love." DWORKIN, *supra* note 57, at 215.

> Of course we could not interpret the politics of any political community as expressing that level of mutual concern, nor is this ideal attractive. The general surrender of personality and autonomy it contemplates would leave people too little room for leading their own lives rather than being led along them; it would destroy the very emotions it celebrates.

Id.

68. Equally inappropriate is what Robert Venturi has termed the false "messianic role" that some architects assume for themselves. ROBERT VENTURI ET AL., LEARNING FROM LAS VEGAS: THE FORGOTTEN SYMBOLISM OF ARCHITECTURAL FORM 149 (1977) ("Total design is the opposite of the incremental city that grows through the decisions of many: total design conceives a messianic role for the architect as corrector of the mess of urban sprawl . . . ."). This Article will argue for the superiority of the incremental city, where low-income housing is concerned.

69. WALZER, *supra* note 13, at 77 ("[I]t can be one of the purposes of communal provision to stigmatize the poor and teach them their proper place—in, but not wholly of, the community.").

70. *Id.* at 92. Walzer states as follows: "Private charity breeds personal dependence, and then it breeds the familiar vices of dependence: deference, passivity, and humility on the one hand; arrogance on the other. If communal provision is to respect membership, it must aim at overcoming these vices." *Id.*

are to be enjoyed by the community at large.[71] Attractive housing can be instrumental in achieving this effect.[72] Contextual thinking is also consistent with a community's recognition of its collective responsibility to the surrounding region, not just to its own citizens and proximate neighbors.[73] Young, consistent with this viewpoint, has argued that the lowest level of governmental power should be regional, rather than local.[74] Some philosophers, following the tradition of Jean-Jacques Rousseau, have described the necessary precondition to this regional perspective as a "social contract."[75] To effectuate the changes in

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71. In the case of Vienna's *Gemeindebauten*, for example,

> [m]any of the municipality's communal facilities—the clinics, counseling centers, libraries, playgrounds, kindergartens, youth centers, gymnasiums, day-care facilities, laundries, carpentry shops, theaters, cinemas, and post offices, as well as the city-run cafes, cooperative stores, and other communal facilities and occasionally also the offices of various municipal departments—were located in the new housing blocks.

BLAU, *supra* note 9, at 45.

72. The Viennese *Gemeindebauten* were described as having this effect:

> [T]he buildings themselves were testimony to the political control that the urban poor of Vienna had acquired over the shape and use of space in their city.
>
> To Charles Gulick, writing just after World War II, the significance of that power was clear: "Probably more than anything else, the city houses . . . made the Vienna worker realize that he was not a propertyless stranger in a society that was not his."

Id. at 46 (second alteration in original). This impression has endured:

> Forty years later, viewing the structures from the perspective of the corroded social fabric of American cities, Peter Marcuse recognized the renewed relevance of this dimension of the Viennese building program; "It was what the city's housing policy *said* to the people of Vienna about their own lives, their roles in society, the respect to which they were entitled, the importance of their welfare, and their ultimate control over the condition of their lives. . . . Housing was not seen as shelter alone, but rather as part of an overall reconstruction of life around goals of human dignity and public responsibility."

Id. (alteration in original).

73. GALLION & EISNER, *supra* note 12, at 235.

> Cities are not surrounded by walls, they are each a part of their region and each is obliged to plan the spaces within its boundaries as an integral part of the plan for spaces outside its boundaries. . . . A community has both the right to determine its character and the obligation to relate its plan to its regional environs.

Id.; *see also* HASSAN FATHY, ARCHITECTURE FOR THE POOR 62 (1973).

> [A] village cannot exist by itself and should not be considered an isolated entity. At all points, it should fit into the overall pattern—not merely in space, but in the various dimensions of social and economic growth, so that as it evolves and its work, trade, and way of life develop, it will help to maintain rather than disrupt the ecological stability of the region.

Id.

74. YOUNG, *supra* note 42, at 252 ("In order to solve the problems of cities I identified [earlier in her text, such as the lack of diversity discussed earlier in this Article], the lowest level of governmental power should be regional.").

75. JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 59–62 (Maurice Cranston

affordable housing that this Article urges, all members of society must be included within such a social contract. It is not at all clear, however, that this ideal is currently descriptive of the United States social structure. Perhaps Rousseau was right in asserting that large entities—like the United States—generally cannot sustain the level of cooperation and mutual identification that is required for an effective social contract.[76] Young has suggested an alternative means of conceiving of this relationship between persons and their government. She suggests that public participation in decisionmaking through an effective voice and vote are an expression of individual empowerment.[77] The combination of regional and local representation for which she advocates is meant to address concerns, like that stated above, that the United States is too large to sustain a truly participatory democracy.[78]

Collaborative projects that embrace all members of society are one means, albeit perhaps a utopian one, of encouraging such cooperation.[79] The lack of trust and communication that some have described between low-income persons and the government is some evidence of a breach in the social contract; such a collaboration, if effective, could constitute the beginnings of a repair.[80] In any event, that mere fiscal subsidies are not

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trans., Penguin Books 1968) (1762).

76. *See id.* at 59.

77. YOUNG, *supra* note 42, at 251. She elaborates as follows: "Justice requires that each person should have the institutionalized means to participate effectively in the decisions that affect her or his action and the conditions of that action. Empowerment is an open concept, a concept of publicity rather than privacy." *Id.*

78. *Id.* at 248 (proposing "large regional governments with mechanisms for representing immediate neighborhoods and towns"). As one of the "mechanisms for representing immediate neighborhoods and towns," Young "imagine[s] neighborhood assemblies as a basic unit of democratic participation." *Id.* at 248, 252.

79. FATHY, *supra* note 73, at 120–21. Fathy suggests the following kind of collaborative community house-building effort:

> When a new house is to be built in a village, everyone is expected to lend a hand. Many people help in the work, and the house is soon finished. None of these helpful neighbors is paid. The only return expected by a man who puts in a day building a fellow villager's house is that the fellow villager will do the same for him one day.

Id.

80. *Id.* at 132. Fathy continues as follows:

> There is in every village a traditional and very reasonable tendency to look upon "the government" as a kind of heathen god, to be feared, propitiated, prayed to, and from which unexpected blessings may descend, but it seldom occurs to the villager that the government is something you may cooperate with, something with which you may even conclude a reasonable agreement on tackling a problem.

sufficient to bring low-income persons into community membership seems to be self-evident.[81] Pessimistically, perhaps the shutting out of the poor from society is not limited to the United States, but represents the current state of mankind.[82] To the extent that this pessimistic view of mankind is accurate, it may both depend on—and perpetuate—the alienation of society's poorest members from the larger community.[83]

To satisfy contextual thinking, low-income housing must be consistent with the fabric of the community in which it is located, as well as the geographic,[84] historical, and social aspects of local character.[85] Some have even advocated "architecture in reverse"—beginning the design process with such considerations in mind, rather than seeking to

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Id.

81. *See id.* at 130 (describing the cycle of entitlement and resentment that began among low-income persons when mere financial subsidies were offered).

82. *See generally* JONATHAN GLOVER, HUMANITY: A MORAL HISTORY OF THE TWENTIETH CENTURY (2000). Although Glover's book is primarily about war, his observations are equally suited to a discussion of affordable housing. He uses Thomas Hobbes and Immanuel Kant to define a span of beliefs, in the midst of which he hopes to place a not-too-optimistic view of reality. *Id.* at 20, 28. He characterizes Hobbes as concluding that men can be controlled only by an all-powerful Leviathan. *Id.* at 20. Glover fears for the stability of any system of governance that would rely merely on brute force. These concerns for stability are in addition to his stated remorse for the failure of morality that such a system would represent. *Id.* at 22–25. In addition, Glover characterizes Kant as standing for what Glover believes to be, unfortunately, a too-optimistic view of mankind at this time. *Id.* at 28. (Kant believed that mankind should respect and protect all people simply because that is one of the moral imperatives of humanity.) I analogize Kant's philosophy to an all-pervasive social contract. Glover seeks, and fails to find, a reason why strong persons might rationally choose to protect one another, in the absence of Kant's moral order or Hobbes's Leviathan. *Id.* at 22–25.

83. Glover's descriptions of war and of military superiors' fears that the men will fraternize with—and thus humanize—the enemy call to mind the interactions of middle-class citizens with the poor and homeless. *Id.* at 49. Perhaps the status quo in the crisis of affordable housing—like the status quo during war—cannot continue unless those in society who are well-to-do convince themselves that those who are less fortunate are somehow less human than they. *Id.* at 35–36. If middle-class society so values its comfort and security then, to tolerate the squalor and insecurity in which others may dwell, it must somehow believe that others do not feel this pain and loss in quite the same way that middle-class persons would. Thus, this necessary alienation, if this theory is correct, may mirror the existing breach in the social contract, if this Article is correct that such a breach exists. In other words, perhaps it is possible for middle-class persons to tolerate others' being subjected to homelessness and filth because they define those others as "other."

84. As the architecture of rural Alabama firm Mockbee Coker demonstrates, "[t]he identity of a region, ultimately found in its people and their culture, is based first in geography: land forms, water, climate, vegetation, and soil." David Buege, *Hard Cash, Hot Coffee, Good Hope*, *in* MOCKBEE COKER: THOUGHT AND PROCESS 23, 24 (Lori Ryker ed., 1995).

85. DAVIS, *supra* note 47, at 29 ("As many architects have argued, technology, manufacturing, and new materials must accommodate the social and cultural aspects of housing rather than presuming that people can and will adapt to any housing circumstance.").

incorporate them after much of the work has already been accomplished.[86] In the United States, for instance, homeownership is considered by many to be part of the American Dream.[87] Indeed, this ideal is so deeply ingrained in U.S. culture that some architects take particular pains to craft low-income housing to reflect this strong design preference.[88] Consistent with this pattern, unlike the rowhouses and duplexes that are common in northern industrial cities, the southern company towns of the early industrial era in this country usually were built around the single-family dwelling.[89] This ideal has taken on moral

86. NAN ELLIN, POSTMODERN URBANISM 24 (rev. ed. 1996) (using the vocabulary of Robert-Louis Delevoy, an architectural historian, specifically advocating the consideration of craft, ecology, and history early in the planning process).

87. CARTER WISEMAN, TWENTIETH-CENTURY AMERICAN ARCHITECTURE: THE BUILDINGS AND THEIR MAKERS 150 (2000) (noting the American architectural focus on single-family dwellings); *see also* DAVIS, *supra* note 47, at 83 ("In the United States the detached house is an obsession, and home ownership, now at 64 percent, is an essential piece of the American Dream. Given this social context, no multifamily housing can be totally satisfactory."). Davis posits that this situation requires a "paradigm shift for housing." *Id.* Others, such as architect Donald MacDonald, believe the proper approach is to make detached housing more readily available to low-income persons. MACDONALD, *supra* note 48, at 31–43 (demonstrating low-cost, detached twenty-by-twenty-foot "cottage-type houses"). Some have dubbed MacDonald's cottages "Monopoly box houses" after the shape of playing pieces for the popular board game. DAVIS, *supra* note 47, at 86, 103 (describing the experiment).

88. MACDONALD, *supra* note 48, at 52 (describing MacDonald's "Monopoly" houses, built with a mere two inches of separation from one another, but nonetheless separated). Regarding the practical, legal, and psychological importance of this physical separation, MacDonald states as follows:

> On one point there was no compromise: However dense the grouping of the houses, whatever their size, whatever their façades, they were all completely detached, if only by two inches between neighboring walls. The houses and the land they stood on therefore belonged to the owners, without the restrictions or shared burdens of condominium-type ownership. They were private property in the fullest nonexploitive sense of the word, and for better or worse the image of the single-family home on its own land is a deeply rooted American tradition . . . . In many cases separation was a decisive selling point.

Id.

89. Margaret Crawford, *Earle S. Draper and the Company Town in the American South*, *in* THE COMPANY TOWN: ARCHITECTURE AND SOCIETY IN THE EARLY INDUSTRIAL AGE 139, 148 (John S. Garner ed., 1992). The author goes on to note, however, that these were often more overcrowded than their northern counterparts. *Id.* In fact, one of the accomplishments of Earle Draper, further discussed below, is that he emphasized the rural origins of the workers' culture and did not subordinate it to that of the mill that employed them. *Id.* at 158; *see also id.* at 159 (discussing the "image of dignity derived from their own heritage"). In addition, like Olmstead, Draper followed in the naturalist tradition and favored designs that made environmental sense, often including greenspace and parkland. *Id.* at 158, 161. In Noisel-sur-Marne, France, builders of company towns ran into a similar phenomenon: Workers had a clear preference for petite maisons over

implications as well as aesthetic significance.[90] Some attempts to depart from the single-family model have failed, arguably because they were deemed automatically to be inferior to the ideal of the detached, single-family home.[91] Relegation to inferior housing can be of particular harm to low-income persons, who generally lack decisionmaking authority over the design of their homes.[92] The single-family-home ideal is not unique to the United States.[93] Nor, however, is the ideal of the single-family, detached home a universal mandate.[94] In addition, it is not at all

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casernes that housed many company towns. *Id.* at 44–46. There, programs were successful that made home ownership possible for workers over a period of time. *Id.* at 46.

90. DAVIS, *supra* note 47, at vii (discussing America's historical ambivalence to subsidized housing and moral attachment to the single-family dwelling). In the book's preface, the author states as follows:

> People all over the world live in detached houses, but nowhere else has this housing type been deified as the socially and morally acceptable form. Moreover, in other industrialized countries the provision of housing to populations in need, with the concomitant governmental intervention, has usually been viewed as integral to a humane social policy. In the United States, however, social policy vacillates between helping the needy and stigmatizing them, between allocating funds and decrying the impulse to throw dollars at problems, between believing in an activist government and trusting the mechanisms of the free market.

Id. at vii–viii.

91. Several sources have commented upon the particular challenges involved in creating a home environment in multifamily rental housing. *See* GALLION & EISNER, *supra* note 12, at 121 (describing the apartment housing that characterized the 1920s urban industrial economy as mere "temporary occupancy" rather than a true home); THOMAS S. HINES, IRVING GILL AND THE ARCHITECTURE OF REFORM 153 (2000). Hines quotes Gill's biographer, Eloise Roorbach, as follows:

> Men have succeeded in building pleasing and livable homes in all sorts of seemingly impossible places, . . . such as on wind-swept mesas, in sun-baked deserts, in lands of eternal snows and in fever-poisoned swamps, but it has taken California to produce a man with imagination brilliant enough to build a home in an apartment house.

Id.

92. VENTURI ET AL., *supra* note 68, at 154–55 (noting that only those who are so poor that they live in public housing are dominated by an architect's values rather than their own).

93. Even in Vienna, where multifamily housing is very common for middle-class inhabitants, this sentiment remains:

> [W]e hope . . . to make the transition to a time when Vienna will be in a position to strive for the real housing ideal: the single-family and two-family house in a garden *Siedlung*. . . . Even the large housing blocks of today are to be considered emergency housing. . . . The municipal administration has always been aware that its multistory housing blocks do not represent the ideal modern building form.

BLAU, *supra* note 9, at 324 (second alteration in original).

94. MACDONALD, *supra* note 48, at 54–55. MacDonald refers to the work of Egyptian architect Hassan Fathy, whose efforts in New Gourna, Egypt, as chronicled in the book *Architecture for the Poor*, are cited elsewhere in this Article. *See supra* note 73. In regard to Fathy's work, MacDonald noted that the architect chose the multifamily model, rather than single-family detached homes, because the latter "would be contrary to custom born of the need for protection from hostile nature and hostile people."

clear that the single-family dwelling deserves recognition as a situs of particular health and wholesome values.[95] It is important, however, to realize that many examples of affordable single-family housing, such as those found in the company towns mentioned above, were built for relatively low-income working people. These individuals more easily fall within the social contract than those who are not wage earners. Indeed, resentment can ensue when nonwage-earners are housed in single-family homes.[96] Europeans, by contrast, have focused on multifamily housing as a "fundamental element of the overall architectural mission," not merely a second-best solution for low-income people.[97]

Failing to consider and respond to the culture of low-income housing's future occupants, whatever that culture might be, comes at a high social cost.[98] To avoid this risk, it is important to include the future

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MACDONALD, *supra* note 48, at 55.

95. GALLION & EISNER, *supra* note 12, at 211 (stating that, although "[s]table social values growing from a sense of personal proprietorship in the community are an essential asset claimed for home-ownership . . . [t]he history of home-ownership . . . has not demonstrated convincing evidence that this principle of soundness has prevailed in practice").

96. Carpenter, *supra* note 2, at 1135 n.262 (describing examples of resentful response in several United States cities).

97. WISEMAN, *supra* note 87, at 150 (noting that European architects, "[u]nlike Americans, who had traditionally conceived of ideal residential architecture as isolated buildings . . . focused their attention as well on the needs of large numbers of people living in close proximity"). In cities like Vienna, there is a well established tradition of mass urban housing for workers. *See supra* note 9 and accompanying text.

98. In Zimbabwe, for instance, the introduction of new technology for low-income housing proved to be extremely unpopular with the occupants. SAAD YAHYA ET AL., DOUBLE STANDARDS, SINGLE PURPOSE: REFORMING HOUSING REGULATIONS TO REDUCE POVERTY 109 (2001) (noting that "95 per cent of the beneficiaries of the Kuwadzana extension housing scheme (which uses steel frame walls) think that steel-frame houses are neither durable nor safe"). Nor has the new housing helped the occupants to feel included within the larger community; instead, they feel isolated in second-best housing, due to the societal belief that "walling should only be made from fired bricks." *Id.* at 116. Architects' attempts at innovation in the United States have, at times, met with similar resentment when the residents-to-be were not consulted during the design process. DAVIS, *supra* note 47, at 48.

> [One architect consulted] cites the example of an affordable project in San Francisco that was developed on the site of an abandoned brewery. The architects retained one of the large vats as a play structure because they liked the form and because they felt it made an intriguing historical reference to the site's previous use. But the residents hated it; they found it demeaning to have junk in their playground, while market-rate housing had new, real play equipment.

Id. The author resists, however, any contention that *all* efforts at innovation are doomed. "People in the community do not fear . . . risk [in innovative architecture and design], as residents themselves—or at least surrogates for them—in the planning process.[99] Doing so is of practical and symbolic importance, producing better (and perhaps cheaper) buildings[100] while also recognizing and supporting the residents' identities as individuals.[101] The house is probably uniquely crucial in reinforcing the future residents' sense of personhood;[102] as Walzer acknowledges, there is a strong connection between goods and identity, and the most important possession of many people is their home.[103] Young would probably focus more on the importance of including future residents in the process than on the result of that process; she asserts that persons are best conceived of as actors, makers of decisions, and architects of their own projects.[104] Walzer, too, has criticized as despotic the unilateral making of decisions that affect the residents of low-income housing.[105] Ackerman's belief in the power of liberal dialogue, and his insistence that this form of discussion can prevent tyranny over society's weakest members, raises the same point: that low-income persons must participate in decisions regarding their communities.[106]

Stated more generally, the community as a whole must be supportive

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long as they are confident it is a means of fulfilling their needs." *Id.*

99. DAVIS, *supra* note 47, at 47 ("Many architects who work in affordable housing insist that nothing can replace direct participation by the community and representative future tenants (if not the actual future tenants, then surrogates)."). This approach requires a change in orientation from traditional public housing. *Id.* at 16. "The idea of asking prospective residents what they preferred, of having them participate in the decisions that would affect their homes and their lives, was just not part of the impersonal, patronizing public-housing process." *Id.*

100. FATHY, *supra* note 73, at 32 (noting that it is human nature to desire to be of assistance and arguing that allowing the residents to be involved in this way will result in a less expensive building).

101. *Id.* at 22 (arguing that "[t]o be alive is to make decisions"); *see also* DAVIS, *supra* note 47, at 107 (stating that "[i]f there is a single, overriding objective for the architect of affordable housing, it is to make a dignified dwelling. One aspect of dignity is choice").

102. FATHY, *supra* note 73, at 33 (describing the house as a unique symbol of self).

103. WALZER, *supra* note 13, at 8 ("Men and woman take on concrete identities because of the way they conceive and create, and then possess and employ social goods.").

104. YOUNG, *supra* note 42, at 16. Young states, "I wish rather to displace talk of justice that regards persons as primarily possessors and consumers of goods to a wider context that also includes action, decisions about action, and provision of the means to develop and exercise capacities." *Id.*

105. WALZER, *supra* note 13, at 301 (addressing the unilateral decision to relocate a company town).

106. "[T]he promise of neutral dialogue," as Ackerman describes it, is that "we *can* talk to one another about power without claiming privileged access to some transcendent judge." ACKERMAN, *supra* note 14, at 333. Ultimately, Ackerman believes, liberal dialogue might persuade citizens "to revise [their] views" on the matters that are discussed, after hearing the positions of others presented in a Neutral way. *Id.* at 351.

of low-income housing.[107] Although the consensus approach to low-income housing design is not without pitfalls, it ultimately can produce a better product.[108] The participatory process can also itself be socially beneficial;[109] using the language of Iris Young, personal involvement in the design of affordable housing might help to mitigate the cultural imperialism of low-income persons by the middle class.[110]

C. The Limits of Design

Promise Enforcement probably requires—and even assumes—the enthusiastic participation of an architect who believes his or her role can make a difference in the lives of low-income people. As Part II.D will demonstrate, contextual thinking includes a design component.[111] But to what extent can design, alone, solve social problems?[112] It seems uncontroversial that architecture can be beautiful and inspirational,[113] but

107. GALLION & EISNER, *supra* note 12, at 167 ("It is the obligation of the people to determine the standards they deem appropriate for their city and translate these standards into effective rules and regulations."). The author goes on to state as follows:

> It can be fairly stated that this responsibility has not been discharged with the intelligence and devotion demanded of citizenship in a democracy. Our cities bear violent testimony to that fact. If we are to bring improvement to the urban environment it devolves upon the people, civic leaders in business, industry, the arts, and public office, to assume this responsibility with vision, integrity, and an unflinching will to serve the public interest. In the final analysis, it is only the few who reap profitable reward through violation of the general welfare.

Id.

108. DAVIS, *supra* note 47, at 47 ("Many argue that the consensus approach does not, and simply cannot, generate distinguished architecture. But others feel it is the only legitimate way to create housing that befits the occupants.").

109. MACDONALD, *supra* note 48, at 94–95 (describing the technique, called "take part," developed by architect Charles Moore and writer Jimmy Burns, that was intended to ensure "effective public participation in the architectural process"). As the author stated, "Many public protests against new construction are based on untruths and lies, and 'taking part' is a way to clear the air and alleviate problems before they get out of hand." *Id.* at 95.

