The Life and Death of Great Cities in the Time of Climate Change and the Covid-19 Pandemic

James Kushner
Southwestern Law School, jkushner@swlaw.edu
THE LIFE AND DEATH OF GREAT CITIES
IN THE TIME OF CLIMATE CHANGE AND THE COVID-19
PANDEMIC

James A. Kushner*

TABLE OF CONTENTS

Prologue

I. History and Culture
   A. Security
   B. The Effects of War
   C. Internal Revolt
   D. The Automobile
   E. Tourism and its Effects
   F. Regulatory Traditions

II. Current Dilemmas
   A. Public Transport
      1. Combatting the Effects of Automobile Use
      2. Life on the Street
      3. Parking
      4. Transportation Network Companies
      5. Land Ethics Towards Open Land
      6. Corporations and the Destruction of Public Transportation
      7. The Role of Transit on Both Sides of the Atlantic Ocean

8. Alternate Modes of Transport

B. Sustainability and Climate Change

C. Urban Sprawl and Growth Boundaries
   1. Regionalism
   2. Corporate Planning and Development and Suburbia
   3. A European Model
   4. U.S. Cities Should Experiment with Successful Policies Undertaken in Europe
   5. The Lessons of Portland

D. Housing
   1. Immigration and Gentrification
   2. Housing Policy
   3. Affordable Housing Strategies and Sustainability
   4. International Finance
   5. Redevelopment
   6. Jobs-Housing Balance
   7. Commercial Gentrification

Epilogue: Ships Passing in the Night
PROLOGUE

Whenever and wherever societies have flourished and prospered rather than stagnated and decayed, creative and workable cities have been at the core of the phenomenon. Decaying cities, declining economies, and mounting social troubles travel together. The combination is not coincidental.¹

Jane Jacobs

I have not invoked the work of the great activist and journalist Jane Jacobs for her mostly wonderful views and ideas about urban planning but for her enthusiastic hope for urban revitalization. In her seminal work, The Death and Life of Great American Cities,² Jane put forward her hopes for urban rejuvenation. One might wonder how her hopes are threatened by the looming catastrophe of climate change. This article will compare the cities of Europe with those of the United States with respect to urban planning and climate change challenges and will discuss why the cities in Europe are so different from U.S. cities.

Climate change is threatening almost all of the world's great cities. Despite the risk and likelihood of catastrophic results, neither the United States nor the European communities are adapting to the forecasted impacts or mitigating those impacts by reducing world greenhouse gas generation. As a result of sea rise and storm surge generated by climate change, many of the great cities of the world will be partially, significantly, or totally destroyed from anticipated flooding between 2030 and 2040.³ "On our current trajectory, we face the loss of all coastal cities,

most of the worlds large cities and all their history--and not in thousands of years from now but this century."⁴ Already, Myanmar and Indonesia have achieved and planned, respectively, similar plans to relocate their capital cities due to climate change.⁵ Typhoon Higibus left Nagano and other communities in the mountainous region under water after making landfall at Tokyo and continuing North to Central Honshu.⁶ Japanese scientists warn of coming earthquakes, tsunamis, and volcanoes.⁷ The Federal Reserve Bank of San Francisco, after assembling and consulting with 38 academics and practitioners, has warned that mortgages and flood insurance are likely to be eliminated and home prices are expected to fall.⁸ The death of those great cities as they are relocated or rebuilt should allow the implementation of best planning practices in designing settlements for the next century, in the absence of an international mitigation policy.

The savings to businesses and to consumer energy bills from slowing global warming and saving most of the world's great cities from sea rise through policies of mitigation would be substantial. An improved environment and cleaner air, significantly lower energy costs, and the gigantic anticipated growth of energy job, would likely offset mitigation costs. With the coming spectre of tens of millions of climate and Pandemic refugees, rising food scarcity, city relocation and evacuation, mitigation would be significantly less expensive and disruptive compared to the economic and cultural cost of mitigation failure and the reality of adaptation.⁹

by the dominant climate models, which don't fully account for the fast breakup of ice sheets and glaciers; while the Intergovernmental Panel on Climate Change, an international organization created by the United Nations that produces climate change models, has predicted that sea levels could rise as much as 21 feet (6.4 meters) by 2100, but NASA predicts a faster rate of glacier loss and thus sea rise; if all the land ice on the planet were to melt, it would raise sea levels about 197 feet (60 m) within that time frame).

⁴ Naomi Klein, *On Fire* 154 (2019) (citing James Hansen and identifying him as perhaps the most respected climate scientist in the world).


⁷ Id.


until 2030 to make changes to mitigate the harshest consequences of climate change or we will mostly have to rely on adaptation to the dire climate changes predicted commencing with masses of refugees and urban evacuations.\(^\text{10}\)

Undertaking any physical comparison of European and American cities and a determination of the best curative fix for the disparate cities demands an understanding of and reflection on the history of settlement and the culture generated in significant part by the built environment.

I. HISTORY AND CULTURE

History and culture play a large role in the design and architecture of cities. Europe has generally protected the historic city centers with their market squares and cathedrals while governments in the United States have not generally protected older structures from demolition. In part, the ethic of capitalism and the idea of the right to control and exploit one's property often contributes to the loss of community soul. The United States does not have broad piazzas and Fourteenth Century architecture, but it can and should preserve the historic buildings that exist and create public space and community around them. This expansion of public space can be accomplished with the goal of historic preservation while fostering community improvement. Culturally, economically and politically, the need for security centralized populations in European cities. American development outside of its city centers reflects the need for safe and quiet space and affordable housing with less noise and pollution than the city. The cities were portrayed and perceived as increasingly unsafe and polluted. This fueled American suburban sprawl. We first will look at the cities of the United States and of Europe and explore why they are so different. An exploration of the differences will reveal the mitigation that must be undertaken in order to save as many of these culturally and historically different cities as remains possible.