110. YOUNG, *supra* note 42, at 59 ("Cultural imperialism involves the universalization of a dominant group's experience and culture, and its establishment as the norm."); *see also* MACDONALD, *supra* note 48, at 8, 19 (advocating personal involvement in design).

111. *See infra* notes 138–69 and accompanying text.

112. As one scholar has stated, "It is not clear whether higher incomes lead to better houses, or better houses result in higher incomes." YAHYA ET AL., *supra* note 98, at 7.

113. Consider the example of the Chrysler Building in New York City, which has been called "skyscraper as entertainment." WISEMAN, *supra* note 87, at 132 ("During the day, Chrysler makes a boldly theatrical gesture evocative of Flash Gordon television shows, but at night it soars into full fantasy, its triangular windows outlined in zigzag

can it also be a source of healing for an existing rift in the fabric of a society? A difference of opinion exists on this point, even within the United States. On the one hand are those, like Hundertwasser, who believe strongly in the power of architecture.[114] Some writers, in emphasizing the power of architecture, also stress the responsibility of the architect to bring to fruition the positive results that architecture can effectuate.[115]

This belief in the comprehensive strength of architecture and the concomitant responsibility of the architect is not unique to his vision. While some thinkers ascribe fairly modest aspirations to architecture, like security and a pleasant place to live,[116] others, like Hundertwasser, believe architecture can have a pervasive influence on the lives of occupants.[117] American architect Irving Gill, for example, dreamt of creating a worker's paradise where labor unrest would cease to exist, and he believed that architecture would be instrumental in achieving this goal.[118]

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lines of white lights worthy of a super-scale carnival."). "But humor, and even delight, were qualities for which American architects had steadily less tolerance." *Id.* at 133.

114. The words of Pierre Restany, biographer of Hundertwasser, capture this viewpoint well, in referring to Hundertwasser-Haus: "Such is the power of art: by asking Hundertwasser to build the public housing estate on the corner of Löwengasse, the Vienna City Council did not turn to an architect but to a dealer in happiness, passing him an order for a complex of happy spaces." PIERRE RESTANY, THE POWER OF ART: HUNDERTWASSER, THE PAINTER-KING WITH THE 5 SKINS 45 (1998); HUNDERTWASSER, *supra* note 33, at 7 ("Art must meet its purpose. It has to create lasting values and the courage for beauty in harmony with nature.").

115. MACDONALD, *supra* note 48, at 9 (arguing that, in addition to "creat[ing] beautiful buildings," as Phillip Johnson claimed, "architects also have a responsibility to do everything [they] can to create a more humane society"); *id.* at 93 (bemoaning the common neglect of the responsibility that is associated with the architect's position and criticizing a number of contemporary elite architects as having "contributed nothing to the social fabric of the country").

116. ELLIN, *supra* note 86, at 59 n.31 (quoting developer Jacques Riboud for the statement that "places should offer their inhabitants not only pleasure but also a 'factor of security'").

117. *Id*. at 9 (quoting architect Tom Hahn for his statements regarding the inherent elegance to be found in what he called the "architecture of the mundane"); FATHY, *supra* note 73, at ix ("At least one billion people will die early deaths and will live stunted lives because of unsanitary, uneconomic, and ugly housing.").

118. HINES, *supra* note 91, at 187 (discussing the "workers" paradise developed for the Torrance Development Company). The statements of city manager George W. Neill show his own prejudice in favor of single-family housing:

> [T]he goal of the builders was "to establish an environment that would produce maximum efficiency in the men as well as in the factories." This meant first of all "a living wage and that means more than bread and clothing and a roof over the head." It meant "opportunities for recreation and culture, education for the children, money saved for sickness and old age." Most importantly, it meant "sufficient pay for the workman to own his own home, thereby becoming a better American citizen and one having an active interest in the development of the community in which he lives."

Id.

Like Hundertwasser, Gill expressed a belief in the power of architecture and the expectation that this power would be used to effectuate positive social change.[119] In addition, like Hundertwasser, Gill may have been influenced by the culture of social activism and reform that surrounded him in 1890s Chicago.[120] Furthermore, like Hundertwasser, Gill particularly enjoyed his work for low-income persons.[121] In these ways, Gill is the American architect who comes closest to Hundertwasser in envisioning a strong social role for the architect.

Today, other architects within the American tradition continue to

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119. One of the ways in which the work of Irving Gill parallels that of his European contemporaries, including Loos, is that he was committed "to using architecture to benefit the poor, working intently on designs for low-income housing" using the best practices in emerging technology. WISEMAN, *supra* note 87, at 87. In fairness, however, it is stated that the work of Wright influenced that of Austrian reformers. *Id.* at 103–04 ("Struggling to shake off the very neoclassical tradition that so attracted the American *nouveaux riches* . . . some of the pioneers of what became Modernism in Germany, Austria, France, and the Netherlands saw in Wright's clean lines and simplified forms a beacon of reform."); *see also* HINES, *supra* note 91, at 12. Architecture critic Lewis "Mumford also appreciated Gill's social commitments to high-quality housing for people of modest means." Thus, it is probably not appropriate to assume that the American architects were influenced by Austrian tradition, rather than vice versa.

120. HINES, *supra* note 91, at 37–38. The text states the following:

> In addition to inspiring advanced architectural achievements, Chicago in the early 1890s was brimming with social and cultural activities that would coalesce into what would come to be called the Progressive Movement. A prime example of this ferment, which Gill would have encountered through [mentors Louis] Sullivan and [Frank Lloyd] Wright, was the progressive social activism of Jane Addams . . . and her colleagues at Hull House. . . .
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> . . . Addams fought relentlessly in Chicago for better housing, schools, parks, and playgrounds, while working in the national and international movements for women's suffrage, working-class entitlements, racial equality, and world peace, causes that would retain Gill's sympathy and would indirectly affect his work.

Id. Although the resemblance may be merely coincidental, it is of note that Gill's work resembles that of Adolph Loos in Vienna, who was Gill's "exact contemporary." *Id.* at 128. Note, along these lines, that working for the firm of Sullivan and Adler serves as a common experience for Frank Lloyd Wright, Irving Gill, and Adolph Loos, among others. Indeed, it has been noted that Gill's West Coast experimentation seems to have paralleled the European development of Loos and others, but no facts show direct influence. Instead, the work of each was apparently original, "grounded in the physical and social facts of his surroundings." WISEMAN, *supra* note 87, at 87.

121. HINES, *supra* note 91, at 151 (describing the Bella Vista Terrace for working class residents as "the architect's own favorite of all of his achievements"). These units were identical in form to Gill's working class cottages at Hillcrest, where Gill himself chose to live for a time. *Id.* at 67.

believe in the power of their craft to effectuate social change.[122] Indeed, some such architects, like Hundertwasser, stress the spiritual, as well as the physical, positive effect that they expect their buildings to have on their residents.[123] Even Hundertwasser's conception of himself as an "architecture doctor"[124] is not without reflection in the contemporary work of other architects elsewhere in the world.[125] It is possible that this trait is most prevalent among those architects who also identify themselves as artists.[126]

On the other hand are those, much more numerous, who ascribe to architecture only a more modest role in planning. Earle Draper, often called the South's first resident city planner,[127] valued planning for its own sake and deemed bettering the lives of workers to be simply a pleasant byproduct of his efforts.[128] Other writers echo Draper's

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122. Mockbee Coker's work "reverberates with hope and change, and with a faith that learning and legibility may be created from experience and imagining." Lori Ryker, *Introduction* to MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 15, 19. Speaking more specifically to his work in affordable housing, Mockbee described this work "as being initiated from the idea 'that architecture can embody the inarticulate aspirations of the human soul.'" *Johnson House*, *in* MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 83.

123. Mockbee Coker's "bottle trees" are designed to nurture this side of man, providing "a means for investigating the conflict of reason and mythology." *Flautt Tractor Shed*, *in* MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 53. Just as they sound, the bottle trees are trees that are decorated with bottles in residents' yards as folk art. In constructing affordable housing, Mockbee Coker sought to "find economical means to construct a home that would provide shelter while not neglecting the spiritual life of its occupants." Randolf Bates, *Interview with Samuel Mockbee*, *in* MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 91, 97. Another architect has referred to this phenomenon as the ecology of the human spirit, invoking an obvious comparison to this Article's later discussion of the concept of environmental responsibility. FATHY, *supra* note 73, at xi–xii (describing the "lethargy and sullen anger" that can result from architecture that breeds despair). The author states, "The human spirit is our most precious resource. Its ecology is our greatest challenge." *Id.* at xii.

124. RAND, *supra* note 33, at 147 (giving Hundertwasser's own description of the concept); *id.* at 170 (stating that this was "a profession of his own invention whose calling is to modify and beautify existing structures, structures sterile and soulless in character"); FRIEDENSREICH HUNDERTWASSER, HUNDERTWASSER ARCHITECTURE 110 (1997) (setting forth Hundertwasser's proposals for healing architecture).

125. FATHY, *supra* note 73, at 31 (comparing the role of an architect to that of a surgeon).

126. *See, e.g.*, *id.* at 29 n.2 (suggesting that the architect, at his or her best, is an artist as well as a professional); *see also* RAND, *supra* note 33, at 15 (describing Hundertwasser as a painter, architect, and ecologist).

127. Crawford, *supra* note 89, at 139 (discussing Draper's opening of his office in Charlotte, North Carolina in 1917).

128. *Id.* at 155 ("He saw mill village design, first, as a demonstration of the value of professional planning and civic design and, only as a result of that, as an opportunity to upgrade the lives of mill workers."). In addition, note that racial discrimination persisted even in Draper's most successful models. *Id.* at 164 ("Draper's most successful villages retained clear social limitations. Blacks were assigned smaller and cruder dwellings than the rest of the workers and remained segregated on the outskirts of the village."); *see*

relatively modest goals for architecture, rejecting the ideal of the activist architect.[129] Later planners intended that their work supplement other welfare programs; often, however, architectural planning became a substitute for the provision of other services.[130] In considering this historical development, it is important to recognize that, although architecture can either exacerbate, or ameliorate, societal problems to a limited extent, thoughtful architecture is neither necessary nor sufficient to improve living conditions for low-income persons.[131] Other United States planners have seen strong social aspirations give way to a purely financial agenda, as developments that were intended to include low-income persons came to fruition.[132] In such cases, the aesthetic success

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also id. at 183 (describing ethnic segregation in western United States company towns). The same could be said of the work of Phillip Johnson, who was convinced that social issues could not be addressed through architecture. WISEMAN, *supra* note 87, at 151.

129. WITOLD RYBCZYNSKI, HOME: A SHORT HISTORY OF AN IDEA 211 (1986) (describing as "charmingly naïve" and mere "wishful thinking" the viewpoint that art has the power to "overcome physical reality").

130. Crawford, *supra* note 89, at 157–58.

> Unlike earlier model towns, Draper's were genuinely attractive—they did not require exaggerated descriptions to convince observers of their merits. Although town planning was originally intended to be an adjunct to and a setting for welfare work, planned mill villages increasingly became a substitute for other types of welfare programs.

Id.

131. GALLION & EISNER, *supra* note 12, at 73 (describing the efforts of activist Octavia Hill to improve life in the tenements of late nineteenth century London through the provision of "good and continuous management").

132. Seaside is an example of a recent project that had strong societal aspirations but has now resigned itself to merely financial success. Harvey H. Jackson III, *Seaside, Florida: Robert Davis and the Quest for Community*, ATLANTA HIST., Fall 1998, at 41. Its founder, Robert Davis, envisioned an "old-fashioned town," not a resort, with a broad income mix. *Id.* at 42. Instead, however, what has sold is the attractive packaging of the community, not his broader vision. *Id.* at 43–44. The community has become one of rentals, rather than of permanent residents, and the community is almost entirely affluent. *Id.* "People who worked in Seaside could not even afford to rent there, much less buy." *Id.* at 45. Looking back, Davis believes perhaps he should have had "less 'faith in building topology, in the power of architecture' to diversify the population." *Id.* Like Celebration, Florida, Davis created neighborly architecture, but not a neighborly community: Despite his best intentions, what he attracted were people for whom "fences were to define limits, not to lean against and talk." *Id.* at 46; *see infra* note 153 (discussing Celebration, Florida). The firm of Mockbee Coker had high hopes for Seaside, as well, and actually built a small bungalow there. Mockbee biographer Lori Ryker described early Seaside as "a promising alternative model [that] points toward a richer, more complex range of possibilities for growth and development." Buege, *supra* note 84, at 25. In voicing concerns that "at least in the short term . . . Seaside [would] influence not more radical variants, but timid and pale replicas with too much in common with the conventional subdivisions they were intended to supplant," the author

of the architecture may actually have squelched the social agenda that was intended to flourish at the same time. Thus, it remains unclear whether the belief that such architects espoused in the power of architecture was unfounded or, instead, was correct but ultimately misdirected.

Europe has led the United States in emphasizing the social responsibility of the architect.[133] It is sometimes posited that cultural differences explain why the U.S. interpretation of modernism, generally lacking the more humane European approach to low-income housing, exacerbated the movement's harsh design aesthetic, as it was translated into this country.[134] The modernist movement, born in Europe, was misinterpreted when imported into America.[135] Its machine-like efficiency appealed to American values as an architecture for affordable housing, but its left-leaning social ideals were largely ignored in this country.[136] Perhaps this phenomenon explains in part why it is said that

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seems not to anticipate the irony that Seaside would so quickly become a "timid and pale replica" of itself. *Id*. Donald MacDonald is less charitable about the development. MACDONALD, *supra* note 48, at 129 (calling Seaside an example of "[o]ne of the latest architectural abominations[,] a type of suburban development called 'the new town'"). He decries the fact that its developers did not include any public participation in the planning process, the "rigid zoning and building codes," and the "stultifying homogeneity" of the completed project. *Id.* at 129–30.

133. European architecture requires that art be of only secondary concern, with primary emphasis placed upon real world problems like poverty and social justice. WISEMAN, *supra* note 87, at 141 (citing Peter Blake, former editor of the periodical *Architecture Forum*, for the statement, "Radical modern [European] architects . . . 'hoped to improve the human condition in an egalitarian society'"). German architect Werner Hegemann criticized "the majority of Viennese architects" as having "shirked their professional responsibility by taking no stand at all and simply 'accepting the political program of building 25,000 dwellings without properly evaluating it or attempting to improve it from a cultural and social perspective.'" BLAU, *supra* note 9, at 160.

134. The typical American view is that the European notion is "impossibly naïve . . . [because, f]or all of the various powers of architecture, it has never been employed with much success in solving social ills." WISEMAN, *supra* note 87, at 141.

135. When imported to the United States, the social justice quality of the architecture was often lost. This occurred even though many of the major modernists in the United States in the 1930s, including Viennese Rudolph Schindler and Richard Neutra, were European by birth. *Id.* at 147–48.

136. *Id.* at 149–50 ("Modernism, as presented by [Walter] Gropius, [Marcel] Breuer, and [Ludwig] Mies [Van der Rohe] appealed to the persistent American Puritanism that had surfaced so often in informed architectural debate since Colonial times."). The original work of Le Corbusier, by contrast, though it spawned much disaster in the name of urban renewal, was itself "deeply humane" at its core. *Id.* at 151 ("Le Corbusier's city and the *Weissenhofsiedlung* were, from the perspective of their time, based as much on concepts of high social responsibility as they were on principles of architectural art."). American modernists, unlike their European counterparts, have been criticized as purporting to have social inspirations but, in fact, ultimately being more concerned with establishing machine-like order. *Id.* at 167 ("[F]or all the insistence by the Modernists that they were originally inspired by social goals, the

modernity was admired by the people of the United States, but was never loved.[137]

D. The Logistics of Contextual Thinking

Just as the patterns of work that are available to low-income families must fit in with societal norms,[138] the architecture of low-income housing must be consistent with the fabric of community social life, as well. This does not mean that the most appropriate architecture for low-income housing is to be copied from the middle class; in fact, Hundertwasser went so far as to comment that the slums are among what little architecture he would consider to be alive.[139] What likely drove his

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architecture to which they gave birth had less to do with the lessons of the machine in service to society than with an underlying urge for mechanistic order."). This criticism has been levied against the group of American architects known as the Whites, who purported to emulate Le Corbusier but lacked his "underlying social purpose." *Id.* at 247 ("Unlike Le Corbusier, who had insisted—however naively—that his architecture could improve the human condition, these architects were more interested in the clarity and cleanliness of his shapes.").

137. HINES, *supra* note 91, at 193 ("It was sadly ironic that while most twentieth-century minimalists would continue, like Gill, to espouse left-of-center ideals, the working-class citizens for whom they designed their modernist utopias would often fail to respond to their vision."); MACDONALD, *supra* note 48, at 29 (noting that modernist architect Le Corbusier "admitted that workers would not want to live in the apartments [he designed] and would have to be educated and forced to accept them"); RYBCZYNSKI, *supra* note 129, at 202–03 (explaining the "antifascist," "antitotalitarian" official appeal of modernist architecture, especially because several contemporary dictators, including Hitler, Mussolini, and Stalin, had preferred neoclassicism, but noting that the public accepted this style only grudgingly, admiring it for its efficiency and functionality, but lacking a sense of emotional attachment to the style).

138. In company towns in the American South, the family often worked as an economic unit because one worker alone could not support the family. Crawford, *supra* note 89, at 142. Along the same lines, although rental costs were very low, the employer often required that the family have one worker per room—another catalyst for having the entire family work. *Id.* Men were therefore deprived of the economic leadership of the family and sometimes could not find work at all, hence the then-contemporary term, "lunch pail father." *Id.* Because it was important to the family structure, at that time in history, for the father to provide the economic leadership of the family, this work environment had at least a potentially detrimental effect on family life.

139. As part of his Mould Manifesto, cited *supra* note 33, Hundertwasser included

> [a] list of "healthy" constructions, judged by the author to be exemplary of the present epoch. [Biographer Restany quotes] from memory, and to underline "its shameful brevity": Antoni Gaudí in Barcelona; Art Nouveau in Vienna; Simon Rodilla's Watts Towers in Los Angeles; the postman Ferdinand Cheval's palace at Hauterives in the Drôme department of France; the insalubrious districts and depressed areas of all cities (shanty towns, slums, etc.); the farms and houses that primitive peoples build with their own hands;

statement was the sentiment that the slums, despite all of their failings, did have some degree of scale, detail, and amenity on their side.[140] His statement is less controversial than readers might assume: Other writers have recognized the diversity and vitality that may be part of slum life and that may easily be destroyed through urban renewal.[141] Along the same lines and outside the slum context, Robert Venturi lauded what he called the "messy vitality" of the past.[142] Taken as a whole, these viewpoints are consistent with a less authoritarian,[143] more

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> the workers' houses and allotments (the Viennese Schrebergärten); the walls of urinals and their inscriptions, and a few works by Christian Hunziker.

RESTANY, *supra* note 114, at 23–24.

140. WISEMAN, *supra* note 87, at 202.

> Even some of the nation's slums that had been cleared with such zeal in pursuit of urban renewal were now recognized in hindsight to have been preferable in their scale and detail (not to mention their role in fostering a sense of community) to the faceless structures that often replaced them.

Id.

141. Hassan Fathy stated as follows:

> Traditional villages, sprawling, dirty, and overcrowded to such an extent that the outside observer sees little more than chaos, are often delicate and sensitive expressions of social organization. Ties of kinship and barriers of hostility are often expressed geographically and structurally. However bad the physical housing itself may be, the villager derives some comfort and, indeed, some meaning from its pattern.

FATHY, *supra* note 73, at x. "In many of these very poor houses, if one can see past the incidental mess and dirt, the lines of the building present an instructive lesson in architecture." *Id.* at 41. "There is more beauty, and more self-respect, in the shanties put up by the refugees round Gaza than in any of the dreary model settlements erected by benevolent foreign bodies . . . ." *Id.* at 117.

142. VICKERS, *supra* note 11, at 166; *see also* RAND, *supra* note 33, at 146–47 (setting forth Hundertwasser's 1980 public statement in Vienna, "Let Everything Overgrow"); RYBCZYNSKI, *supra* note 129, at 17 ("Hominess is not neatness. Otherwise everyone would live in replicas of the kinds of sterile and impersonal homes that appear in interior-design and architectural magazines. What these spotless rooms lack, or what crafty photographers have carefully removed, is any evidence of human occupation.").

143. MACDONALD, *supra* note 48, at 82 (describing the "City Sleeper," a design that was developed for "the social dropouts, the loners and wanderers, many of them chronic alcoholics, who simply do not fit into the way the world works"). As MacDonald states, "Housing programs for these 'derelicts,' as they used to be called (and are still considered), are inevitably associated with rehabilitative social services." *Id.* As an alternative, for those people who "simply [want] to be left alone," MacDonald proposes the City Sleeper, an eight-by-eight-by-four-foot plywood, camperlike unit "just large enough to accommodate one person comfortably." *Id.* As the author describes it, it is "a secure, dry, and warm place of their own to stay, where they [will] not be harassed by hoodlums, police, homeowners, and well-meaning authorities who want to change the lifestyle they have chosen." *Id.* The author concludes as follows:

> As one alcoholic put it, "There are always places we can go for food, clothes, a shower; what we need is a place to sleep." It is not too much to ask. In a nation as wealthy as the United States, society can well afford to be generous to those who do not fit in and do not want to.

Id. MacDonald proposes an alternative design, the van-based affordable motor home, for low-income individuals and families who wish to lead a nomadic lifestyle. *Id.* at 158 (describing the design, which the author calls "an affordable cottage on wheels").

understanding role for the architect in low-income housing;[144] the architect should not feel compelled to transform the entire environment, simply for the sake of doing so.[145]

Despite the fact that others have, like him, embraced an activist role for the architect of low-income housing, Hundertwasser was despised by the architectural institution.[146] One of his key beliefs that may have contributed to his lack of popularity with other architects was that architecture, in being confined to the elite, had lost touch with reality.[147] As this statement suggests, perhaps architecture tends to reify that which is glorious and undervalue that which is merely adequate.[148] Others have echoed his sentiment by stating that architects must embrace the real world in which their buildings are to be constructed.[149] Along the same lines are calls for architecture to be directed to mass markets, not just to the elite.[150] This movement would represent a major change in the primary modern market for architecture.[151] The involvement of

144. VENTURI ET AL., *supra* note 68, at 6 ("Analysis of existing American urbanism is a socially desirable activity to the extent that it teaches us architects to be more understanding and less authoritarian in the plans we make for both inner-city renewal and new development."); *see also* MACDONALD, *supra* note 48, at 25 (advocating a servant mentality for the architect).

145. VENTURI ET AL., *supra* note 68, at 3 ("Modern architecture has been anything but permissive: Architects have preferred to change the existing environment rather than enhance what is there.").

146. *See infra* note 33 and accompanying text.

147. *See infra* note 183 and accompanying text.

148. Consider, here, the statements of June Jacobs in "The Need for Aged Buildings." She includes "plain, ordinary, low-value," and rundown buildings as those she believes to be essential to the fabric of society. WISEMAN, *supra* note 87, at 211 (noting Jacobs's focus on "how cities work in real life"). Contrast the statements of Ryker: "We often develop great affection even for such mediocrity, given enough time and patina." Buege, *supra* note 84, at 26; *see also* VENTURI ET AL., *supra* note 68, at 93, 130 (arguing for the value of ordinary, rather than heroic, buildings, and talking about those that are heroic and original versus those that are ugly and ordinary).

149. VENTURI ET AL., *supra* note 68, at 129.

> In general the world cannot wait for the architect to build his or her utopia, and in the main the architect's concern should belong not with what ought to be but with what is—and with how to help improve it now. This is a humbler role for architects than the Modern movement has wanted to accept; however, it is artistically a more promising one.

Id.

150. *Id.* at 150 ("Architects should forget about being great technical innovators in housing construction and concentrate on adapting this new and useful technology to more broadly defined needs than it serves today and on developing a vivid mobile home symbolism for mass markets."); *see also* MACDONALD, *supra* note 48, at 7 (arguing that architecture has ignored most people).

151. *See* ELLIN, *supra* note 86, at 26 (citing Marxist Aldo Rossi for the statement,

Hundertwasser—as well as other elite architects—in low-income development is a good start in that it tends to send the signal that affordable housing is important and valuable.[152]

Some architecture, far from being connected with the fabric of the surrounding community, is clearly meant to be separate from its physical environment.[153] This effect can be accomplished through insulation from sound as well as by visual or physical separation.[154] This phenomenon can be empowering to members of a community who would otherwise feel unsafe or demoralized by their surroundings.[155] This separateness can also, however, be damaging, as is often the case with low-income-housing developments that are geographically and holistically separate from the rest of the community.[156] This model of compartmentalization and isolation can be contrasted to architecture, like that of ancient Rome, that was intended to fill each citizen with a

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"The history of architecture is always the history of the ruling classes").

152. Austrian architect Adolf Loos's involvement with affordable housing in Vienna spawned the phrase, "Grosse Architekten für Kleine Häuser," or "Big Architects for Little Houses." BLAU, *supra* note 9, at 98.

153. Consider Peachtree Center in Atlanta, Georgia, and Detroit, Michigan's Renaissance Center, both designed by architect John Portman. WISEMAN, *supra* note 87, at 321. His has been called the architecture of fear and of "social unrest and racial strife." *Id.* at 321. His centers are islands, taking an "otherworldly, defensive posture" to "soothe the spirit and reduce anxiety and uncertainty" among those inside. *Id.* at 321, 323. Indeed, it is this very separateness from the community, this very keeping of the outside world outside, that is meant to soothe the insiders. Compare the phenomenon of "edge cities'" attempts to make the world safe for women. *Id.* at 328–29 (noting that the developers of edge cities "had . . . gone out and built an entire world around their understanding of what Americans demonstrably and reliably valued"). The Disney Corporation-planned community of Celebration, Florida has been called the same sort of "packaged fearfulness," due to its purposeful isolation from surrounding areas. *Id.* at 341. Moreover, Celebration has been criticized as not creating the sort of bubble-world—even for insiders—that has been marketed: Instead, the front porches are bare of everything but signs for security firms, invoking "a facsimile—not just of a bygone architecture, but of a way of life that had largely vanished." *Id.* at 342.

154. *See, e.g.*, THE UNDERGROUND SPACE CTR, UNIV. OF MINN., EARTH SHELTERED HOUSING DESIGN: GUIDELINES, EXAMPLES, AND REFERENCES 45 (1979) ("In housing, this acoustical isolation is a definite benefit on sites which are close to busy highways, airports, or other undesirable noise sources.").

155. The authors of *Earth Sheltered Housing Design* state as follows:

> In the case of an undesirable view such as a highway or an adjacent building, the orientation of major window openings away from the view is important. Earth sheltered designs may be particularly effective in screening out undesirable views by orienting windows into courtyards which are visually isolated from the surrounding environment.

Id. at 22.

156. This problem is not unique to the United States. In Malawi, Zimbabwe, "a lack of political commitment to meeting the needs of poor people meant that [their homes] were often located on the periphery of towns, making them undesirable places to live because of the major transportation problems." YAHYA ET AL., *supra* note 98, at 47.

sense of the power and privilege of citizenship.[157] As has previously been discussed, it is not clear that low-income persons feel this sense of connection to the community.[158]

Symbolism and allusion are other tools that can bring beauty to low-income housing, along with individuality and a sense of community identity that transforms merely adequate shelter into a home, a loved and healthful space.[159] Such a development can become an aesthetic asset to the community as well as to its residents.[160] Modern architecture, rather than taking advantage of the power of allusion, has been criticized as neglecting and misusing this important source of meaning.[161] Symbolism cannot simply be manufactured for a community; rather, this must be an organic process.[162] Architecture that fails to allow its

157. VICKERS, *supra* note 11, at 40, 133 (noting the Roman zeal for emphasizing citizenship through architecture, making citizens feel like owners of the great buildings of their city). It is important, however, not to idealize the Roman model: There, too, slums called *insulae* were common, complete with the decay and fire that we associate with contemporary slums. *Id.* at 46 ("Proving again that certain human impulses are eternal, a commentator writing at the end of first century Rome noted how the landlord [sic] of dilapidated insulae were inclined to stave off imminent collapse with short term measures, including 'papering over cracks in ramshackle fabric.'"); *see also* GALLION & EISNER, *supra* note 12, at 28 ("Diversion was offered to the citizen, but he saw his city grow congested. He saw men, like Crassus, profess to be civic leaders but speculate in the land and build huge tenements. He saw the city crowded with slums to become fuel for disastrous fires.").

158. *See supra* note 14 and accompanying text.

159. GALLION & EISNER, supra note 12, at 204–05 (asserting that the concept of adequacy, properly conceived, includes some measure of beauty and feeds the human spirit); RAND, *supra* note 33, at 184 (making the claim that "[t]he health of the individual can be markedly improved by living in the settings Hundertwasser advises").

160. ELLIN, *supra* note 86, at 10 (stating that a place can sustain both its environment and its residents).

161. VENTURI ET AL., *supra* note 68, at 53 (lauding the value of symbol and allusion, lacking in modern architecture); *id.* at 137–39 (describing as hypocritical the modern refusal to acknowledge the use of symbols, and often the misuse of these devices).

162. As Hundertwasser's work demonstrates, "One does not assign people to their happiness. Everything [in building a community must be] done to invite them on a journey into happy spaces worth loving." RESTANY, *supra* note 114, at 56. Compare to Hundertwasser's gold onion domes the failed attempt of Venturi, in the Guild retirement home he designed, to create symbolism for the community, in the form of "an oversize, non-functioning television antenna in gold-anodized aluminum," intended to symbolize the large amount of time older people, in Venturi's opinion, spend watching television. WISEMAN, *supra* note 87, at 229. While Hundertwasser's domes were made to honor the inhabitants by comparison to the royalty who occupy onion-domed palaces, Venturi's imagery can easily be found insulting. HUNDERTWASSER, *supra* note 33, at 266 (describing the onion domes that are situated atop Hundertwasser-Haus and explaining the architect's decision to include them); *see also* DAVIS, *supra* note 47, at 48 (citing the example of the use of brewery vats as playground equipment by developers of affordable

residents to participate in this way can be perceived as condescending.[163] In addition, contrived attempts at symbolism seem doomed to fall short of the meaning to which they aspire.[164] Symbolism can arise in different ways; sometimes, folk art can be part of appropriate community symbolism.[165] Indeed, affordable housing itself, at its best, can be deemed art.[166] Symbol-rich affordable housing reflects the identity of the inhabitants in a way that makes them proud of themselves and their homes.[167] The concept of identity is neither simple nor entirely rational,[168] and personal identity—as expressed through symbolism—can

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housing in San Francisco; the architects thought the form was interesting, unique, and played appropriate homage to the area's history, but the residents found the experiment to be demeaning). Mockbee Coker's work, like Hundertwasser's, recognizes the importance of authentic symbolism: "Southerners have built their icons of common materials in a vernacular language." Ryker, *supra* note 122, at 19.

163. Eve Blau states as follows:

> Elsie [Altmann-Loos, the architect's second wife], whose job it was to listen to visitors' comments, was shocked by the negative reception to Loos's design (which she deemed "so enchantingly beautiful that it made poverty seem like a privilege"). "All these people who lived in miserable tenements," she reported, "were furious about the house and found fault with everything."

BLAU, *supra* note 9, at 106. Along the same lines, Josef Frank, writing about 1930s German modernist attempts at affordable housing, stated as follows: "Power and representation are inextricably bound together. And the worker distrusts the symbols bestowed upon him, so long as others exist and the new ones fundamentally belong to artists who live outside society and are regarded from all sides as fools." *Id.* at 378. The text goes on to conclude that "[t]he worker resists the forms of the new architecture not because they are incomprehensible to him but because they are in fact illogical." *Id.*

164. GEORGETA STOICA, ROMANIAN PEASANT HOUSES AND HOUSEHOLDS 146 (1984) (decrying those "forms, motifs and designs that are beautiful but socially dead" and emphasizing the power of authentic folk art).

165. The murals that are included in some of Mockbee Coker's affordable housing are each intended to be "a link to the collective memory Mockbee finds fading from the lives of those preoccupied by the mind-numbing artifacts of pure profit developments. They are contributions that sustain and support the culture of the people from which they grow." Randolph Bates, *Interview with Samuel Mockbee*, *in* MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 91, 93.

166. Contrast the statements of Ryker regarding ordinary architecture: "Architecture for the public market is not art at all, but commerce. Most architecture today is an example of what happens when architects take their cue only from business people. . . . Their actions reveal a modern offense: the chasing of false obligations." *Id.* at 99.

167. Mockbee Coker's work is attentive to "a recognizable language of form the [local] people know and can identify." Ryker, *supra* note 122, at 16. The firm's work can be contrasted to those of architects who "offer[] culturally insignificant developments, swapping existing conditions of reality for superficial reference." *Id.* at 17.

168. In describing the work of Mockbee Coker, Ryker states as follows:

> It is not a rational understanding of the South they seek, but a blurring of knowable and resolute truths caused by the immediacy of place, nature, and personal experience. . . . Western society is searching for unnecessary clarity and therefore, reduced refinement of an understanding of the world around them . . . .

Id. at 18; *see also* HUNDERTWASSER, *supra* note 33, at 46–48 (setting forth Hundertwasser's "Mould Manifesto Against Rationalism in Architecture").

be significant in the region's efforts to define itself.[169]

E. Concluding Thoughts on Contextual Thinking

It is not enough that low-income housing be contextually appropriate; like their homes, the residents themselves must be part of the fabric of society and thus be considered to be within the social contract.[170] This need can work in concert with the role of multiple commodification, emphasized in Part III of this Article,[171] when the resident can contribute to the community by building his own home, supplying valuable labor even if he or she cannot supply funding.[172] Such an effort requires that the residents be provided with building skills and materials they can replicate or easily purchase.[173] Even when the resident does not construct his or her own home, a relationship of mutual benefit and respect between the provider of housing and the persons who are to live there is essential to the project's ultimate success.[174] It can even be said that what makes architecture honest or dishonest is whether it fits with the inhabitant and his or her geographic context.[175]

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169. "Through the different forms of their work [Mockbee Coker] construct[s], re-construct[s], and preserve[s] a regional culture struggling to survive both in spite of and through greater universalization." Ryker, *supra* note 122, at 19.

170. Southern mill workers were often treated as a lower caste by rural and urban dwellers alike. Crawford, *supra* note 89, at 152. The author goes on to note that members of the middle class, concerned with the mill workers' lifestyle, made them an object of reform. *Id.* These efforts at reform were not necessarily tailored to the needs of the community, and welfare programs often produced disappointing results, with most workers demonstrating that they would vastly prefer simply receiving more money. *Id.* at 155. Western company town dwellers were subject to a different kind of isolation; because the towns were often far away from others, integration with other communities was unlikely. *Id.* at 176.

171. *See infra* notes 212–27 and accompanying text.

172. FATHY, *supra* note 73, at xii (proposing a "new form of partnership" in which the poor contribute their labor and the architect contributes guidance).

173. *Id.* at 61 ("[A] vital part of the project was to extend the resources of the [local citizens] by giving them trades that would earn money."); *id.* at 116–17 (criticizing United Nations aid projects by showing that "the 'self-help' lasts just as long as the 'aid' does," because the local citizens "cannot [later] employ the skills they have learned [in working a cement mixer, for example] because they cannot afford the materials").

174. *Id.* at 27 (asserting that the craftsman's involvement is part of what gives a building its soul).

175. George Howe denounced the investment broker living in an "imitation thatched cottage" as "playing at doll's house." WISEMAN, *supra* note 87, at 145. Howe went on to state that "[t]he architect who builds it for him is doomed to produce a work without mature significance." *Id.* Hundertwasser agreed, in "Loose from Loos," that the same criticism could be made of the modern style. HUNDERTWASSER, *supra* note 33, at 58–61;

Some have posited that, rather than considering themselves to be part of the larger community, it might be possible for low-income persons to thrive by forming their own social environment.[176] Indeed, Hundertwasser was conscious of the proud, separate identity of those low-income persons who inhabited his development.[177] Those who promote this approach may focus on evidence that low-income individuals do not necessarily want to be erased or homogenized into the middle class.[178] Iris Young identifies this very concern as one of the primary problems with the common conception of communitarianism.[179] Along these same lines, she identifies the most troublesome source of oppression, not as the structural oppression of a tyrant, but rather the

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RAND, *supra* note 33, at 118–19 (containing the text of Hundertwasser's 1968 statement by this title). Demonstrating his own strong belief that simply following traditional forms was artificial and false, Walter Gropius, as Dean of the Harvard School of Architecture, went so far as to drop architectural history from the curriculum. WISEMAN, *supra* note 87, at 154 ("So hungry were Gropius's supporters for a change from the old ways of doing things that this excision of architectural memory performed on their education met virtually no resistance.").

176. One such example is idyllic Scotia, a community in northern coastal California in which "[n]o one sinks, but no one soars." Leland M. Roth, *Company Towns in the Western United States*, *in* THE COMPANY TOWN: ARCHITECTURE AND SOCIETY IN THE EARLY INDUSTRIAL AGE, *supra* note 89, at 173, 198.

> What Scotia is really offering those dismayed with the world outside is also the tie that pulls back men who vowed to leave: not the promise of fulfillment but an assurance of moderation, the possibility of living a humane life in a humane community. And for that, there will always be a waiting list.

Id.

177. The residents of Hundertwasser-Haus are described as follows: "The inhabitants of the house are conscious of belonging to a group apart. They live differently to, and better than, their neighbours. They are proud to have been able to influence their quality of life themselves. The children among them, moreover, develop harmoniously and without complexes." RESTANY, *supra* note 114, at 46. In the last sentence, Restany reaffirms the power of architecture.

178. BLAU, *supra* note 9, at 209–10 (providing examples of the development of a working class identity in post-World War I Vienna). The author states as follows:

> Because of the new vertical dimensions of the Gemeinde-Wien-Type dwelling and because all rooms, including the toilets, had windows, with all of the windows in any given unit facing either the street or the courtyard, the facades of working-class dwellings for the first time in Vienna gave the full measure of the working-class home. And since the windows in the new buildings not only had different dimensions from those in the privately built structures around them but also were standardized, they created a distinctive pattern on the facades that was both new to Vienna and particular to the *Gemeindebauten*—and was therefore a mark both of difference and identity. Distributed throughout the city, the *Gemeindebauten* therefore for the first time gave the proletariat a public identity and distinctive presence on the streets of Vienna.

Id.

179. YOUNG, *supra* note 42, at 227 ("The ideal of community denies and represses social difference . . . .").

systemic constraint of minority groups by the majority.[180] Ackerman's conception of community, responding to similar concerns, requires that citizens bring only a very thin conception of self into the public sphere; by doing so, he both protects and respects the difference of minority groups while, at the same time, ensuring their participation in the forum of public life that he calls "liberal dialogue."[181] Others have been skeptical of such efforts, concerned that any such separate identity must necessarily relegate low-income persons to second-class status.[182] Indeed, much affordable housing has estranged its inhabitants,[183] particularly when it is unfamiliar to them in form.[184] For this reason, it

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180. *Id.* at 41 ("Oppression in this sense is structural, rather than the result of a few people's choices or policies.").

181. ACKERMAN, *supra* note 14, at 332–33 ("At no point, have I asked my reader to suppress the fact that he is a person with his own goals in life, that he encounters others with competing goals, and that he is in a social situation in which conflicts will be settled in some organized way."). Instead, Ackerman employs the tool of "conversational constraint" to allow citizens to bring some part of their identity into the public sphere as they participate in liberal dialogue. *Id.* at 8–10 (setting forth the principles of "Constrained Power Talk").

182. Josef Frank, describing affordable housing design in Germany in the 1930s, stated as follows:

> "The endlessly repeated nonsense that once upon a time all architecture was representational and that now it serves functional needs . . . is a lie; the only difference is that now [rather than pomp and monumentality] poverty is represented." This, Frank maintains, is one of the principal reasons that the "new architecture" has so little appeal for the working classes. "The question is often asked, Why is the modern style, which was ostensibly invented for the lowest classes, not greeted with enthusiasm by them?" The reason, Frank suggests, has to do with the representational nature and political significance of architecture itself. The working class has never had desirable images of its own; therefore the concept of self-representation has had little appeal.

BLAU, *supra* note 9, at 378 (alterations in original).

183. MACDONALD, *supra* note 48, at 56–57 (asserting that the government can effectively ostracize low-income persons through its choice of architecture).

184. BLAU, *supra* note 9, at 270 (providing examples of failed affordable housing types in Vienna). The author states as follows:

> The highly programmed organization of the Bebelhof [Vienna *Gemeindebauten*] courtyard spaces is best understood in light of the observation by city building officials in 1926 that the courtyards were not always used or valued by residents of the new buildings, because they were a type of space—part public, part private, enclosed yet freely accessible—that was unfamiliar to those for whom they were provided. The issue of estrangement is significant. Though familiar in its forms and even its organization—which did not differ much from the public parks in all Vienna districts—the new garden/courtyard was *verfremdet*, or made strange, by enclosure within the courtyard of the building . . . .

Id. (footnote omitted).

is perhaps particularly important that architects of low-income housing employ innovation, but stop short of subjecting residents to untested designs.[185]

It is perhaps also necessary that the architects themselves take care to ensure their own connectedness to the community for which they intend to provide services. A connection between the inhabitant and society, through the supplier-architect, might thus be created. For these reasons, at least one scholar has advocated interdisciplinary study and increased interdisciplinary exposure for architects.[186] Architects must step back into the world in which their buildings will exist;[187] indeed, even

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185. DAVIS, *supra* note 47, at 53. The author states as follows:

> The cumbersome approval process militates against architectural innovation, and this is a two-edged sword. On the one hand, affordable housing residents should not be the subjects of experimentation. They have little choice about where to live, and an odd design serves only to further stigmatize them and to undermine their desire to fit into the community. . . .
>
> On the other hand, hard-and-fast conservatism dissuades talented architects from venturing into housing and proposing new ideas or contemporary translations of . . . proven types.

Id.

186. ELLIN, *supra* note 86, at 25 ("[O]ther fields of study should become important to the architect, especially anthropology, cultural geography, urban history, and economics.").

187. One author bemoans the isolation of the architectural elite from the general public. WISEMAN, *supra* note 87, at 11. The author states as follows:

> In the twenty-first century, . . . the profession of architecture as an art in the United States faces an uncertain future. The country's architectural leadership has become gradually more ingrown, distancing itself from the social and economic realities of the larger society. By isolating themselves from much of the public in the pursuit of power, publicity, or in theoretical flights of fancy, many of the country's best-known architects have come to be associated with arrogance, frivolity, and greed. As a result, architecture in American is in serious danger of becoming marginalized, if not irrelevant.

Id. (taking heart, however, in "signs of a heightened awareness that architecture can bring beauty to humble commissions along with the grand"). This phenomenon was particularly obvious with regard to modernist architecture, beloved of theorists but not of the public. Along the same lines were the members of the White School—architects who preferred to design in cardboard—whose designs, like Atlanta, Georgia's High Museum, look sullied by reality. This has been described as "indoor architecture," made ugly by time and weather, unlike the work of Kahn and Hundertwasser. *Id.* at 251 (describing the work of Richard Meier as an aesthetic "based so heavily on cleanliness [that] even the slightest discoloration of the shimmering white surfaces by rain or rust can be jarring, like a gravy stain on a dress shirt"). Similar criticism has been made of the suburbs, which, being defined by what they are not (the city), being "anti-urban enclaves," were poorly planned for growth and, as such, generally have not aged well. *Id.* at 326, 335. One major problem with suburban growth is that the areas often have not provided low-income housing for support personnel. *Id.* at 335. A similar criticism has been made of Seaside, Florida, in which the "teachers, shopkeepers, artists, and writers who were to have been residents were priced out of the market." Jackson, *supra* note 132, at 45. In addition are the heavy traffic and general lack of culture, perhaps coming from a lack of diversity that is typical of contemporary suburbs. WISEMAN, *supra* note 87, at 335. The suburbs have been thus described as "socially deadening." *Id.* at 336; *see also* YOUNG, *supra* note 42, at 246 (showing how the separation of becoming involved in the architecture of affordable housing will be an important first step in this direction.[188] Gill took this principle a step further: After constructing cottages for low-income residents, "he occupied several of them himself to test their livability."[189] This decision on his part demonstrates a sense of shared experience and shared values between client and architect.

This process requires architects to be less paternalistic and more open to input from their low-income clients.[190] This approach is consistent with Ackerman's definition of the "liberal neutrality" that he believes healthy public life requires: According to Ackerman, neutrality does not try to impose any one conception of the good on any person.[191]

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functions such as workplaces, stores, and residential communities can be isolating for those who live outside the cities, and especially for suburban full-time homemakers). One might contrast Hundertwasser and others whose work ages gracefully. HUNDERTWASSER, *supra* note 33, at 46–48 (Hundertwasser's "Mould Manifesto Against Rationalism in Architecture"). One such architect was Louis Kahn, who "used materials in a way that anticipated the effects of weather and ag[ing]," unlike many modernists. WISEMAN, *supra* note 87, at 198 ("Kahn's are clearly buildings with a past—and a future."). Another example is the Boston firm of Perry Dean Rogers & Partners, which focused intentionally on architecture that "wears well and is appreciated by those who use it day-in and day-out, long after the paint is dry and the pretty pictures have been taken." MICHAEL J. CROSBIE, COLOR & CONTEXT: THE ARCHITECTURE OF PERRY DEAN ROGERS & PARTNERS 6 (1995).

188. FATHY, *supra* note 73, at 114 ("No peasant can ever dream of employing an architect, and no architect ever dreams of working with the miserable resources of the peasant."). Housing competitions may be one way of generating interest in the design of low-income housing. DAVIS, *supra* note 47, at 21. At times, architects have already made significant contributions to low-income housing:

> The rise of a few architects to celebrity status and the lavish magazines devoted to high-style homes perpetuate the stereotype that architecture, like couture, is only for the lucky, moneyed few. Not so. The all-too-obvious mistakes in public housing of the last fifty years overshadow the long and occasionally honored history of architects' participation in affordable housing.

Id. at 2–3.

189. HINES, *supra* note 91, at 67.

190. MACDONALD, *supra* note 48, at 13 (asserting that "the underlying problem at virtually all of [the low-income projects the author cites], whether architecturally graced or not, was the pervasive paternalism of the people who developed the projects: We know what is best for the tenants and they do not").

191. Ackerman defines Neutrality as follows:

> No reason is a good reason if it requires the power holder to assert:
> (a) that his conception of the good is better than that asserted by any of his fellow citizens, *or*
> (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.

ACKERMAN, *supra* note 14, at 11. Ackerman calls part "a" the "bar against *selectivity*, for it denies speakers the right to say that some 'conceptions of the good' affirmed by

Continuing this thought, perhaps architects of low-income housing should consider even styles that they would not necessarily prefer, rather than trying to make all dwellers fit into some approved lifestyle.[192] Because neither group, architect nor low-income resident, traditionally has been involved in such work (instead, low-income housing typically has been designed by government entities), the experience will be new to both parties.[193] Both the architect and the low-income client can benefit greatly from collaboration with one another, an exercise that may exemplify the sense of shared community membership that contextual thinking requires.[194]

III. VALUING INDIVIDUALITY IN THE UNITED STATES

Valuing individuality is my term for the full recognition of low-income persons as citizens and as individuals, rather than as mere denizens of public housing who are, as a result of their low-income status, excluded from important decisions about their community. This concept requires that residents of low-income housing be valued for the nonmonetary (as well as monetary) contributions that they make to the larger community and be provided with the comprehensive array of resources and opportunities they need to exercise their rights of citizenship.[195]

A. Redistribution as a Precondition

As the discussion below on multiple commodification suggests, valuing individuality will require some redistribution of money, of opportunity, and of power—at least at first. A number of contemporary

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citizens are intrinsically superior to others." *Id.* at 43.

192. *See supra* note 143 and accompanying text.

193. FATHY, *supra* note 73, at xiii ("Ironically, most public housing in the world today is done without the cooperation of either the architect or the people. It is a bureaucratic decision built by contractors, and, whether horizontal or vertical, it almost immediately becomes a slum.").

194. The work of Mockbee Coker has been described as demonstrating "the opportunities, dignity, and joy to be found in places like a bend in the Black Warrior River, and the paradoxical and impoverished condition of our public environment as the setting for incredible private wealth." Buege, *supra* note 84, at 32. In addition, Mockbee stated that such work "can create an opportunity even for the comparatively advantaged painter and architect to step into the open and express the simple and actual rather than the grand and ostentatious." Bates, *supra* note 165, at 101 (describing the murals in the home of low-income client Lizzie Baldwin). He goes on to state, "I don't think architecture that is preoccupied with affluence can initiate anything that is humanly sustaining." *Id.*

195. Carpenter, *supra* note 2, at 1098–1114 (introducing the concept of valuing individuality).

theorists agree with this point: Ackerman, for example, makes a case for what he calls "initial equality," a state that might even countenance the right to housing.[196] Rawls, similarly, describes justice as requiring what he calls an "original position" of equality that provides an equal initial assignment to all members of basic rights and duties.[197] Walzer, too, asserts that some form of redistribution is required because the market does not, on its own, provide a complete system of distribution.[198] He goes so far as to assert that community provision is always redistributive.[199] He is critical, however, of what he calls "simple equality" as failing to be sustainable.[200] Young's model would require the

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196. ACKERMAN, *supra* note 14, at 53–59 ("The Case for Initial Equality"). Ackerman describes the "liberal assertion of equality" as the following conversational move:

> 1. I am a person with a conception of the good.
> 2. Simply by virtue of being such a person, I'm at least as good as you are.
> 3. This is reason enough for me to get as much manna [Ackerman's name for the universal human good] as you do—so long as you have nothing more to say that will Neutrally justify a claim to additional manna.

Id. at 66–67.

197. RAWLS, *supra* note 61, at 14 (describing the original position of "equality in the assignment of basic rights and duties"). Rawls continues by asserting that "[i]n justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract." *Id.* at 12. Further explaining, Rawls states, "Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others." *Id.* at 14. He describes four branches of government—allocation, stabilization, transfer, and distribution—that are responsible for overseeing the system he proposes. *Id.* at 275–79 (describing these four divisions and adding that "[t]hese divisions do not overlap with the usual organization of government but are to be understood as different functions").

198. WALZER, *supra* note 13, at 4 ("Throughout history, the market has been one of the most important mechanisms for the distribution of social goods; but it has never been, it nowhere is today, a complete distributive system.").

199. *Id.* at 82 ("The truth is that every serious effort at communal provision . . . is redistributive in character. The benefits it provides are not, strictly speaking, mutual.") (footnote omitted); *see also id.* at 65–66 (defining general and particular community provision).

200. *Id.* at 13–17. "Simple equality" is described as a situation in which "everything is up for sale and every citizen has as much money as every other." *Id.* at 14. Walzer states as follows:

> The regime of simple equality won't last for long, because the further process of conversion, free exchange in the market, is certain to bring inequalities in its train. If one wanted to sustain simple equality over time, one would require a "monetary law" like the agrarian laws of ancient times or the Hebrew sabbatical, providing for a periodic return to the original condition.

Id. "Simple equality would require continual state intervention to break up or constrain most significant changes to society: She asserts that mere redistribution is a meaningless exercise, because distribution is naturally in accordance with power, and power is relational, rather than a "thing" that can be distributed like a good.[201]

The redistributive model is consistent only with those theories of justice that would countenance this level of government involvement and would be squarely at odds with those that support only the "minimal state," as Robert Nozick defined that term.[202] There are legitimacy advantages to any government that emerges from societal consent,[203] and this consideration is perhaps particularly important if the government thus developed is what has come to be called a "welfare state."[204] Dworkin finds support for redistribution in community rather than in contract.[205]

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incipient monopolies and to repress new forms of dominance." *Id.* at 15.

201. YOUNG, *supra* note 42, at 30–33 ("Problems with Talk of Distributing Power"). Young states that "regarding such social values as rights, opportunities, and self-respect as distributable obscures the institutional and social bases of these values." *Id.* at 30. "A distributive understanding of power, which treats power as some kind of stuff that can be traded, exchanged, and distributed, misses the structural phenomena of domination." *Id.* at 31. She goes on to state, "By domination I mean structural or systemic phenomena which exclude people from participating in determining their actions or the conditions of their actions." *Id.*

202. *See* David Miller, *The Justification of Political Authority*, *in* ROBERT NOZICK 10, 10 (David Schmidtz ed., 2002). In characterizing the theory of Robert Nozick, Miller states, "[Nozick] argues that states that do more than the minimal state does—for instance, redistribute resources between their citizens, supply public goods by means of compulsory taxation, or force citizens to contribute to schemes of social security—are not justified." *Id.* Miller continues as follows:

> Nozick's central argument is that state activities beyond the minimum must necessarily violate the fundamental rights of their citizens. A central point of contention has been whether the Lockean rights defended by Nozick have either the weight or the determinacy to trump the ethical values appealed to by defenders of the more-than-minimal state, such as social justice, protection against poverty, or the public interest.

Id.

203. *Id.* at 16–17, 19 (attempting to show that social contract theory justifications of political authority are more powerful than invisible hand theories). The essayist also asserts that Nozick has chosen a relatively weak form of invisible hand theory: "His invisible hand explanation is an account of how a certain form of state *might* arise, not an account of how any existing state has actually arisen." *Id.* at 19.

204. WALZER, *supra* note 13, at 68 (stressing that "every political community is in principle a 'welfare state'").

205. Dworkin states as follows, in setting forth his own theory of political legitimacy:

> Philosophers make several kinds of arguments for the legitimacy of modern democracies. One argument uses the idea of a social contract, but we must not confuse it with arguments that use that idea to establish the character or content of justice. . . . [S]ome political philosophers have been tempted to say that we have in fact agreed to a social contract of that kind tacitly, by just not emigrating when we reach the age of consent. But no one can argue that very long with a straight face. Consent cannot be binding on people, in the way this argument requires, unless it is given more freely, and with more genuine alternative choice,

Promise Enforcement, as a model for affordable housing policy, is consistent with Dworkin's community-based concept of "equality of resources."[206] Promise Enforcement also accepts Dworkin's claim that valuing individuality requires equality of resources.[207] Rawls and Ackerman are in agreement with Dworkin on this point. Rawls has asserted that inequality can be justified only insofar as it betters the position of the worst-off-class.[208] Ackerman, similarly, acknowledges the current state of societal inequality, and responds that such imperfection requires an equal sacrifice of ideal rights by all persons, rather than requiring low-income persons to shoulder the entire burden alone.[209] The United States clearly has not reached this ideal at this time; one estimate is that forty percent of Americans currently lack decent housing.[210] In addition, low-income housing often requires a

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> than just by declining to build a life from nothing under a foreign flag.

DWORKIN, *supra* note 57, at 192–93. Consistent with this emphasis, some architects have stressed the social nature of mankind in developing low-income housing. FATHY, *supra* note 73, at ix ("The cost of housing must be broken down into its component parts. These are, I suggest, three: economic, social, and aesthetic."); *id.* at x ("[A]s social animals, black men, like white, brown, and yellow men, reached out to attempt to touch their neighbors and to reassert two basic urges of all mankind, territoriality and society.").

206. DWORKIN, *supra* note 57, at 297. "[E]quality of resources," according to Dworkin, "requires [government] to make an equal share of resources available for each [citizen] to consume or invest as he wishes." *Id.* "The practical elaboration of equality of resources . . . requires compensating for unequal inheritance of wealth and health and talent through redistribution . . . ." *Id.* at 301.

207. As Dworkin states,

> Under equality of resources, people have rights that protect fundamental interests . . . . They also have rights securing each person's independence from other people's prejudices and dislikes which, if these were allowed to influence market transactions, would defeat rather than advance the goal of making distribution sensitive to the true costs of people's choices.

Id. at 307.

208. RAWLS, *supra* note 61, at 14–15 ("[S]ocial and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.").

209. ACKERMAN, *supra* note 14, at 238–39. This is called second-best theory, as Ackerman defines that term. *Id.* at 232 (defining "second-best" as "a description of the way a citizenry committed to [the process of Neutral dialogue] will deal with the problem of technological imperfection").

210. MACDONALD, *supra* note 48, at 165. Other countries have enjoyed more success in equalizing the living conditions of citizens. Ancient Greek democracy attempted to establish—and convey the appearance of—equality through dwelling design. GALLION & EISNER, *supra* note 12, at 19, 23 (noting that these efforts achieved some measure of success, at least initially). Greek emphasis on the temple rather than the palace as the center of city life had the same democratic purpose. *Id.* at 15. Rome's Forum Romanum was intended to instill the same pride in citizenship, and Irving Gill's

disproportionately high percentage of its residents' income.[211]

B. The Role of Multiple Commodification

Multiple commodification is an important part of valuing individuality. Walzer's theory provides the most comprehensive description of this concept: Walzer believes justice should strive, not to eliminate inequality in any single area of life, but rather to eliminate the dominance of one sphere, namely, that of money,[212] over the others, such as work, family, and public office.[213] Walzer calls this condition "complex equality."[214] Multiple commodification is consistent with Robert Solomon's assertion that it is the reification of wealth, not the bare inequity in wealth between persons, that is most of concern.[215] Young agrees that society is inequitable in this way but would argue that the concept of multiple commodification does not go far enough because it fails to redress the underlying social structures that are responsible for the inequitable distribution patterns.[216]

Smith house embodied similar democratic ideals. *Id.* at 26; HINES, *supra* note 91, at 126.

> Smith liked the fact that the house allowed for no qualitative hierarchies and that there was "little variation in the essential features from the formal reception room to the farthest of the servants' quarters." In fact, she found the house to exemplify a kind of "democracy—what's good enough for the mistress is none too good for the maid."

Id.

211. GALLION & EISNER, *supra* note 12, at 99 (stating that Sweden has attempted to remedy this problem through rental rebates).

212. WALZER, *supra* note 13, at 14 (stating that the current regime is one dominated by the "monopoly of money").

213. *Id.* at xiii. Walzer's system does not strive for "the elimination of differences; we don't all have to be the same or have the same amounts of the same things." *Id.* Instead, Walzer states, "Men and women are one another's equals (for all important moral and political purposes) when no one possesses or controls the means of domination." *Id.* He thus calls for the elimination of intersphere tyranny. *Id.* at 17–20. As Walzer states, in such a system, "[t]hough there will be many small inequalities, inequality will not be multiplied through the conversion process." *Id.* at 17. Walzer would accomplish this through "a society in which different social goods are monopolisticaly held—as they are in fact and always will be, barring continual state intervention—but in which no particular good is generally convertible." *Id.*

214. *Id.* at 19. Complex equality is defined as follows: "[N]o citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good." *Id.* As Walzer states, "Complex equality requires the defense of boundaries; it works by differentiating goods just as hierarchy works by differentiating people." *Id.* at 28.

215. Solomon states, "The existence of wealth and poverty in modern society betrays a pathology that does not lie in either capitalism or inequality as such but rather in the values that give wealth priority over community and create poverty as a consequence." SOLOMON, *supra* note 43, at 186.

216. YOUNG, *supra* note 42, at 15. Young states as follows:

> [T]he distributive paradigm . . . tends to focus thinking about social justice on the allocation of material goods such as things, resources, income, and wealth,

Hundertwasser's work demonstrates his deep belief in multiple commodification, which manifests itself in his statements that an ordinary man—even a poor man—can be authentically royal despite his lack of fiscal wealth.[217] Single commodification, on the other hand, represents a totalization of individuality along the single axis of wealth[218] rather than a comprehensive valuing of individuality. In this way, single commodification traps thinking and stifles creativity.[219]

Examples of multiple commodification can be found in both Europe and the United States; some employers, for instance, have demonstrated through their conduct that they value employees comprehensively as individuals, not simply by the amount of money they produce for the company. The amount of time the employee has invested in the company, for example, might be treated as a valuable contribution.[220] Another example of multiple commodification is allowing inhabitants to contribute their labor, rather than their money, to the building of their

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> or on the distribution of social positions, especially jobs. This focus tends to ignore the social structure and institutional context that often help determine distributive patterns.

Id.

217. Hundertwasser stated as follows, as his words are recalled by biographer Restany:

> [E]verybody can wear a crown and have themselves admired as a king. It will last an evening, and later he who felt like a usurper will run away. He who feels at his ease in the king's skin will persist in wearing the attributes of royalty. People will take him for a clown and make fun of him. But at that moment, "if he is strong, he will contrast that situation with something just as strong as the masses that mock him. And in that way he will then attain to a position equal to that of a king: he will become a king."

RESTANY, *supra* note 114, at 57.

218. WALZER, *supra* note 13, at 10 ("[M]ost societies are organized on what we might think of as a social version of the gold standard: one good [money] . . . is dominant and determinative of value in all the spheres of distribution.").

219. FATHY, *supra* note 73, at 128 ("[S]o long as their thinking remains bound by the monetary system, imprisoned in the edifice of contract, subcontract, tender, and quotation, they will never see any way of providing the people with houses fit to live in.").

220. One employer in the Ville Industrielle in France instituted the following system: Although there was no possibility, in his town, for employees to own their homes, this employer reduced rental rates with years of service such that retirees lived rent-free. John S. Garner, *Noisielielle in France*, *in* THE COMPANY TOWN: ARCHITECTURE AND SOCIETY IN THE EARLY INDUSTRIAL AGE, *supra* note 89, at 43, 65. This seems to be an example of multiple commodification: The employee had given his time and loyalty, and at some point, this became an equivalent exchange for money, in the employer's view. Thus, not even all males in the village worked and were therefore current profit centers.

home.[221] Doing so requires training the future residents who are to assist with construction, as well as selecting housing materials and designs that are affordable[222] and can be replicated with relative ease.[223] One advantage of this approach is that it would equip residents with the ability to modify their homes later, as their housing needs change.[224]

The current approach to affordable housing does not reflect multiple commodification; rather, it may be more consistent with a pragmatic approach, as Dworkin defined that term to describe a system predicated wholly on practical realities rather than rights.[225] Pragmatism is inherently a position of insecurity, especially for low-income persons. As Young acknowledges, dependent persons have fewer rights than

221. The Viennese cooperative settlement associations in the 1920s were an example of this practice:

> As an alternative to paying a deposit or making some other cash investment (as was customary in cooperatives elsewhere in Europe), settlers could contribute their own labor. A minimum of 10 to 15 percent of the total estimated building costs were provided by the direct labor of the settlers themselves. On average, each settler worked 1,600 hours, in this way covering up to 80 percent of the labor costs and 30 percent of the total building costs. The remaining financing was provided by government loans. The division and organization of the labor was determined by the skills of the settlers themselves.

BLAU, *supra* note 9, at 95. This practice was not perfectly democratic, because it favored those who were skilled laborers. *Id.* at 95 ("The required participation in construction naturally privileged settlers with professional training in the building trades, and they had preferred status within the societies."). Artistic contributions were, however, valued as well. *Id.* ("Artistic skills were also recognized, and painters and craftsmen contributed murals and ornamental stucco work as forms of payment.").

222. MACDONALD, *supra* note 48, at 35 ("Wood is a democratic building material. Almost anyone who has a little skill and patience can work with it."); *id.* at 36 ("Compare this to using concrete. It takes much more skill . . . . To build with steel is quite impossible for an amateur.").

223. HINES, *supra* note 91, at 248 (describing an experiment that "called for Gill to design a project that could be built by the Indians [who were to occupy the development] themselves").

224. MACDONALD, *supra* note 48, at 21 ("A design concept that meets a group's fundamental needs does not necessarily satisfy the individual members of the group. To individualize a building, the design should enable people to make adjustments themselves.").

225. Dworkin defines legal pragmatism as follows:

> Legal pragmatism is . . . a skeptical conception of law. . . . [I]t denies that a community secures any genuine benefit by requiring that judges' adjudicative decisions be checked by any supposed right of litigants to consistency with other political decisions made in the past. It offers a very different interpretation of our legal practice: that judges do and should make whatever decisions seem to them best for the community's future, not . . . for its own sake. So pragmatists, strictly speaking, reject the idea of law and legal right deployed in my account of the concept of law, though . . . , they insist that reasons of strategy require judges sometimes to act "as if" people have some legal rights.

DWORKIN, *supra* note 57, at 95 (footnote omitted).

those who do not require communal provision.[226] This lack of security is itself problematic, although Dworkin argues with some persuasiveness that pragmatism would often reach the same ends as more apparently secure methods of lawmaking such as conventionalism.[227]

C. The Logistics of Valuing Individuality

Valuing individuality is consistent with an understanding of the community as a body or a collage—vibrant and diverse—rather than as a machine, monolithic and keyed toward a common task.[228] Architecturally, such a conception might find expression through design elements such as an articulated façade and diversity of unit design,[229] elements that Hundertwasser valued and that can be found in the work of some U.S. architects as well.[230]

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226. YOUNG, *supra* note 42, at 54 (stating that "the provision of welfare itself produces new injustice by depriving those dependent on it of rights and freedoms that others have").

227. Conventionalism, as that word is used by Dworkin, "accepts the idea of law and legal rights. It argues . . . that the point of law's constraint, our reason for requiring that force be used only in ways consistent with past political decisions, is exhausted by the predictability and procedural fairness this constraint supplies . . . ." DWORKIN, *supra* note 57, at 95. In describing circumstances under which strategy requires judges to act "as if" people have legal rights, Dworkin states as follows:

> The pragmatist will pay whatever attention to the past is required by good strategy. He accepts as-if legal rights in that spirit and for reasons of strategy will make mostly the same decisions a conventionalist would make when statutes are plain or precedents crisp and decisive. He will reject what a conventionalist accepts as law only in special cases, when a statute is old and out-of-date, for example, or when a line of precedent is widely regarded as unfair or inefficient, and it is difficult to see what of value is then lost.

Id. at 162.

228. *See* ELLIN, *supra* note 86, at 34–35.

> Whereas Le Corbusier regarded the city as a machine, [Léon] Krier saw it as a natural object or an "individual, possessing a body and a soul." . . .
>
> . . . Krier was also influenced by Camillo Sitte's view that the city should be a "*Gesamtkunstwerk*" [or collage], a comprehensively interwoven system rather than a functionally divided one."

Id.

229. RAND, *supra* note 33, at 182 (noting the importance to Hundertwasser that "[o]ne [could] stand in the street and, pointing up to one's apartment, say, 'I live in that red apartment. That's my home.'"); *see also* HUNDERTWASSER, *supra* note 33, at 268 ("Every house within the house has a colour of its own on the outer façade, made of coloured finishing plaster.").

230. HINES, *supra* note 91, plates 6, 7 (showing variety within cohesion in the children's home association dormitory and unbuilt worker housing project he designed); MACDONALD, *supra* note 48, at 8 ("[D]esign aesthetics should express the multiplicity of society, not some ideal of perfection or political ideology."); *id.* at 9 (stating that high-

Individuality, as expressed in the appearance of one's home, has been described as being essential to the development of a sense of personal identity.[231] Perhaps because of this consideration, at least one architect would take the concept of personal expression a significant step further, having architects design housing for each low-income family, individually.[232] Allowing the future inhabitants to have significant input requires the architect to give up some measure of control over the design process, but doing so may increase the project's chances of ultimate success.[233]

Relentless monotony, as contrasted with architecture that demonstrates individuality, deprives the inhabitants of the opportunity to express themselves and, indeed, to develop an awareness of themselves as individuals.[234] This stifling of individuality was common in the company towns of both the United States and the United Kingdom: Rather than encouraging workers to develop a sense of themselves, company towns often attempted to mold every aspect of each inhabitant's life.[235] This phenomenon is equally apparent in the design

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quality affordable housing requires "a willingness to view people as individuals—not types").

231. RYBCZYNSKI, *supra* note 129, at 110–11 ("The desire for a room of one's own was not simply a matter of personal privacy. It demonstrated the growing awareness of individuality—of a growing personal inner life—and the need to express this individuality in physical ways."); *see also* RAND, *supra* note 33, at 182 (describing housing as man's "third skin").

232. FATHY, *supra* note 73, at 51. As he acknowledges, this model is economically feasible only if, as he urges, future residents build their own homes with design support from an architect and materials that are either free or extremely inexpensive. *Id.* at 32–33.

233. Consider the example and undue expense involved in building European-style houses in Togo and finding them to be unlivable, while homes built from local materials were far less expensive and were much more pleasant. SHELTER, *supra* note 35, at 9. The author notes that African families generally live outside of their straw homes unless there is inclement weather. *Id.*

234. Ryker describes this as "the plague of sameness affecting all American cities." Ryker, *supra* note 122, at 17; *see* GALLION & EISNER, *supra* note 12, at 67 (describing company towns particularly negatively, calling them "a shameful blot on the American scene").

235. Consider the company store. These entities provided credit that was not generally available elsewhere to workers due to their low income and were intended to function as a brake on the workers' natural inclination to move. Crawford, *supra* note 89, at 145; *id.* at 153 (noting that, due to the easy availability of work, the turnover rate for mill workers in 1906 was 176%). "A model company town was one in which the paternalism of the owner extended beyond the bare-bones architectural requirements of factories or mines." John S. Garner, *Introduction* to THE COMPANY TOWN: ARCHITECTURE AND SOCIETY IN THE EARLY INDUSTRIAL AGE, *supra* note 89, at 3, 4; Garner, *supra* note 220, at 48 (describing the company's total control over the lives of residents in Noisel-sur-Marne). In the company towns of the American South, the masters exercised control even over the religious faith available to the employees. The company would hire Methodist and Baptist clergy, even if the owner adhered to a different faith, because the theology preached was largely one of hard work and deference to authority. Crawford, *supra* note 89, at 144–45. To encourage attendance at church, there was frequently a

of much affordable housing[236] and can demoralize the inhabitants, resulting in the suppression of local culture.[237] This kind of standardized low-income housing has been described as containers for the poor rather than true homes.[238] This environment can keep the resident from feeling a sense of ownership in his dwelling, even if the housing is otherwise healthful.[239] To achieve the necessary fit, valuing individuality can require that architects be willing to suspend their own preconceived

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connection between church attendance and rewards at work. *Id.* at 145; *id.* at 146 (enumerating ways in which owners' paternalism extended to issues of personal morality). The workers often preferred churches of the Pentecostal denomination, but the employers tended to discourage such churches as being disruptive. *Id.* at 145. Furthermore, education was provided, and attendance was encouraged, but only up through the seventh grade, the theory being that overeducated young people would not work in the mill. *Id.* at 144.

236. In Red Vienna, for example,

> [t]here were inherent contradictions in the Social Democrats' program between the democratic aims and the authoritarian methods used to achieve them, between the goal of empowerment through education and programs that cast the worker as the passive recipient of welfare and consumer of party-approved culture. The workers themselves were rarely consulted or allowed to participate as subjects in the shaping of policy.

BLAU, *supra* note 9, at 43.

237. This practice has been referred to as benevolent despotism. *Id.* at 150. For example,

> carpets [in the Viennese *Gemeindebauten*] could be beaten and trash emptied only during specified hours; children were not allowed to play on the grass except in designated play areas (and therefore would play in the streets or on vacant lots outside the courtyards), and they were chastised for making noise. . . . In addition, the standards of cleanliness and "orderliness" enforced by the caretakers were alien to many tenants and, it was felt, were aimed at breaking down traditional customs and habits of working-class culture.

Id.

238. MACDONALD, *supra* note 48, at 18 (going on to state that "[a] true home has three qualities: It must afford the occupants as much individual privacy as possible, it must offer a reasonable sense of security, and above all, the dwelling must be congenial, agreeable to one's outlook on life").

239. Some of the Viennese *Gemeindebauten* were described as follows:

> In these dwellings the tenant lives under healthful conditions, he lives cheaply, he saves time and work; in short, as far as tenement houses they are ideal—the dream of many a housing reformer is realized. But solicitude has gone too far. Individual needs cannot be satisfied. Literally, every nail driven in the wall is controlled by the city government. Every individual rule may be approved, but all the rules taken together tend to destroy the satisfaction of living in a building where everything is done mechanically and the bureaucracy, because no rents are charged, is in a position to exercise the most minute control in every part of every dwelling.

BLAU, *supra* note 9, at 150.

notions of appropriate architecture to adapt to their clients' needs.[240] One thinker, noting the architect's inescapable "presumptiveness" in attempting to mold the living space of a future inhabitant, has stated that the only excuse for such an intrusion is the promise to imbue the home with beauty.[241]

Diversity, rather than simple repetition of built forms, is a building technique that reflects the diversity of the occupants.[242] The design might include, for example, variations in size or in amenities.[243] Furthermore, permitting flexibility, rather than precise specialization, allows each generation of occupants to customize the space to its own needs.[244] Hundertwasser believed the right to future alteration was so important that the state must not only allow the residents to change their homes, but also provide money and other resources to make such alterations possible.[245] One architect has advocated the use of the

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240. Mockbee described this process as "the replacement of abstract opinions with knowledge based on real human contact and personal realization applied to the work." Bates, *supra* note 165, at 99.

241. FATHY, *supra* note 73, at 72 ("It would be grossly discourteous of an architect whose imagination had been enriched amid the loveliness of Sienna or Verona, or the Cathedral Close of Wells, to scamp his work and fob his clients off with something less than the most beautiful architecture he can create.").

242. MANUEL GAUSA, HOUSING: NEW ALTERNATIVES, NEW SYSTEMS 23 (1998) (defining diversity as "combinatory possibility liable to favor a productive mixing together of many types and programs proceeding from the concept of new mechanisms and more polyvalent processes").

243. The apartments in Hundertwasser-Haus, for example, vary as follows:

> The 50 flats in the house fall into 5 groups: 8 having a surface area of 40 sq.m, 14 of 60 sq.m, and 25 of 80 sq.m. Two of them reach 117 sq.m, while the largest of them all measures exactly 148.59 sq.m. 37 car parking places are also provided.

RESTANY, *supra* note 114, at 46. This level of variation is relatively common in American affordable housing. Other kinds of variation are less common. HUNDERTWASSER, *supra* note 33, at 287 (describing the spontaneously created mosaics that line the hallways of Hundertwasser-Haus, put there by the craftsmen who constructed the building); RAND, *supra* note 33, at 185–87 (describing the varied windows in Hundertwasser-Haus, which were intended not only to produce a varied façade, but also to provide more light where it was most needed, on the lower, darker floors, without overheating the top floors).

244. GAUSA, *supra* note 242, at 31. The author favors a "greater isotropy and spatial indeterminacy," which he calls "a virtual checkerboard," having "[t]he possibility of . . . a more fluid and transformative space." *Id.*; *see also* STEWART BRAND, HOW BUILDINGS LEARN: WHAT HAPPENS AFTER THEY'RE BUILT 10 (1994) ("There is a universal rule—never acknowledged because its action is embarrassing or illegal. *All buildings grow.* Most grow even when they're not allowed to."). Compare the homes in the Nabdam Compound of Bongo, Ghana, a matriarchal society in which bold, varied wall paintings delineate the domain of each woman, both physically and stylistically. SHELTER, *supra* note 35, at 6.

245. HUNDERTWASSER, *supra* note 33, at 59 ("[I]t is the duty of the state to provide financial assistance and support to every citizen wishing to undertake individual alterations, whether to outside walls or indoors.").

Japanese modular design to achieve this flexibility.[246] He describes this approach as "convertible architecture."[247] Another suggests what he calls "unfinished architecture" to allow later residents to tailor the home to their own needs and preferences.[248] However achieved, this process allows the residents even of apparently impermanent or stigmatized housing to make it their own.[249] Allowing this kind of alteration to take place over time is consistent with the theories of Rawls and Ackerman, both of whom were concerned that future generations have access to the same rights and resources that were available to those who were present at the time when the society—or, in this case, the affordable housing development—had begun.[250]

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246. MACDONALD, *supra* note 48, at 152.

> My first idea was to adapt to Western apartment living the movable partitions, folding screens, and built-in cabinets of the conventional Japanese house. . . . [A] Japanese room ordinarily has several functions, which change in the course of a day and from day to day. It might serve as a living room, a dining room, and at night a bedroom. By opening and closing sliding partitions the size of the room can be expanded or contracted as needed—usage determines space."

Id.

247. *Id.* at 147 ("The idea that a developer should be able to adjust his product, after it has been built, to the needs of potential buyers is the basis for developing the . . . convertible house.").

248. ELLIN, *supra* note 86, at 47 ("[Architect Alain] Sarfati has described the open work as a composition made from accumulation, juxtaposition, and the superimposing of actions, intentions, events, and chance."). "The firm AREA has developed this idea most fully, especially Philippe Boudon, Alain Sarfati, and Bernard Hamburger, who acknowledge being influenced by the writings of Robert Venturi, Umberto Eco, Jacques Derrida, and Gilles Deleuze." *Id.*

249. In referring to manufactured housing, Ryker states, "The owners transform the cheaply manufactured, ready-made thing into a home of individuality needed to last a lifetime." Garner, *supra* note 220, at 45. Ryker further states as follows:

> [T]railer houses are typically perceived as symptoms of modern America's nomadic culture. In the South, however, the trailer is not seen as something temporary, but as a response to the condition of the isolated rural environment. It provides means of modern shelter for an affordable sum. Once provided a site, the trailer begins to define the future of its place. Through the years it receives a variety of permanent extensions that perpetuate its life: shed roofs, awnings, porches, and decks, all becoming part of the whole.

Id.

250. RAWLS, *supra* note 61, at 284–85 ("Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation."); *see also* ACKERMAN, *supra* note 14, at 221 ("[I]f the first generation enjoyed a condition of undominated equality, it is under the plainest dialogic obligation to pass this inheritance on to its children.").

D. Final Thoughts on Valuing Individuality

Sometimes, architects welcome resident customization of the property after occupancy;[251] even when the process is discouraged, however, it may take place anyway.[252] In addition, nature itself "customizes" many properties over time,[253] and some buildings adapt to these changes gracefully, while others look sullied and worn. Indeed, some architects affirmatively celebrate the aging of their buildings.[254] Appropriate low-income housing design should take the natural aging process into account to ensure that the homes remain attractive, perhaps even becoming more so over time.[255]

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251. In comparing his belief in the importance of each resident's expression of personal style to his Mould Manifesto, discussed below, Hundertwasser stated, "Each inhabitant must cultivate his or her own domestic mould." RESTANY, *supra* note 114, at 23. Along the same lines, Vienna's Social Democrats in the 1920s acknowledged "that the inhabitants wanted, and were entitled, to personalize their own spaces" through choice of paint and other personal effects. BLAU, *supra* note 9, at 193. The architect's role should therefore be a limited one. "The architect should provide a scaffolding or frame for dwelling, not prescribe and arrange furniture or objects—that is the business of the inhabitants, if the space is to have life." *Id.* at 195. This freedom of choice was both novel and important.

> For the first time, . . . the Viennese working-class tenant had both the opportunity and the need to invest in the dwelling itself; to furnish it and decorate it as he or she chose.
>
> . . . .
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> . . . Traditional working-class furnishings and cherished knick-knacks—the "trivial trinkets" scorned by architects and socialist intellectuals alike—were the signifiers of home for a social class that until that time had led an essentially nomadic life.

Id. at 192–93.

252. HINES, *supra* note 91, at 193.

> To many occupants, [Gill's construction for workers at Torrance] seemed *too* plain and minimalist. . . . Consequently, over the years, successive tenants would alter and "decorate" their modernist Gill cottages virtually beyond recognition. This predicted the reaction, a decade later, of workers in Pessac, France, to the modernist housing of Le Corbusier.

Id.

253. Viennese architect Josef Hoffmann particularly enjoyed the concept of walls as offering "'the rare opportunity . . . to give . . . ivy . . . and . . . ailan-thus, the indigenous weedlike plants of the Viennese courtyard, a beautiful painterly place' on which to grow." BLAU, *supra* note 9, at 317.

254. Hundertwasser's Mould Manifesto of 1958 is perhaps the most colorful such statement:

> The text [of the Manifesto] introduces the concept of mould, a process of slow proliferation, an extension into the built or unbuilt domain of fluid and spiral activity in painting. The blistered mould, subjected to its organic law of expansion, has to ferment structures and explode the straight line in houses.

RESTANY, *supra* note 114, at 23. Hundertwasser goes on to laud what he calls "[t]he renewal of architecture by rot. The putrefaction of rational architecture." *Id.* at 25.

255. HINES, *supra* note 91, at 11 ("[W]e should build a house simple, plain and substantial as a boulder, then leave the ornamentation of it to Nature, who will tone it with lichens, chisel it with storms, make it gracious and friendly with vines and flower

Potential gender bias is another reason for including end users in the design of their homes.[256] Some architects have taken note of the need to ensure that they keep the needs of women in mind when designing housing.[257] Along the same lines, the Dutch understood domesticity to be a distinctly feminine concept, making feminine input particularly important to the design of housing.[258] Gender sensitivity is particularly important in the design of low-income housing, in which a

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shadows as she does the stone in the meadow."); *id.* at 125 ("[Gill] asks no one to be content with the bald facade of a newly finished house, but would have you foresee what time and nature will do for it."). Privacy considerations can enhance the sense of individuality, as well. In Belleville, Paris, which has been described as historically consisting of "ruinous corners inhabited by the poorest of the poor," new housing has been constructed. GAUSA, *supra* note 242, at 248. Among other features, "[h]ere, everyone enjoys the right to enter their own home in isolation." *Id.* The author decries any artificial effort to construct community by forcing people into close interaction. Instead, he asserts, "[t]he neighborliness so talked about these days pays homage more to common sense and to each individual's reality than to the idiotic principle of frenzied alignments with prohibited interruptions. This means additively creating a city of small fragments." *Id.* Along the same lines, a development for immigrants in the Chartrons district of Bordeaux, France, features "three-story facades composed of an assembly of openwork wooden shutters fixed to sliding panels." *Id.* at 252. This facade "allows the tenants to control the entrance of light and the degree of contact they wish to have with the neighbor opposite." *Id.*

256. "There is a notable absence of discussion on the issue of gender in relation to housing standards." YAHYA ET AL., *supra* note 98, at 60.

> There is a [sic] increasing need to consider technology choices in terms of women's needs. In some countries self-help construction is traditionally undertaken by women, and they are likely to be displaced unless new technologies are introduced carefully. The rapid increase in female-headed households, especially among the urban poor, is another compelling reason for designers, implementers, and regulators to give women's needs careful consideration.

Id. at 61.

257. HINES, *supra* note 91, at 83 (noting that "[a] merger of commitments from both his Quaker heritage and the contemporary Progressive Movement lay in Gill's support for the burgeoning women's movement, not just for suffrage but for all aspects of the quest for social equity"). The author goes on to state as follows:

> Recognizing the reality of women's powerful domestic roles, Gill, recalling his own mother's arduous housekeeping responsibilities, explicitly designed houses that were inflected toward women. He once told architect Rudolph Schindler that, despite his own bachelorhood, he worked on the theory that "the house was built for the woman. Man was the guest."

Id.

258. RYBCZYNSKI, *supra* note 129, at 71 ("When a male is included in a [Jan] Vermeer [Delft domestic painting], one has the sense that he is a visitor—an intruder—for these women do not simply inhabit these rooms, they occupy them completely."); *id.* at 75 ("If domesticity was, as John Lukacs suggested, one of the principal achievements of the Bourgeois Age, it was, above all, a feminine achievement.").

disproportionate number of women are heads of household.

The inclusion of residents in creating their homes should not end when occupancy begins, or even when the first generation of tenants vacates the property.[259] For this reason, the architectural practice of "programming"[260] the building for its occupants-to-be has been described as a step in the right direction, but as ultimately failing to meet the needs of future generations.[261] Instead, low-income residents should be permitted and, indeed, encouraged to participate in the natural, ongoing process of growth and renewal that takes place as a matter of course in privately owned dwellings.[262] Some evidence has suggested that fear of low-income tenants' running down the buildings' value through post-occupancy changes is unfounded.[263] Indeed, perhaps tenants' comfort in living in a dwelling suited to their own current

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259. Rather, "incremental construction," and allowing "step-by-step upgrading offers a way for poor people to meet their needs in line with their resources." YAHYA ET AL., *supra* note 98, at 55; *see also* GAUSA, *supra* note 242, at 69 (recommending that housing be characterized by "[a] space open to formal mutation").

260. "Programming" has been defined as the process of establishing "the needs and desires of the users of a building and then reflect[ing] these in the spaces to be designed and built." THE UNDERGROUND SPACE CTR., *supra* note 154, at 3.

261. BRAND, *supra* note 244, at 181.

> The great virtue of programming is that it deeply involves the users of a building and makes it really *their* building. The great vice of programming is that it over-responds to the immediate needs of the immediate users, leaving future users out of the picture, making the building all too optimal to the present and maladaptive for the future.

Id.

262. YAHYA ET AL., *supra* note 98, at 30.

> People adapt their housing as a matter of natural life cycle changes, rising aspirations, and increases in family size. Residents make changes to their houses for different reasons, including their need to make their own mark, to make a home with which they can identify, their need to generate income from their housing by renting some or all of it to tenants or by running a business from home.

Id.

> Two quotes are most often cited as emblems of the way to understand how buildings and their use interact. The first, echoing the whole length of the 20th century, is "*Form ever follows function*." Written in 1896 by Louis Sullivan, the Chicago highrise designer, it was the founding idea of Modernist architecture. The very opposite concept is Winston Churchill's, "*We shape our buildings, and afterwards our buildings shape us*." These were clairvoyant insights, pointing in the right direction, but they stopped short.
>
> Sullivan's form-follows-function misled a century of architects into believing that they could really anticipate function. Churchill's ringing and-then-they-shape-us truncated the fuller cycle of reality. First we shape our buildings, then they shape us, then we shape them—ad infinitum. Function reforms form, perpetually.

BRAND, *supra* note 244, at 2–3.

263. YAHYA ET AL., *supra* note 98, at 55 ("Often such end user initiatives are viewed as the unfettered creation of slums, yet the study [of informal settlements in Bangladesh] clearly shows that the biggest change required is in official attitudes . . . .").

purposes would suggest that permitting this sort of flexibility would result in the buildings being better treated, rather than ill treated.[264] Thus, perhaps a dynamic tenant is better than one who permits the dwelling to stagnate.[265] This renewal process has some foundation in American private housing for those of moderate means.[266] Furthermore, there is some evidence that permitting tenants to modify their environment would simply legalize—thereby allowing reform and improvement—the activity that will proceed anyway as a matter of human nature and evolving needs.[267]

The concept of continued resident involvement in the creation and sustenance of his or her community is consistent with theories of justice that emphasize the centrality of personal projects to satisfactory human existence.[268] Iris Young has asserted that persons who are at the margins of society, particularly, are in need of support for their personal projects and aspirations.[269] This viewpoint is also consistent with a view of

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264. "When we deal with buildings we deal with decisions taken long ago for remote reasons. We argue with anonymous predecessors and lose." BRAND, *supra* note 244, at 2–3.

265. The typical rental relationship can be described as follows:

> Landlord and tenant are automatically in conflict, especially with houses and apartments. The landlord wants stable tenants who will treat the property as their own, *but* will make no alterations or improvements without the landlord's approval. The tenant wants to spruce up or adapt the place, *but* gains nothing in equity thereby; in fact the rent may go up. Every detail of repair, maintenance, or improvement becomes grounds for an argument.

Id. at 86.

266. *Id.* at 137 n.6 (citing THOMAS HUBKA, BIG HOUSE, LITTLE HOUSE, BACK HOUSE, BARN (1984), a study of "New England connected farms and the commercial theory that shaped them").

267. "[M]ore than any other human artifact, buildings excel at improving with time, if they are given the chance." *Id.* at 11.

268. *See* John T. Sanders, *Projects and Property*, *in* ROBERT NOZICK, *supra* note 202, at 34, 41.

> The right to acquire private property involves the centrality of personal undertakings or projects—whether conducted individually or collectively—in human life. Whether resources are altered or not by such projects, it is the projects and their importance to persons that must be respected, and for which room must be made, provided that they do not interfere with the similarly justifiable projects of others. This is vital if more than lip service is to be paid to the idea of respect for people.

Id.

269. YOUNG, *supra* note 42, at 55. Young states that, "[e]ven if marginals were provided a comfortable material life within institutions that respected their freedom and dignity, injustices of marginality would remain in the form of uselessness, boredom, and lack of self-respect." *Id.*

humanity that focuses on persons as agents of their own lives.[270] Such a conception of personal activism is consistent with the comprehensive responsibility that this Article urges, and finds support in the work of American architect Irving Gill.[271]

One contemporary English architect even employed the same vocabulary as Hundertwasser in describing a building's exterior as its skin, denoting an organic, dynamic, living being.[272] Like Hundertwasser, this architect understood the importance of a building's skin in communicating with the public regarding its purpose and inhabitants.[273] Communicating to the outside world the humanity, individuality, and citizenship of the inhabitants of low-income housing is particularly important. Because each tenant will have different needs and will wish to project a different identity, providing a building that is sturdy and flexible enough to permit tenant adaptation is crucial to this effort.[274] Along these same lines, it may be said that part of being a citizen of a community, rather than a mere denizen of a dwelling, requires that occupants exercise a certain sense of ownership, through adaptation, over their dwellings.[275] Some writers claim that this relationship is central to a building's being "loved" by its occupants.[276]

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270. Sanders states, following Joel Feinberg, that "[t]here is an important sense in which understanding persons is impossible without understanding their projects. People are living, breathing actors, not passive things with merely static characteristics." Sanders, *supra* note 268, at 41. In explaining the natural human preference for "real life" over Nozick's "experience machine," Sanders goes on to say, "The suggestion I'm offering here is that people do not understand themselves primarily as passive receivers of experiences of the world but as active participants in a world shared with other actors like them." *Id.* at 42.

271. HINES, *supra* note 91, at 192. Architecture critic Walter Willard

> was impressed with the fact that the founders and planners [of Gill's Torrance, California development for workers] had learned from industrial history "that paternal landlordism, no matter how high and pure its motive, is diametrically opposed to those principles of a democracy which give every man the right to grow dandelions or bluegrass in his own front yard at his own sweet will."

Id.

272. BRAND, *supra* note 244, at 13. The author describes the building's exterior, or Skin, as one of the six S's that he believes come together to create a building, the others being its Site, Structure, Services (or "working guts"), Space Plan, and Stuff (or furniture and other personal effects). *Id.*

273. "The building interacts . . . with the public via the Skin and entry . . . ." *Id.* at 17.

274. "An adaptive building has to allow slippage between the differently-paced systems of Site, Structure, Skin, Services, Space Plan, and Stuff." *Id.* at 20 (acknowledging that the different elements of the building change at radically different rates).

275. "In classical Greece and Rome, *domus* meant 'house' in an expanded sense: 'People and their dwellings were indistinguishable: domus referred not only to the walls but also to the people within them.'" *Id.* at 23 (noting that "[t]he architectural setting was not an inert vessel").

276. The Massachusetts Institute of Technology's Building 20 is one such building that is described as being greatly loved by its inhabitants. *Id.* at 27–28. A survey of the

As a practical matter, it is generally more feasible, as well as more comfortable for the occupant, to modify a building that invites adaptation through a combination of its own structural integrity and aesthetic humility than one that does not: Such buildings support change, rather than declaring themselves to be finished masterpieces not to be touched.[277] For these reasons, buildings that are the showplace of famous architects may sometimes be the most stifling of all.[278] Ultimately, the bottom line is that taking a more inclusive approach requires the architect to consider later, unknown residents during the design process.[279]

There must be some limits on what one tenant may do to an apartment; requiring that tenant adaptation be reversible is essential to

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building's "alumni" elucidated the following as reasons for their devotion:

> "Windows that open and shut at will of the owner!" "The ability to personalize your space and shape it to various purposes. If you don't like a wall, just stick your elbow through it." "If you want to bore a hole in the floor to get a little extra vertical space, you do it. You don't ask. It's the best experimental building ever built." . . . "We feel our space is really ours. We designed it, we run it. The building is full of small microenvironments, each of which is different and each a creative space."

Id.

277. One author describes these as "low road" buildings. *Id.* at 24. MIT's Building 20, described *supra* note 276, is a classic low road building: hastily, but soundly, built, with every intention that the building be a temporary one. *Id.* at 27.

278. Flexible, loved, low road buildings "raise[] . . . question[s] about what are the real amenities." BRAND, *supra* note 244, at 28. "[B]adness is the norm in new buildings overdesigned by architects." *Id.* at 53. The author describes I.M. Pei's Wiesner Building at MIT as "impressive and useless, . . . isolat[ing] and overwhelm[ing] people, and provid[ing] no amenities." *Id.* He denounces architects as "an obstacle to adapativity in buildings." *Id.* He cites "Architect Peter Calthorpe[, who] maintains that many of the follies of his profession would vanish if architects simply decided that what they do is craft instead of art." *Id.* at 54. The author criticizes architectural photography, upon which architectural awards are based, as promoting sterile, unreal constructions, rewarding art with no concern for usefulness. *Id.* at 55. Along the same lines, he believes too much attention is paid to a building's exterior. *Id.* at 56. "A building's exterior is a strange thing to concentrate on . . . . All that effort goes into impressing the wrong people—passers-by—instead of the people who use the building." *Id.* at 56–57. Frank Lloyd Wright's designs have been roundly criticized for their dictatorial rigidity. "To live in one of [Wright's] houses is to be the curator of a Frank Lloyd Wright museum; don't even think of altering anything the master touched. They are not living homes but petrified art, organic only in idea, stillborn." *Id.* at 58. He also criticizes Wright's houses as failing the user, given their universal reputation for leaks, and the architectural establishment for totally ignoring this central flaw in declaring Wright to be "the greatest American architect of all time." *Id*.

279. DAVIS, *supra* note 47, at 102 ("The patterns of people's lives should be the inspiration for the unit plan. But in housing in which many different people will live over time, none of whom are known to the architect, this is a difficult proposition.").

ensuring that one tenant's adaptations do not hinder those of the next tenant.[280] In addition, tenants should not be permitted to encroach upon the dwellings of their neighbors. Allowing such limited tailoring should not be seen as an intrusion on the rights of other residents; indeed, failing to allow tenants to adapt their living space can paralyze both the tenants and the surrounding community.[281]

The convergence of contextual thinking and valuing individuality requires a comprehensive conception of individuality that takes into account each person's inter-relational, as well as individual, identity and conception of happiness.[282] Promise Enforcement does not, however, embrace the sort of tyrannical, identity-erasing communitarianism that Iris Young has decried.[283] Instead, as this Part has shown, Promise

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280. "While all buildings change with time, only some buildings improve. What makes the difference between a building that gets steadily better and one that gets steadily worse? Growth, apparently, is independent of adaptation, and spasmodic occupant-turnover can defeat adaptation." BRAND, *supra* note 244, at 23. To prevent this, "[a]s much as possible of the original fabric of the building is to be saved. New work should be potentially reversible." *Id.* at 105.

281. Brand states as follows:

> Buildings steady us, which we can probably use. But if we let our buildings come to a full stop, they stop us. It happened in command economies such as Eastern Europe's in the period 1945–1990. Since all buildings were state-owned, they were never maintained or altered by the tenants, who had no stake in them, and culture and the economy were paralyzed for decades.

Id. at 17–18. The same criticism can appropriately be made of traditional American public housing. *Id.* at 18.

282. Solomon states, "Individual happiness or 'utility' just doesn't make sense without friendship and community, and justice is the pursuit of *shared* well-being." SOLOMON, *supra* note 43, at 95. He goes on to state, "The individual is the creature of the community; communities are not just collections of individuals." *Id.* at 96. Even Hundertwasser's concept of window rights takes into account the claims of neighbors. It is because of his concern that window rights are limited to "as far as your arm can reach, your window or exterior facade," but no further. RESTANY, *supra* note 114, at 27.

283. *See supra* note 55. Robert Solomon has a similar conception of community. Solomon states as follows:

> Justice is first of all a personal virtue with a concern for the community, but the essential unit of justice is neither the individual nor the community (much less the institution or the whole society). It is rather what we might clumsily call "affective unities," groups, however large or small, made up of people who care about one another and about their place in the social world they share.

SOLOMON, *supra* note 43, at 98. Indeed, Solomon makes the point even more directly: "Radical individualism, for all of its attractiveness, is intellectually bankrupt and conceptually absurd, while communitarianism, the prominent alternative, is oppressive and unacceptable." *Id.* at 101. Solomon thus suggests the following response:

> [A] third way, a conception of justice and society in which individuality retains its central place but without the absurd ontology that so often goes with it, in which community retains its importance—and not just as the birth context and molder of men and women—in the ongoing identity and life of the individual.

Id. Dworkin's concept of political integrity also attempts to achieve this balance, although somewhat less clearly than Solomon or Young. Dworkin's political integrity

Enforcement is concerned both with the development of personal identity and the encouragement of a tolerant, vibrant public life.

IV. COMPREHENSIVE RESPONSIBILITY IN THE UNITED STATES

Comprehensive responsibility is my term to describe the balance of rights and responsibilities that is required to bring low-income people within the social contract. It encompasses not only bilateral lease enforcement and supportive services, but also the provision of housing that is environmentally, historically, and financially responsible.[284]

A. Opportunities and Challenges

Low-income housing is comprehensively responsible when it is attractive, reasonably priced, and environmentally efficient and respectful, as well as aesthetically and symbolically honest and meaningful.[285] As discussed above, personal involvement in the design of one's dwelling is one way to achieve comprehensive responsibility.[286] Some housing designs, of course, more easily lend themselves to self-building than others do.[287] When building their own residences, human

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"assumes a particularly deep personification of the community or state. It supposes that the community as a whole can be committed to principles of fairness or justice or procedural due process in some way analogous to the way particular people can be committed to convictions or ideals or projects . . . ." DWORKIN, *supra* note 57, at 167. This concept of political integrity functions "as if a political community really were some special kind of entity distinct from the actual people who are its citizens." *Id.* at 168.

> [W]hen [Dworkin] speak[s] of the community being faithful to its own principles [he] does not mean its conventional or popular morality, the beliefs and convictions of most citizens. [He] mean[s] that the community has its own principles it can itself honor or dishonor, that it can act in good or bad faith, with integrity or hypocritically, just as people can.

Id.

284. Carpenter, *supra* note 2, at 1114–33 (introducing the concept of comprehensive responsibility).

285. The Wiessenhofsiedlung in Stuttgart reflected a concern for comprehensive responsibility: This housing complex for workers was designed to be "efficient, affordable, attractive, and easy to build, using available industrial materials." WISEMAN, *supra* note 87, at 142 (noting that the development "provided a showcase not just of the latest architectural technology and aesthetic thinking, but of a determination among the participants to bring architecture to bear on the solution of social problems on a large scale"). Likewise, Irving Gill designed affordable housing for Native Americans that they could build for themselves. HINES, *supra* note 91, at 248.

286. Formerly, people usually supplied their own homes, clothing, and food. SHELTER, *supra* note 35, at 3.

287. Earth sheltered housing is perhaps more easily created by unskilled workers

beings are likely to consider their climate, population, and local building materials, as well as their budgets.[288] The residences of the very poor, however, when self-built, sometimes do not meet the requirements of comprehensive responsibility.[289] Therefore, as discussed above, self-built, low-income developments require fiscal support, instruction in building skills, and the provision of other resources.

Having a personal financial interest in one's home, even short of ownership, may be another means of encouraging personal investment in the residence, but this option would be available only for those residents of at least modest means.[290] The goal is nevertheless an important one; failing to allow some kind of personal investment can result in the failure of the building itself, and the social cost of the blight that can result from such failure has been well documented.[291] Some scholars have asserted that inappropriately rigid building codes are to blame for putting so-called affordable housing—even rental housing—beyond the means of society's poorest members.[292] Government housing decisionmakers have been criticized along these lines as valuing rules above people.[293]

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than a standard timber or masonry-constructed house would be. THE UNDERGROUND SPACE CTR., *supra* note 154, at 207.

> The simplicity with which the Ecology House [described in the book as a recommended self-built dwelling] components fit together is designed to enable the house to be built by relatively unskilled workers. This offers great potential for the "owner-builder," and could result in additional savings in construction costs.

Id.

288. SHELTER, *supra* note 35, at 4.

289. An example can be found in the self-built tin can settlements of the poorest inhabitants of Bidonvillages, Belgium. *Id.* at 15. They are demeaning, even though they are ingeniously built, and the author especially notes that there is no possibility of ownership. *Id.*

290. This idea was explored, albeit in a limited manner, through Vienna's Rent Control Act of 1922.

> [The Act] had a number of consequences for Vienna. Because it more or less eliminated rent from a tenant's budget, each tenant became in effect the owner of an equity in his apartment. But it was an equity that the tenant could not sell and could protect only by continuing to occupy the apartment.

BLAU, *supra* note 9, at 138.

291. GALLION & EISNER, *supra* note 12, at 181 ("The disintegrating city is not, in its present condition, a good financial risk for the taxpayer: blight costs too much."). The author goes on to provide statistics on the cost of blight in Indianapolis, Cleveland, Boston, San Francisco, and Los Angeles. *Id.*

292. DAVIS, *supra* note 47, at 76–77; MACDONALD, *supra* note 48, at 24. The problem can be exacerbated in developing countries. *See* YAHYA ET AL., *supra* note 98, at 1 (noting that "[l]ess than half of the urban population in developing countries can afford to build according to the prevailing standards").

293. MACDONALD, *supra* note 48, at 84 (describing the "City Sleeper" project in San Francisco, discussed *supra* note 143).

> Worrying about potential liability if anything happened to one of the tenants,

In addition, rigid housing codes may stifle innovation that might make wider provision of low-cost housing possible.[294] This phenomenon can result in greater-than-usual rates of illegal housing and homelessness.[295] Overly rigid housing codes can also encourage subterfuge.[296] When so-

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> [the California Department of Transportation] brought suit to force removal of the Sleepers from its property . . . . The department had not worried particularly about liability when the men had slept exposed and unprotected in the [parking] lot. Nor had it worried, of course, about the health and safety of the men. The court, expressing reluctance, ordered removal of the Sleepers, and the men went back to curling up in corners of the lot at night.

Id.

294. *See generally* THE UNDERGROUND SPACE CTR., *supra* note 154, at 37 (describing the ways in which traditional building codes make the construction of earth sheltered housing more difficult, including requiring unwanted additional windows and "forc[ing] unusual plan arrangements so that windows can be grouped together"); MACDONALD, *supra* note 48, at 87 (describing the eight-by-eight-by-eight plywood huts built for homeless people in Georgia by a group called the Madhousers of Atlanta). "To the consternation of the authorities," MacDonald states, "the huts violated just about every applicable code on the books." *Id.* The Madhousers acknowledged this fact, and their decision to build the huts anyway was a purposeful one. "[A]s one of the initiators of the [huts] . . . commented, 'We're not outlaws. The magnitude of this homeless problem is such that zoning and building codes are irrelevant. The good outweighs any law we might be breaking.'" *Id.*

295. The author of *Double Standards, Single Purpose* states as follows:

> It can be argued that the prevailing high level of standards and regulations is morally wrong, in that it stimulates the emergence of dualistic cities which formally recognize a minority of the population as legal residents as legal residents, while an ever-increasing majority of people live unrecognized in informal and illegal settlements, where they are at considerable risk.

YAHYA ET AL., *supra* note 98, at 1. Further explaining the "considerable risk" to which these individuals are exposed, the author states that, although "[l]and occupation is not a secure form of ownership," nevertheless "[s]quatting is often the only affordable housing option for poor people." *Id.* The author's suggestion that squatters' rights to land be recognized once some period of time and investment has taken place is one way of establishing the multiple commodification that this Article advocates. *Id*. at 9. These individuals would thus have obtained ownership of their home through their time and effort, in the absence of money sufficient to purchase the land. Indeed, the author of *Double Standards* claims that recognizing squatters' rights makes economic sense. He states that research in Peru demonstrated that "the national average differential in housing investment between legally recognized and illegal settlements was estimated to be in the order of 9:1." *Id.* at 10. He further argues that "[t]he granting of government-owned land to squatters is a form of 'progressive subsidy' which does tend to reach the poor [and can be effective] where public land is accessible or where adequate resources are available for land acquisition." *Id.* at 11.

296. DAVIS, *supra* note 47, at 77. The author states as follows:

> Building-code compliance is a matter of judgment and interpretation, both the architect's and the official's, and some subterfuge is often employed. For example, loft space in a dwelling, with a steep stairway or a ladder, does not conform to the code's definition of habitable space. The architect and the

called affordable housing is made too expensive for those who are most in need of it, this housing, and the surrounding area, may be taken over and gentrified by the middle class.[297] Alternative financing may be one way to ameliorate this problem.[298] In addition, as one scholar has suggested, perhaps the term "homeless" should be expanded to include those who reside in illegal or dangerous environments.[299] Doing so would require a more complex understanding of what a "home" is.[300] One proposed solution is performance-based building codes, rather than prescriptive codes.[301] Indeed, the HUD minimum property standards are

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> developer may intend this space as a room, and they know full well that a low-income family will use it as such, but it will be identified as storage on the drawings. The drawings are approved, the cost of construction is reduced, and the occupant gets the extra space.

Id.

297. "Over the years projects undertaken in the name of the poor have been ineffective at reaching them, proving to be expensive, often usurped by middle-income people, while the poorest continue to be marginalized from the little state assistance that exists." *Id.* at 27.

298. The following was the approach taken to financing affordable housing in social democratic Vienna:

> The new housing was financed out of taxes, which were sharply graded to put the burden on the rich, and built at a nonrecoverable cost to the municipality. (The rents that the city charged its tenants amounted to less than 3.5 percent of the average semiskilled worker's income, and they were intended to cover only regular maintenance and repair costs.)

BLAU, *supra* note 9, at 6.

299. YAHYA ET AL., *supra* note 98, at 6 (suggesting that "[t]he term 'homeless' could . . . be extended to include people living in shared and overcrowded accommodation, as well as women exposed to domestic violence and children subjected to sexual abuse").

300. "Depending on how 'home' is defined, there could be anything between 100 million and one billion homeless people worldwide." *Id*. Although the author's focus is on developing countries, his criticism is equally applicable to the United States.

301. The difference can be described as follows:

> There has been a long standing argument between performance and prescriptive standard proponents. Prescriptive standards have advantages in allowing easier enforcement. Both parties know what is required of them and personalities and reputations enter into the situation very little. Prescriptive standards work best for conventional buildings where little design effort is used. In unconventional designs, however, prescriptive standards may be unnecessarily restrictive or even out of place. They allow very little ingenuity in meeting the intent of the code. Performance standards overcome these objections by specifying the performance of the end product, not how it is to be achieved. In performance standards, however, local code officials are required to make judgments on the final performance of systems that may be outside their realm of competence. The fact that they are allowed to make judgments removes some of the rigidity of the code but also introduces a greater element of uncertainty.

THE UNDERGROUND SPACE CTR., *supra* note 154, at 154. The authors propose the use of registered architects or engineers to provide professional opinions, in an effort to ameliorate the concern for uncooperative officials blocking appropriate constructions pursuant to a performance standard. *Id.*

performance-based, and thus already relatively flexible.[302] Another approach that has been used elsewhere is to legalize previously illegal housing. This strategy is not without its own risk and may end up creating a system that is so adversarial that it fails in its attempt to bring the residents of the newly legalized housing within the community.[303]

The complexity of building codes can also make the law incomprehensible to the general population, especially to the extent that it does not comport with local conceptions of common sense.[304] The use of indecipherable building standards can thus further isolate the tenants of low-income housing from the creation of what purports to be their home.[305] Requiring circuitous and time-consuming building procedures

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302. *Id.* at 160. The authors note, however, that compliance with these HUD standards does not ensure that the contractors will be able to secure financing for their projects. *Id.*

303. YAHYA ET AL., *supra* note 98, at 64–65.

> In Trinidad and Tobago, legal revisions enabled squatters to claim a 30-year lease on land that they had occupied for some years. Impact was severely limited by the eligibility criteria applied, however, which included cut-off dates and continual occupancy requirements. The adversarial nature of the process was also an effective barrier to individuals, who would have needed to engage legal professionals . . . .

Id.

304. *Id.* at 9 ("The need to define rights, obligations and duties in plain language has resulted in a legalistic approach to the formulation and documentation of standards. The unintended result is that standards are usually difficult to understand, and often do not take account of social and cultural requirements."). The disconnect between building codes and societal requirements is illustrated by the irony of the following situation:

> A Labour government [in the United Kingdom] introduced . . . standards in 1961 to govern the minimum floor area as a means of improving the quality of working-class housing. The same government did not want to impose the same minimum space standards on private developers, however, for fear of curtailing the construction of smaller "starter units."

Id. at 32. There is some evidence that awareness of building requirements may be higher in smaller communities than in large ones. *Id.* at 103 (citing studies in Zimbabwe). If this phenomenon proves itself to be a universal one, it may raise the question of whether Rousseau was correct in claiming that the social contract, as he envisioned it, was better suited to a small community than to a large one. ROUSSEAU, *supra* note 75, at 59.

305. YAHYA ET AL., *supra* note 98, at 9 (asserting that the process "tend[s] to isolate housing standards both from the housing that results and from many people or groups who use the standards").

> The involvement of end users might seem a logical approach in this day of market-driven, customer-centred economies, but the principle that users are the best people to judge what they want has not penetrated the thinking of housing sector officials, bureaucrats, politicians, civil servants, professionals or technocrats, who tend to claim superior knowledge of what is "right" for people.

Id. at 37–38. Note that this problem would be lessened or even eliminated, insofar as can have the same effect.[306] The current, legalistic, isolating approach stands in contrast to the inclusiveness and sensitivity to the humanity and needs of the future occupants that Promise Enforcement requires.[307] Perhaps housing standards and procedures based upon local norms rather than on law that may be out of touch with the needs of the population would make legal housing accessible (and comprehensible) to more low-income citizens.[308] The current incongruity demonstrates a fundamental failure of the social contract to include residents of low-income housing,[309] and may be particularly apparent when low-income housing

"technocrats," "bureaucrats," "housing sector officials," "civil servants," and "politicians" are concerned, if the residents of public housing were included in the political process. In addition, the problem would be eliminated insofar as "professionals" are concerned, in the event of a system employing Rawls's *Theory of Justice* and providing equality of opportunity for those in the least advantaged group, inevitability resulting in the ultimate inclusion, within the class of professionals, of members of the worst-off class. RAWLS, *supra* note 61, at 98. Rawls's conception of the least advantaged group is defined ex ante, such that a professional who came from the worst-off class would not, by virtue of her obtaining professional status, lose her standing as a member of the least advantaged group. *Id.*

306. YAHYA ET AL., *supra* note 98, at 13 ("The lengthy and costly nature of application procedures also has a large impact on the affordability of legal housing."). The author goes on to describe the approval, planning, and building process as "an institutional maze . . . that . . . is inaccessible to lay people." *Id.* at 22.

307. *See* HUNDERTWASSER, *supra* note 33, at 17 (introducing the concept of the "window right").

> A person in a rented apartment must be able to lean out of his window and scrape off the masonry within arm's reach. And he must be allowed to take a long brush and paint everything outside within arm's reach, so that it will be visible from afar to everyone in the street that someone lives there who is different from the imprisoned, enslaved, standardised man who lives next door.

Id.; *see also* RAND, *supra* note 33, at 146 (setting forth Hundertwasser's own public statements regarding "window rights").

308. *See* YAHYA ET AL., *supra* note 98, at 16–17.

> An international study carried out in 1975 in Asia and Latin America found that "one of the reasons for the relatively inefficient functioning of human settlement . . . is the conflict between official and cultural standards . . . , that is those standards accepted by a number of people based on social beliefs and traditional practices, and those set down in legislation and based on professional and 'scientific' recommendations."

Id. (alterations in original). The author posits a specific reason for the existence of this problem in developing countries: "In much of the developing world, standards were imported by foreign professionals from a very different context and often a very different time." *Id.* at 17. The author notes, by contrast, the effectiveness of "gossip and cursing" in a traditional African society in enforcing building standards that are accepted by the community. *Id.*; *see also id.* at 24 (describing the "[s]elf-regulation" and "[c]ommunity-based standards" of Sri Lanka's One Million Houses Programme as "a participatory process that create[d] a sense of ownership and communal commitment").

309. To solve this problem requires "a new ideological setting" that "'basically relates to a set of values, where the poor are sovereign and subjects of their own process of self-development.' The corollary is that the state now becomes a sensitive supporter and partner, the other partner in the dialogic relationship." YAHYA ET AL., *supra* note 98, at 62 (citation omitted). This description clearly does not capture the current state of

is built in an existing residential neighborhood.[310] In a large country such as the United States, norm-based building standards would also obviate the problem of the poor fit between a community's needs and a building standard that may have been designed for a community with very different characteristics.[311]

B. Logistics of Comprehensive Responsibility and Examples in the United States

Environmental responsibility is central to the concept of comprehensive responsibility[312] and is one of the least controversial aspects of Hundertwasser's work.[313] Even his "tree tenant"[314] concept—the

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low-income housing in the United States.

310. GAUSA, *supra* note 242, at 51. Gausa recommends

> [s]ystems which, far from being regenerative models (or intrusions) or ideal *tabulae rasae*, would seek to favor other, more versatile types of order (drastic and respectful at the same time) in distant and also civilized cohabitation with the multiplicity of heterogeneous signs which characterize contemporary urban space.

Id. He describes such orders approvingly as being "generated by a tactical infiltration of reality rather than by the imposition of prefigured codes." *Id.* These developments would be marked by "confidence in the sequential but not strictly repeated action. [T]he serial succession . . . of referential elements would characterize those systems conceived more as abstract cadences intended to provide guidelines for space than as strict orders intended to guarantee its continuity." *Id.* at 53.

311. YAHYA ET AL., *supra* note 98, at 25 (describing a situation in the former Soviet Union in which "standards in Tashkent were applied according to the directives issued by Moscow (about 3000km away), which were based on the conditions and needs there") (citation omitted).

312. The work of Mockbee Coker is described as reflective of "stewardship of the land" and reflects deference toward nature. MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 16. Coker stated as follows with regard to this concept:

> [I]n our hope of keeping as loose a grip as possible, I would like to give this thing that we call nature a wide berth. As I continue to frame it here, I will set it aside, outside our conventional boundary, and within the kind of division that I hope offers sanctuary. And, in doing so, I grant it protection, as a thing apart . . . . But in order for me to leave nature alone, I must establish some place-holder for it. . . . .
>
> . . . The frame I set around nature will be a pair of quotation marks . . . .

Coleman Coker, *An Intent of Constructing*, *in* MOCKBEE COKER: THOUGHT AND PROCESS, *supra* note 84, at 57, 65.

313. MACDONALD, *supra* note 48, at 8 ("[I]n deciding where and how to construct a building every effort must be made to prevent damage to the environment.").

314. HUNDERTWASSER, *supra* note 33, at 20 (introducing the concept of the "tree tenant"). The "tree tenant" is, as its name suggests, a tree that is planted inside the walls of the building. In addition to creating beauty and diversity within the building itself, Hundertwasser describes the trees as valuable providers and cleaners of oxygen in the

whimsical and prominent use of trees in building construction for ecological purposes—finds support in contemporary U.S. architecture.[315] Environmental responsibility, more broadly considered, involves using readily available, sustainable building materials, preferably those that are locally obtained. Such initiatives can be as relatively common as the use of earth for construction,[316] or as unusual as the homes in Ethiopia made from recycled tar barrels used for road construction.[317] Along the same lines is the notion of "adaptive re-use" (or recycling of older buildings) as a form of preservation.[318] Unlike the construction of new buildings, a process that tends to focus on creating structures that are of historic or particular aesthetic value, the recycling movement in architecture has encompassed the ordinary as well as the sublime.[319] Thus, it may even be said that multiple commodification has spread somewhat to architecture, in that ordinary buildings, as well as extraordinary ones, are recognized as being valuable. In addition, unlike preservation, which may bring to mind rigid standards that require the restoration of a building's original appearance,[320] recycling a building affords the architect greater freedom,[321] even to the point of allowing a building to

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urban environment, sound buffers, absorbers of dust, and providers of shade for people and housing for birds and butterflies. *Id.* He describes the tree tenant as "a symbol of reparation towards nature" and "a piece of spontaneous vegetation in the anonymous and sterile city desert." *Id.*; *see also id.* at 276 (describing tree tenants as "a gift of the house to the outside world, for the people who pass by the house").

315. DAVIS, *supra* note 47, at 169 ("The architects [of one housing development] even provided a hole in the floor through which a tree, planted in the ground one story below, could penetrate to offer some shade and landscaping.").

316. SHELTER, *supra* note 35, at 6.

317. *Id.* at 8.

318. WISEMAN, *supra* note 87, at 218 ("[T]he idea was to take a building that had outlived its original purpose and save it from destruction by assigning it a new function. Thus Chattanooga's Terminal Station, which had seen its last train depart in 1970, eight years later became a restaurant.").

319. SHERBAN CANTACUZINO, RE-ARCHITECTURE 9 (1989) (noting the interest in converting "more ordinary . . . buildings which are solidly built and adaptable, and which are often of industrial or commercial origin").

320. BRAND, *supra* note 244, at 92 ("British preservation is renowned (and often resented) for its attention to extreme detail in discouraging alteration to 'listed' buildings. The strictures are a barrier to adaptivity in buildings, and they feel to the inhabitants like an invasion of their privacy and property rights.").

321. CANTACUZINO, *supra* note 319, at 9 ("The emphasis has also shifted from accurate and reverential restoration to a freer and more creative attitude to the changes that an old building may undergo; from the building as art object to the building as the product of a whole socio-economic system."). The author of *Re-Architecture* goes on to state as follows:

> In practice, this has meant that we no longer concentrate only on the architectural and historic merit of threatened buildings but see the whole stock of existing buildings as potentially useful for sound economic, social and ecological reasons, and as an opportunity for urban regeneration. It has meant that we no longer focus only on the restoration of an individual monument, but

transcend its original use—for instance, morphing from an industrial use into housing.[322] Perhaps it is this characteristic freedom that has sparked the interest of some of contemporary architecture's best.[323]

> attend to the conservation of whole areas. It has meant that we now look beyond the individual church or country house, at warehouses, mills, factories, market halls and other industrial and commercial buildings.

Id. at 9.

322. The change in attitude has been described as follows:

> [Conversion] has meant, too, that instead of looking for public uses like museums and art galleries, we now also look for commercial uses; and we can now convert large buildings, which are unlikely ever to attract single users again, into workspace for small firms, into several housing units, or into a mix of uses.

Id.; *see also id.* at 52–53 (describing the evolution of the Varney School in Manchester, New Hampshire into housing for the elderly). This conversion obviated the need for the building's demolition after "the changing demographics of school-age children in Manchester [rendered the school] surplus to the city's requirements after the Second World War." *Id.* at 52. The building appears to have been a success in its new incarnation, the creation of which was funded in part by the New Hampshire Housing Finance Agency. *Id.* "[T]he senior citizens residing in the building refer to it as a happy place, citing the spacious atrium, the varied colours and the comfortable apartments as particularly successful." *Id*. at 53 ("[T]he new sky-lit atrium [was] carved out of the old building to provide a generous and attractive circulation area."). That the building was of brick and slate may have made the conversion more possible. *Id.*; *see also* BRAND, *supra* note 244, at 123 ("'Bricks are heavenly,' says contractor Matisse Enzer, 'because they require relatively little technology to create, build with, and *modify.*'"). In addition, "[b]ricks manage time beautifully. They can last nearly forever. Their rough surface takes a handsome patina that keeps improving for centuries. Walls of brick invite and then record alterations." *Id.* At least one architect feels so strongly about the appropriateness of recycling existing buildings into housing that he insists that new construction be done in such a manner as to be convertible to housing. *Id.* at 174. The author asks, "Have any office buildings proven adaptable over the decades on purpose?" *Id.* He answers his own question as follows:

> Some have managed by accident, such as the Chrysler Building . . . and Empire State Building . . . in New York. Their high ceilings, daylit shallow depth, and openable windows turned from embarrassments back into virtues without benefit of intent. The severely ecological architect William McDonough imitates them with his insistence that any new office building he designs be potentially convertible into housing, since he regards that as the most fundamental use of buildings, for which there were always be a need and which always guides you toward humane design.

Id. at 174–75. The work of Perry Dean Rogers & Partners also demonstrates the sort of architectural recycling for which Hundertwasser was known. The YMCA of Greater Worcester, Massachusetts, "has become a landmark example of building reuse and has provided a growth stimulus and an urban amenity to a rundown section of the city of Worcester." CROSBIE, *supra* note 187, at 22. Another way of promoting the recycling of buildings is to plan, during original construction, for the later reutilization of the building through "non-aggressive products . . . low-impact construction, [and] reversibility." GAUSA, *supra* note 242, at 35.

323. *See infra* note 333 and accompanying text.

Comprehensive responsibility can also take the form of attention to surrounding greenspace. Hundertwasser expressed, for example, a strong desire to restore the greenspace that was eliminated when Hundertwasser-Haus was built, and he did so by planting on the rooftops.[324] Although his solution was unusual, this fundamental concern was not uniquely his; rather, even his predecessor Adolph Loos, whom he decried, also believed in the importance of urban greenspace.[325] This approach is an architectural expression of humility: Through environmental responsibility, the architect places man in context by demonstrating that he or she does not require that the building dominate the landscape.[326] Examples reveal the success of this

324. Hundertwasser described this concept as the "tree duty":

> "Free nature must thrive wherever snow and rain fall. Wherever everything is white in winter must be green in summer. What is parallel to the sky belongs to nature—the streets and rooftops must be wooded—in cities or towns one must again be able to breathe the air of the forest." This fine pictorial vision of the naturist habitat culminated in a burst of spiritual fervour: "The man-tree relationship must take on its religious dimensions."

RESTANY, *supra* note 114, at 27; *see also* HUNDERTWASSER, *supra* note 33, at 276 (providing the logistics for planting trees on the building's roof); *id.* at 68–70 ("Concrete Utopias for the Green City"); *id.* at 156–58 ("GREENERY ON THE ROOF: A FUTURISTIC, ECOLOGICAL BUILDING MODEL"); *id.* at 25 ("The nature we put on the roof is the piece of earth that we murdered by putting the house there in the first place."); *id.* at 7 (describing KunstHausWien, the building that houses the museum of his work, as "a house in which you have a good conscience toward nature"); RAND, *supra* note 33, at 184 ("These trees provide shade, ornament (as no carved foliage could), add colour, clean the air, and suggest a kind of aristocratic opulence formerly available only to large landholders."). The words of Coleman Coker are very similar:

> In this relationship, constructing builds things up from the earth; it raises up those things from the horizontality of earth. To construct is to *raise up*. I can think of this as a literal bringing up from the ground, the rising up into a kind of verticality, a verticality which has a relationship to horizontality. . . .
>
> Like the things that we raise up, our living bodies are for a time vertical.

Coker, *supra* note 312, at 71.

325. Eve Blau states as follows:

> In 1912 [Loos] had built his first house with terraces in Vienna, the villa for Gustav Scheu, in the suburb of Hietzing. By stepping back the upper stories of the house, Loos explained, he had been able to give the second-floor bedrooms and third-floor rental unit access to their own private outdoor space on large terraces.

BLAU, *supra* note 9, at 299–300. The author also notes the urban roof gardens in Le Corbusier's work. *Id.* Hundertwasser's self-named spa town was much the same way, with what he termed "eye-slit houses" that are "so totally integrated into nature that [they are] practically invisible." HUNDERTWASSER, *supra* note 33, at 98 ("One can walk through the landscape without realizing that one is walking on roofs.").

326. Along the same lines, the underground caves that function as homes in North Africa solve the problem of the landscape appearing cluttered because they appear to be invisible, even at close range. SHELTER, *supra* note 35, at 14. Housing built in Glasgow was the same in consisting of "'small artificial hollows' inserted into a host landscape.'" GAUSA, *supra* note 242, at 85 (describing the work of architects Njiric & Njiric). "The natural landscape would appear . . . as a single barely-modified space, not divided into plots but merely appropriated from low-density enclaves molded and adapted to the

approach, showing that it is possible for a building to be extraordinary in design without being overwhelming in scale.[327]

Fiscal responsibility is another central component of comprehensive responsibility, and environmental and fiscal responsibility often go hand-in-hand.[328] Especially following the Tax Reform Act of 1976, recycling older buildings can be cheaper than constructing new ones.[329] After the 1981 Economic Recovery Tax Act, such recycling efforts became even more financially wise.[330] Although some of these benefits

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terrain." *Id.* American examples of earth sheltered housing have been similarly described.

> The Clark-Nelson house [described in the text] clearly demonstrates the potential of earth sheltered housing to be well integrated into it's [sic] environment. It is set into a hillside, the arching forms complementing and blending with the surrounding shapes. Also by disturbing the existing shrubs and trees very little and by allowing the natural grasses and wildflowers to reclaim the "roof-walls," the house itself has become reclaimed by the landscape.

THE UNDERGROUND SPACE CTR., *supra* note 154, at 215. The same effect has been achieved in multifamily housing. *Id.* at 239 (describing a project known as the Dune Houses).

327. On a larger scale, New York City's Rockefeller Center made some efforts to make up for its immensity with an inviting street elevation, a public skating rink, and, for a time, rooftop gardens. WISEMAN, *supra* note 87, at 156. This goal brings to mind the compliment paid to Kahn's work as being "at once monumental and intimate." *Id.* at 199 (adding that this "combination . . . had eluded most of the Modernists"). Hundertwasser accomplished the same thing. For example, consider the juxtaposition of the grand onion domes at Hundertwasser-Haus with the carefully crafted individual living areas. RAND, *supra* note 33, at 181–87 (providing descriptions and graphics of Hundertwasser-Haus).

328. The necessity to stick to a precise budget situation led Hundertwasser to draw a compromise with prefabrication. To obtain the total diversity of built spaces, he sacrificed the idea of doing every item by hand, making use of a whole range of mass products. The door-locks and handles are all different, chosen from the sales catalogues of various ironmongers.

RESTANY, *supra* note 114, at 47; *see also* RAND, *supra* note 33, at 184 ("The industrial capacity for efficient and low-cost production based on uniformity of manufacture is maintained while the luxury of variety is present in every element of the house.").

329. WISEMAN, *supra* note 87, at 221 (noting that the Act "provided financial benefits to owners who reused older buildings rather than demolish them"). This has not always been the case. CANTACUZINO, *supra* note 319, at 9–10 ("Ten years ago there was evidence that the cost of converting old buildings consistently outstripped the cost of equivalent new work."). The author of *Re-Architecture* goes on to state that "[t]his tendency appears to have been reversed, and conversions are now fully competitive." *Id.*

330. CANTACUZINO, *supra* note 319, at 10.

> As a result of the 1981 Economic Recovery Tax Act, private investors were able to obtain a tax credit of up to 25 per cent on the capital cost of converting an old building, providing it was of landmark status. The result was a great upsurge in the adaptation of old buildings . . . .

were taken back by the 1986 Tax Reform Act,[331] recycling of buildings generally is less capital-intensive and more energy-wise than the construction of new buildings.[332] That this approach to architecture is becoming more accepted by the architectural establishment is demonstrated by the fact that some of contemporary architecture's top names now deem the task of converting an existing building to be worthy of their considerable talents.[333]

This phenomenon is equally apparent in Europe and in the United States. In Hundertwasser's native Vienna, the well-known architectural firm Coop Himmelblau made a reputation largely through conversion of existing buildings.[334] Along these lines, the work of American firm Mockbee Coker is described as "not an architecture that aspires to immortality";[335] instead, the buildings the firm constructs invite change, even welcoming destruction if they are no longer deemed useful. In addition to its fiscal and ecological benefits, the innovative architecture that is often associated with environmental responsibility can actually create excitement about the functions that are contained within the building.[336]

Id.

331. *Id.* (indicating that the 1986 Act was intended to correct "abuse of the tax credit system").

332. *Id.* at 11 ("Conversion work is labour-intensive, employing thousands of small builders, whereas new building tends to be capital-intensive. New building is energy-consuming, where conversion work is energy saving. . . . [O]ld buildings are themselves energy-saving because of their massive construction and small windows."). As the authors of *Earth Sheltered Housing* note, such observations "lead[] into the wider question of whether a person is free to design a home for his own needs, or whether he must design it with future ownership by others in mind." THE UNDERGROUND SPACE CTR., *supra* note 154, at 157.

333. CANTACUZINO, *supra* note 319, at 11 (citing a litany of well-known American and European architects who are, or have been, actively engaged in the conversion of existing buildings).

334. WISEMAN, *supra* note 87, at 310 (noting Coop Himmelblau's famous and "unorthodox additions to existing buildings"). "The best-known was an unexceptional Beaux-Arts block that, when Coop Himmelbau had finished with it, looked as if another building had been demolished and then deposited on the roof of the original." *Id.* The firm described its work as rebellion against "the bourgeois regularity of Vienna." *Id.*

335. Buege, *supra* note 84, at 31 ("In general, the work of Mockbee Coker feels durable, if impermanent, and fully capable of showing age and use well.").

336. Although Perry Dean Rogers & Partners' creation of the Seeley G. Mudd Chemistry Building at Vassar College is in a different arena because it was built with private money for an expensive private college, I include it because of its impressive environmental responsibility, which is demonstrated through its "active solar collectors, . . . passive solar wall on the south face, . . . mechanical heat recovery distribution system, and low-level fluorescent task lighting." CROSBIE, *supra* note 187, at 36. For an institution that is educating those who may be future leaders in science to educate them in environmental responsibility at the same time is laudable. Along the same lines, rooftop plantings create "a plant cover [that] changes with each season adding a dynamic 'living aspect' to the appearance" of the buildings that employ them.

Hundertwasser was fond of asserting that his buildings did not cost much more than conventional construction in the short term and, in the long term, were far less expensive than those buildings that "failed" their inhabitants and thus ultimately required demolition and rebuilding.[337] Thus, Hundertwasser claimed, his stewardship of human resources was also consistent with good stewardship of economic resources, especially because he believed in comprehensive definitions of cost and benefit that took into account environmental considerations in addition to fiscal cost.[338] This claim is consistent with the statements of other proponents of environmentally responsible and innovative architecture regarding the immediate costs of their work.[339] In addition, like Hundertwasser, some of these advocates claim that their innovations are more comprehensively economical than conventional design is; this claim, if true, may be consistent with good environmental stewardship of land for future generations.[340]

THE UNDERGROUND SPACE CTR., *supra* note 154, at 197.

337. He stated as follows, in support of his assertion:

> Constructing badly at a cheap price merely increases the terrible social danger of pollution by ugliness. My constructions cost a little more than the routine planned norm. This slight increase has only a small effect on the project budget. . . . The aesthetic investment in habitat has decisive consequences for the quality of life, for the workers in their work, for the inhabitants later in their daily lives, and this cannot be calculated in figures.

RESTANY, *supra* note 114, at 58–59.

338. HUNDERTWASSER, *supra* note 33, at 197 ("[B]uildings which are more befitting to nature and man are cheaper in the total network of ecology, health (physical and mental), economy, heating and air-conditioning, creativity, migration to the country, alcoholism and drug addiction, architectural stability, etc."); *see also* DAVIS, *supra* note 47, at 4 (stating that the "ultimate social cost is greater than the front-end savings achieved by making large projects" and stating, instead, "[r]ather than create isolated enclaves, we need to integrate affordable housing into communities").

339. *See, e.g.*, THE UNDERGROUND SPACE CTR., *supra* note 154, at 191 ("Although [the cited] cost estimates are only preliminary and are subject to a number of variables, it appears that the cost of earth sheltered construction is quite comparable to good quality conventional above grade housing.").

340. *See, e.g.*, *id.* at 193.

> In comparing the cost of earth sheltered housing to conventional above grade construction, it is essential to consider the life cycle costs of the two alternatives. The true cost of housing cannot be limited only to the purchase of land and the initial construction cost. The continuing costs of heating and cooling as well as maintenance must be included. . . .
>
> . . . Even if an earth sheltered home costs slightly more to construct initially, the cost to live in it over a period of time is likely to be significantly less than in a typical above grade house. The concept of long lasting, low maintenance housing with relatively low energy requirements is very appropriate in a time of limited material and energy resources.

One characteristic of fiscal responsibility is the use of conventional materials in new ways, to beautify without extravagance.[341] Color has been an important part of this endeavor in many such undertakings.[342] This medium need not be expensive and can contribute to a sense of resident individuality, as well.[343] Another characteristic of this approach

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Id.

341. Both Hundertwasser and the firm of Perry Dean Rogers & Partners are known for this characteristic. Note, for instance, the firm's renovation of the YMCA of Greater Worcester, Massachusetts. CROSBIE, *supra* note 187, at 22. "Given the budgetary restrictions of a service organization, the design aesthetic could not depend on expensive objects or specialty products for its appeal. Instead, common industrial-type products were used in a creative way to achieve an exciting design." *Id.* Another example, this one using public money, is the bright blue, green, red, and yellow General Mail Facility in North Reading, Massachusetts. *Id.* at 84. The building is "economical and efficient," employing "[g]lass block . . . because it provides natural light with security and has a glistening presence after dark. The principal occupancy of this building occurs at night, and the glass block form functions as a beacon for incoming employees and visitors." *Id.* At the same time, however, the building is fanciful: Along with the aforementioned bright colors, "[t]he top of the metal building curves up, while the bottom curves out, in an allusion to a mailbox." *Id.* at 87. Along the same lines are others who, like Hundertwasser, favor the creative use of relatively inexpensive mass-produced materials over cumbersome, expensive, "quasi-artisanal methods and technologies." GAUSA, *supra* note 242, at 33.

342. HUNDERTWASSER, *supra* note 33, at 62–66 (setting forth the address, entitled "Colour in Architecture, 1981," that Hundertwasser wrote to be given at the architecture congress by a similar name, but never delivered). Hundertwasser criticizes his contemporaries as being afraid to employ color in architecture. *Id.* at 62. He calls for the application of color in a way that complements, or provides counterpoint to, colors found in nature. *Id.* He also insists that the persons who are to live in the building be permitted to choose the colors of their homes. *Id.* at 63. Along the same lines, the firm of Perry Dean Rogers & Partners, based in Boston, has as its trademark "the use of saturated color to enliven spaces and to contrast them." CROSBIE, *supra* note 187, at 6.

> A large portion of the firm's work is for colleges and libraries, buildings that will be in use for many years, and where people will spend long periods indoors, often at night. On the practical side, color helps alleviate fatigue and keeps the eye stimulated. Interiors with intense colors washed by natural light are a constant play of contrasts, marking the time of day, offering different shades and hues from hour to hour.

Id. Such concerns demonstrate the firm's attentiveness to its buildings' users. *Id.* at 5 ("The result [of such care and attention to detail] is architecture that is responsive to its users and the context, and that is distinguished by a bold use of color inside and out."). Thompson Hall at the University of New Hampshire in Durham, New Hampshire, likewise employs white walls to strong effect as vivid color, given the way they play against the bright green carpeting. *Id.* at 90–91. Perhaps the strongest use of color to create drama throughout a building, despite economical constraints, is the work of Perry Dean Rogers & Partners at the North Shore Community College in Danvers, Massachusetts. *Id.* at 140. Even without the support of state funding, a phased federal construction program resulted in the creation of an imaginative "multi-purpose instructional space." *Id.* Enlivened by color, conventional materials spark visual interest throughout the modestly constructed metal building shell. *Id.*; *see also id.* at 141–45 (color plates).

343. The following was said of Vienna's *Gemeindebauten* of the Social Democratic era:

> Responsive to custom and place, they are at once spare and empathetic,

is the use of versatile, yet economical, building materials such as concrete.[344] Sometimes, color and concrete are employed together, to dramatic effect.[345] As these examples suggest, economic responsibility is not inconsistent with creativity and ingenuity.[346] Recognizing the connection that may exist, however, requires recognition that beauty in architecture is not just for the elite, and, as the final section shows, this may be a novel concept in the United States.

V. CONCLUSION

One critical piece of Hundertwasser's vision has only tentative grounding in American tradition and contemporary thought: the conception of beauty as part of human dignity, even part of humanity itself.[347] A notable exception is the work of Mockbee Coker, and the

> carefully planned in relation to use and site, individualistic in terms of color and detail yet thoroughly integrated into the urban context of their sites. Much of the original color has disappeared, but contemporary descriptions document their effect. The [housing development called the] Wiedenhoferhof, for example, was described . . . as "a symphony . . . of orange plastered wall, white windows and [metal] railings, concrete balconies, and green gates. There is nothing but the unpretentious homeliness, the warm colouring, and satisfying grouping of balconies . . . to mark it out beyond its fellows, but its simplicity is its genius and the proportions its beauty."

BLAU, *supra* note 9, at 379 (alterations in original).

344. *See, e.g.*, THE UNDERGROUND SPACE CTR., *supra* note 154, at 171 (noting the prevalence of concrete in underground construction); *see also* HINES, *supra* note 91, at 179.

> Gill was concerned that the colored concrete floors be particularly beautiful, and finding no one at the time who seemed sufficiently competent and motivated, he, [nephew and partner] Louis [Gill], and several of their draftsmen got down on their knees on the rough, damp, unfinished concrete and rubbed the color in themselves.

Id. at 70, 179 (noting Gill's recognition, and exploitation, of "the creative potential of concrete construction"); VICKERS, *supra* note 11, at 41, 45 (noting the Roman invention of concrete although it was never an exposed element of Roman architecture, but always hidden beneath a decorative façade).

345. RAND, *supra* note 33, at 182 (noting that, until Hundertwasser, "surface delight had been lacking in modern building since Gaudí's death. Hundertwasser's concrete is tinted in the material so that weathering will not eliminate the colour").

346. As Ryker states,

> There are few precious materials in the work of Mockbee Coker, yet there is a rich materiality, and a modest structural expressionism. . . . Materials tend to be those readily available from any local building material supplier in any part of the country, used mostly in conventional ways, but with an occasional subtle twist or manipulation.

Buege, *supra* note 84, at 29.

347. As Restany points out,

similarity between the two may be attributable to the fact that Friedensreich Hundertwasser, Samuel Mockbee, and Coleman Coker were all artists as well as architects.[348] According to Hundertwasser, lack of beauty is affirmatively dangerous to humankind.[349] He even went so far as to celebrate the gratuity of beauty, an approach that is far from the American norm.[350] This aesthetic is not unique to him, but whether it is Viennese, European, socialist, or of some other pedigree in origin remains unclear. It is clear, however, that Hundertwasser is not the only Austrian architect to understand the complex relationship between beauty and function, particularly in the Viennese consciousness.[351] Along

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> [Hunderwasser's] simple truth rests on a universal postulate: that nature is an end unto itself. It has no other cause but itself, nothing exists outside itself. The perfect autarchy of its structure engenders universal harmony, beauty. Art is the path that leads to beauty. The great artist is the true man: he possesses the gift of showing us beauty in the most sublime aspects of its intensity.

RESTANY, *supra* note 114, at 17.

348. Buege, *supra* note 84, at 28 ("Samuel Mockbee . . . is a painter, and is as playful and wild, and as engaging and provocative, in a sly and measured way, as his paintings. . . . Coleman Coker is a sculptor, and a painter, too."). Bruneleschi is another well-known artist and architect. VICKERS, *supra* note 11, at 80.

349. In describing much contemporary art, he stated as follows: "It expresses its ugliness through constant visual aggression. Optical pollution by ugliness is the most dangerous because it kills the soul." RESTANY, *supra* note 114, at 83–84.

350. "The law of nature is the law of art: that of the aleatory play of spontaneous creativity. The most spectacular details of beauty in nature are to be seen in their utter gratuity. What is the use of the superb designs on butterflies' wings or a peacock's feathers?" *Id.* at 58. He closes, however, with the following testament to the functional importance of form:

> Beauty is always functional . . . . It is the basis of all the technological developments of ecology. And its proof is that I am convinced that the butterfly wings extensively spread to the sun are energy collectors that act in the manner of the photovoltaic panels used for solar heating, and more effectively still, thanks to the beauty of the design with which they are adorned and which contrasts with the geometric rigour of industrial collector panels.

Id.

351. The unidentified author of the introduction to the turn-of-the-century treatise *Modern Architektur* noted as follows:

> "A functional building does not necessarily appear to be so, nor is a building that looks functional necessarily actually functional." Furthermore, the author claimed (with regard to Vienna's prewar housing), neither the fact nor the appearance of usefulness or functionality have anything directly to do with an absence of applied ornament. "Prewar worker tenements were objectionable, but not primarily because they were decorated with all kinds of columns and pilasters that supported nothing . . . but because their plans . . . did not fulfill the material purposes of dwelling."

BLAU, *supra* note 9, at 345–46 (second alteration in original). The same, unidentified author went on to laud the *Gemeindebauten*, in which, the author stated,

> [F]unctional expression . . . is "brought into harmony with the existing need for embellishment [*Schmuckbedürfnis*] of the Viennese," whose home "is one of the most magnificent German cities" . . . [and concludes that] "the Viennese will be pleased that dullness has not been perpetuated in their city."

Id.

the same lines, a Romanian author has described what she calls the necessary mixture of functionality and beauty as facilitating "dignity through decoration."[352] What is equally apparent, however, is that this aesthetic is not well established in mainstream contemporary American tradition and beliefs. Rather, in the United States, beauty for the sake of beauty is considered a luxury to be enjoyed by the privileged few. This phenomenon may be at least partly a result of this country's original Puritan suspicion of aesthetics,[353] as evinced by a statement attributed to John Adams: "[I]n the worship of beauty there may be sin."[354]

Recent writings document the contemporary American ambivalence toward the provision of affordable housing, which dates back to Puritan times. The well documented NIMBY (*N*ot *i*n *M*y *B*ack*y*ard) phenomenon is a common example.[355] Along the same lines is debate regarding whether new housing is appropriate for low-income persons.[356] Indeed,

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352. STOICA, *supra* note 164, at 81 (noting that "[t]he concern to achieve dignity through decoration, found in making most of the [Romanian working-class] furniture, is related to the place and use of the pieces, to the room where they will be used").

353. WISEMAN, *supra* note 87, at 15 (noting the "deepset [American] suspicion of aesthetic display, a sentiment based on the Puritan religious traditions that had drawn many colonists to America in the first place").

354. *Id.* In a letter to his wife Abigail, Adams stated, "I cannot help suspecting that the more elegance, the less virtue, in all times and countries." *Id.* Along the same lines are the words of Louis Sullivan, famous architect and tastemaker for a generation: "[F]orm ever follows function, and this is the law." *Id.* at 61.

355. MACDONALD, *supra* note 48, at 113–26. The entire chapter, entitled "Battle for a Fair Process," describes a case study in San Francisco, in which the NIMBY phenomenon is chronicled, along with the architect's response. The effort produced mixed results: Negative community response created delay and ultimately resulted in the project's alteration, but not its abandonment. *Id.*

356. GALLION & EISNER, *supra* note 12, at 210. The authors state as follows:

> It is frequently assumed that *new* housing is not expected to reach all the people; that low-income families should logically accept second-hand dwellings which they can afford. This point of view reflects a policy that the benefits of our society should naturally "filter down" to each successive income level. Opposed to this policy is the theory that our economy thrives to the extent that all economic levels are directly served with new products. The public-housing program grows out of the latter policy; it derives from the theory that low-income families should be "siphoned out" of substandard housing by the positive process of providing standard housing within their means.

Id.; HINES, *supra* note 91, at 246.

> It was appropriate that one of Gill's last important commissions dealt with an architectural problem that had always concerned him: low-cost housing for people of modest means, or, as [Gill scholar] Esther McCoy put it, "for that vast segment of the population who had to be content with hand-me-downs."

Id.

the author of *The Architecture of Affordable Housing* acknowledges that the very title of his book may be deemed an oxymoron.[357] Other criticism is more subtle, accepting the need for affordable housing but urging that it not be "too nice" for the low-income persons who are to live there.[358]

There are some notable exceptions to this American trend toward severity.[359] In addition to the work of Mockbee Coker, the best-known examples are perhaps found in the work of Frederick Law Olmsted and, somewhat later, in the City Beautiful Movement.[360] Other American architects, such as Robert Venturi, have also emphasized the role of beauty.[361] Venturi went so far as to describe modern architecture's

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357. DAVIS, *supra* note 47, at vii.

> When I would tell people I was writing a book on affordable housing, I usually deflected their disbelieving glances by joking that it was to be one of the shortest books ever written, or that my first chapter would be one sentence long: "Move out of California." If pressed, I would further confound people by adding that the book focused on the architecture of affordable housing. Certainly this is an oxymoron of classic proportions!

Id.

358. *Id.* at 3.

> The . . . misconception is that affordable housing should not exceed a minimum standard. It should be basic, safe, and clean—but no more. That it should meet the cultural and psychological needs of its residents or have the quality and amenities of market-rate housing is often seen as a misguided use of money, particularly if the housing is subsidized.

Id. at 3, 63 ("The attitude that subsidized housing should not look or be too good or should not cost too much is persistent.").

359. The spirit of Louis Sullivan himself may even be an exception to this rule as it is now understood. He included uplift and ornament within his definition of "function." WISEMAN, *supra* note 87, at 67–68 ("Unlike some of his later critics, Sullivan did not see a conflict between his search for structural truth and his devotion to ornament. On the contrary, he saw them as inextricable, and said so many times."). This seems to be a European conception of function. Also note Mies van der Rohe's famous credo, "Less is more." *Id.* at 150. Contrast the statements of Louis Kahn, who asserted that art and industry should not overlap. *Id.* at 142–43. (Although Kahn himself was an artist, he stated, "Architecture is 90 percent business and 10 percent art." *Id.* Again, however, note that "elemental forms modulated by exquisite details" characterized his work. *Id.* at 189 (noting that "[h]e had a unique sense of materials and of the ways in which they can be joined together"). Also note the "Ornament is Crime" manifesto of Adolph Loos. *Id.* at 130 (describing Loos as "the proto-Modernist Austrian whose name has become most closely associated with a single essay he wrote in 1908" bearing that name). Like Sullivan and Kahn, however, the work of Loos in some ways belies his credo: It is not sterile, but elegant.

360. WILLIAM H. WILSON, THE CITY BEAUTIFUL MOVEMENT: CREATING THE NORTH AMERICAN LANDSCAPE 5 (Gregory Conniff et al. eds., 1994) (noting that the "thought and example" of Olmstead "underlay much of the City Beautiful").

361. VENTURI ET AL., *supra* note 68, at 164–65. The author states as follows:

> The courts have ruled that beauty is an urban amenity to be sought through the police powers, review boards, and other regulatory measures; but they have omitted to set the standards by which beauty may be defined or the processes through which it may be equitably judged to be present. . . .
>
> . . . .

rejection of ornamentation as hypocritical.[362]

Although the City Beautiful Movement is largely deemed to have been a failure, having been displaced by the City Practical Movement,[363] it did leave behind some significant resources and heritage: The City Beautiful movement marked one time in American architectural history that beauty and utility were inextricably tied together.[364] In addition, Central Park and other creations of Frederick Law Olmsted, who slightly predated, and inspired in many ways, the City Beautiful Movement,[365] achieved some measure of success in bringing people from all classes together.[366] Furthermore, like Hundertwasser, Olmstead believed that

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> . . . Any artist could have told the lawmakers that you cannot legislate beauty and that attempts to do so by the use of experts will result not only in gross injustice but in an ugly deadness in the environment.
>
> Beauty escapes in the pursuit of safety, which promotes a simplistic sameness over a varied vitality. It withers under the edicts of today's aging architectural revolutionaries who man the review boards and who have achieved aesthetic certainty.

Id.

362. *Id.* at 103 ("Ironically, the Modern architecture of today, while rejecting explicit symbolism and frivolous appliqué ornament, has distorted the whole building into one big ornament."); *id.* at 163 (standing for the same proposition).

363. WILSON, *supra* note 360, at 9 ("When Americans abandoned the City Beautiful, they embraced the city practical . . . ."); *see also* GALLION & EISNER, *supra* note 12, at 84 (articulating some of the reasons for the abandonment of the City Beautiful Movement). The authors state as follows:

> [T]he "City Beautiful" was not frowned upon, it was simply too expensive. Awed by the monumental dreams, impressed by the vision, it was not with disrespect that the proposals were sidetracked. These great designs had simply lost all connection with the commercial city that was growing up in the twentieth century. It was a thing apart, detached, unrelated to the affairs of men. It solved no problems, and there was a subconscious recoiling from the classic mold into which it would cast the physical environment.

Id.

364. WILSON, *supra* note 360, at 17 ("What all this [work by Olmsted] meant in practical terms, if not in aesthetic theory, was a close identification between beauty and utility . . . .").

> Partisans of the City Beautiful went beyond Olmsted to argue for a generalized civic beauty, but they accepted his belief that beauty created a positive environment capable of influencing human thought and behavior.
>
> [In addition], Olmsted advanced many of the arguments associated with the City Beautiful conviction of the inseparability of beauty and utility. [Daniel] Burnham encapsulated the conviction for the twentieth century when he declared that "beauty has always paid better than any other commodity and always will."

Id. at 29.

365. *See supra* note 360.

366. Some of the language Olmsted uses in describing the park is reminiscent of

the additional expense his plans required was "paid" for by the civic benefit they provided.[367] Although he also showed that his work made fiscal sense, he made it clear that he believed its societal benefit was of greater importance than its monetary soundness.[368]

The City Beautiful Movement was far from a perfect model of Promise Enforcement, however, even during the short time that it existed. The movement was not socially inclusive, and thus did not demonstrate a valuing of individuality; rather, it was the brainchild of men from the middle and upper-middle classes.[369] Perhaps for this reason, the movement's focuses were purely aesthetic ones and did not embrace broader issues of societal reform such as greater equality.[370]

Hundertwasser's description of the gold domes at Hundertwasser-Haus as a way to elevate common man to nobility. WILSON, *supra* note 360, at 14.

> In the campaign for Central Park [Olmsted] again emphasized the role of the park in encouraging democracy and promoting class reconciliation. "It is republican in its very idea and tendency . . . and raises up the man of the working men to the same level of enjoyment with the man of leisure and accomplishment."

Id. (alterations in original).

367. *Id.* at 30.

> Olmsted claimed that parks paid by attracting visitors and permanent residents who considered urban cultural conditions when making their travel and living arrangements. Parks paid, then, by retaining and restoring the city's resident population while they helped the city win the competition for tourists and for new residents of quality.
>
> Landscape beauty paid enterprising cities directly, by raising property values and swelling tax revenues.

Id. (footnote omitted).

368. *See id.*; *see also id.* at 31 ("Though Olmsted argued for the tangible monetary returns from beauty, social utility was a higher priority with him.").

369. *Id.* at 1 ("The heyday of the City Beautiful movement, from about 1900 to 1910, saw middle- and upper-middle-class Americans attempt to refashion their cities into beautiful, functional entities.").

> City Beautiful advocates were mostly male and members of the urban middle class or upper middle class. They were often the owners or managers of businesses large by community standards, for example, newspaper editors, managers of manufacturing plants, or owners of sizeable retail establishments. There was some representation from smaller businesses and, rarely, skilled labor. Other prominent City Beautiful supporters included professional people: attorneys, bankers, physicians, and real estate specialists and investors.

Id. at 75.

370. *Id.* at 78.

> [T]he City Beautiful solution to urban problems—transforming the city into a beautiful, rationalized entity—was to occur within the existing social, political, and economic arrangements. City Beautiful advocates were committed to a liberal-capitalist, commercial-industrial society and to the concept of private property. They recognized society's abuses, but they posited a smooth transition to a better urban world. City Beautiful proponents were, therefore, reformist and meliorative, not radical or revolutionary.

Id.

> [Albert] Burnham and other City Beautiful planners were little concerned with housing, it is true. Whether their approach is open to criticism is another

The most serious criticism, however, that has been levied against the City Beautiful Movement—that it was a nefarious form of social planning—seems to be without significant support. Although the movement was based on a belief in the redemptive power of architecture, the lofty social ideals of the City Beautiful Movement normally express themselves in relatively modest ways that seem to belie the more dangerous agenda that some have suggested.[371] There are, however, some reasons for believing that leaders of the City Beautiful movement may have had Vienna in mind as a model.[372]

Because of its failure to achieve inclusiveness, the City Beautiful Movement is not a prototype for effective planning in the twentieth century. However, there is value in its assertions that, to be functional, the building must also be beautiful. This viewpoint seems the closest that can be found in American architectural history to the ideals, expressed through Hundertwasser-Haus, that beauty is a part of human dignity. Instead, most American architectural history seems consistent with the proposition that beauty is merely a privilege of the wealthy.[373]

> matter, to be considered later. For now it may be said that housing details were outside the purview of the comprehensive planning of the era. The planner's task, instead, was to provide the spatial opportunity for good housing at all income levels. Ensuring adequate housing for poor people was a matter for private initiative and for thoroughgoing housing code inspection and enforcement.

Id. at 283–84.

371. *Id.* at 4 ("The City Beautiful movement was too hopeful, too uplifting to be very cynical or manipulative.").

> [T]he City Beautiful's exercise in social control was . . . normative and behavioral. It was not coercive, the mechanism of the concentration camp, or utilitarian, the accommodation between the car corporation and the wage worker on the assembly line. . . . The problem with imputing overreaching or potentially fascistic statements to the City Beautiful reformers is that their system was severely self-limiting. Their rhetoric might soar, . . . and they might occasionally overlook the individuals composing a community, but their claims for control rested upon the presumed effects of the urban environment. . . .
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> . . . If its language was fervent, its actions often were prosaic: a cleanup campaign, a struggle for councilmanic hearts and minds concerning a local billboard ordinance, a suit over land condemnation for a park or civic center.

Id. at 81.

372. *Id.* at 85 ("German cities, [political scientist Albert] Shaw found, were masterpieces of administration. He praised the Viennese government [in 1895] for forging a beautiful and practical city.").

373. Another reason not to propose the City Beautiful Movement as a prototype for twenty-first century planning is that the City Beautiful Movement was staunchly neoclassical. Although the neoclassical architecture does invoke the democracy of

The scale of City Beautiful, coupled with the focus on low-income housing that Mockbee Coker demonstrated and Venturi's particular interest in appropriate respect for ordinary architecture, together represent some movement in America toward making beauty a part of culture and everyday life, even for low-income people. Finding precedent for these ideals is particularly important because this part of Hundertwasser's vision cannot be dismissed as tangential; indeed, it could be described as Hundertwasser's central motivating force.

There is, however, reason for hope in the future of Promise Enforcement in the United States in the form of the American love of functionality. Public subsidy of beauty in the United States has been most effective when it shows results, reaping benefits in the form of increased civic pride and community realization of some amenity. Several American architects, like Hundertwasser, have indicated their belief that *beauty matters*; in other words, that *form is functional.*[374] Indeed, Hundertwasser took care to ensure that the elaborate ornamentation of his buildings was not merely decorative, but also served some purpose—whether structural or symbolic. For many of the American architects whose work and philosophies are cited in this Article, it is not form itself that is objectionable, but rather form that obstructs function, rather than enhancing it.[375] If these thinkers are correct in their belief in the transforming power of aesthetics, then there is reason to be optimistic about the future of Promise Enforcement in this country.

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ancient Greece, it is important to remember that the democracy of ancient Greece was not an inclusive one. Rather, women and others were excluded. To be appropriate for the twenty-first century, planning need not only be inclusive, but also, necessarily, as a result of that, physically represent the people more comprehensively. The neoclassical style seems unlikely to do this.

374. Hundertwasser was particularly fond of stylistic features that also served a physical purpose, like the grass houses on the plains of Ethiopia and Egypt, in which a "pottery jar . . . over the top of the center pole [was used] as a decoration and to help shed water from the center of the roof." SHELTER, *supra* note 35, at 8.

375. *See* HINES, *supra* note 91, at 74 ("Why should we chatter idly and meaninglessly with foolish ornaments and useless lines? Any deviation from simplicity results in a loss of dignity."); *id.* at 77 ("Gill 'abhorred anything which did not have a real function, usually a structural function.'"); VICKERS, *supra* note 11, at 108 (describing the rise of the Neoclassical movement, "reject[ing] the excesses of the Baroque/Rococo period [and] arguing that all forms having no structural or functional purpose should be abandoned"). Note, for example, the introduction to *Twentieth-Century American Architecture*, in which the author describes the goal of architecture as creating that which is "buildable, useful, and beautiful." WISEMAN, *supra* note 87, at 9 ("Buildability and use are relatively easy to judge. Beauty is harder, largely because the criteria by which it is measured change over time. Today's success may be the object of tomorrow's ridicule."). The author goes on to downplay somewhat that which is mere "theory and fantasy." *Id.* at 9 ("Not that theory and fantasy don't have their places; but in the end, architecture . . . stands or falls by standing or falling, on aesthetic as well as functional terms.").