---

A. Security

The phenomenon of walled cities and gated communities is a dramatic manifestation of a new fortress mentality growing in America. . . . Americans of all classes are forting up. . . . the walls of the mind must open up to accept and cherish a more diverse nation than the walls that separate our communities.\(^{11}\)

Edward J. Blakely & Mary Gail Snyder

Cities reflect both the history of the community, as reflected in architecture and street layout, and historic security concerns. The customs and culture of the community may also impact the architecture and the city's historic aesthetic taste. Most of Europe's great cities were located at harbors or essential trade routes. The oldest surviving cities were often designed to adapt to external threats. Although our knowledge of early communities is limited at best, archeological studies suggest that cities were at one time small communities or villages, often at transportation hubs, harbors, or crossroads or along trails and roads between developments. Many towns in Europe reflect the outposts of the Roman conquest. Barcelona is one of many cities built by the Romans - no doubt developed on the site of prior settlements.\(^{12}\) Yet the tradition of city walls and ramparts for defense was replicated from Scotland to Spain, from the Netherlands to Italy and to the East. Both in the United States and Europe, early settlements often faced the possibility of attack - by indigenous peoples in the U.S. - and in Europe by various tribes, invading hordes, or competing principalities, fiefdoms, or states. Ironically, it was the Europeans who initially attacked and conquered the Indigenous peoples of the Americas.\(^{13}\)

Europe's cities defended their communities by walling towns, and in the Gothic period, this was accompanied by narrow street patterns and higher density living. The citadel of Barcelona was built between 1715 and 1720.\(^{14}\) Although an

---

\(^{11}\) Edward J. Blakely & Mary Gail Snyder, *Fortress America: Gated Communities in the United States* 1-2, 177 (1977)


unintended positive consequence of walls, the walls were also the perfect impediment to urban sprawl.

In the United States, rather than walls, the government often built military forts separate from the town, allowing the pioneering settlers to live in a pattern of ranches or farms, and open spaces. Towns did not build walls as nearby forts and a well-armed populous made town walls superfluous. This pattern was to be replicated in the execution of development in the form of urban sprawl. While the land ethic in Europe is based on limited land, food production and high density urban living, the American land ethic continues to reflect the perception of unlimited land and the desire to have a personal piece of the pastoral rural landscape. It is important to take note of the emphasis on security in the development of gated and locked communities as the predominant American architectural element of the past generation, and a more recent emphasis on fortressing the Nation against climate refugees. It is interesting that Europeans are pursuing a less secure suburban lifestyle as the U.S. appears consumed with security concerns. Like the experience of the United States, some move to the suburbs to attain the privacy of detached housing and greater open space, yet at the same time may be taking steps to protect their families from fears of a more dangerous city, or one that may be more diverse.

B. The Effects of War

In uniquely different ways, the cities of Europe and the United States reflect the impacts of war, particularly, World War II. Since the War of 1812, the U.S. has not experienced an invasion from beyond its borders other than modern terrorism, and as such its architecture reflects a peace and pastoral society at least in the popular idyllic, suburban image. By comparison, Europe has seen persistent modern wars, including the Franco-Prussian Wars as well as World War I and World War II. The impact of those wars, particularly World War II, with catastrophic massive bombings, first by the German military in the Battle of Britain

---


and in attempting to control the continental skies and subsequently by the Allied forces as they bombed Germany, occupied battlefields, and other strategic targets.

The twentieth century was the century of destruction. With two world wars in Europe, architectural expression that still existed at the start of that century had, in the intervening hundred years, been purposely, thoughtlessly, and sometimes with malice, removed from the earth forever. Both the overrun countries, and the former axis powers were bereft of the capital to take advantage of revolutionary land use patterns based on the personal automobile, as was the case in the United States. The future affluence of Europe was insufficient to generate a post-World War II mass market for private automobile ownership and suburban detached homes. The economic conditions in Europe required cities to maintain and upgrade public transit and house the displaced in high density apartments designed around existing subway and tram lines. This reinforced high density living served by efficient public transit, avoided the demand for the urban sprawl that swept the U.S. following World War II.

The United States experienced mass market demand for additional housing from returning soldiers and young families that had been unable to obtain housing during the Great Depression and World War II. Applying wartime Fordian assembly line production techniques, the nation commenced an unprecedented increase in housing. Fordism is the basis of modern economic and social systems in industrialized, standardized mass production and mass consumption. Central to the housing settlements was the efficiency of large tract subdivision development on inexpensive land on the urban fringe. The United States embarked on this experimental land use form throughout the country. Congress established programs to subsidize returning veterans in purchasing housing and programs to

---


19 Id. (during the war few new units of housing, other than barracks for the military and migrating factory workers, but in 326,000 housing units were built in 1945 -- and then a million or more annually to a peak of 2 million in 1950, when the crisis started to ease, while during that period, the U. S. jobless rate averaged 4%, which was considered nearly full employment), On the Fordist economy, see generally James P. Womack, Daniel T. Jones & Daniel Roos, *The Machine that Changed the World* (1990).

render homeownership accessible and affordable to non-veteran workers.\textsuperscript{21} Only Blacks were excluded from these programs that mandated racial segregation and allowed the financing and development of one or more all-Black subdivisions in each urban region.\textsuperscript{22} This is why to this day most cities have a long-time Black community in the suburbs.\textsuperscript{23} This process of segregation produced growing racial separation not just in housing, but also in schools.\textsuperscript{24} The suburban sprawl that was generated largely eliminated the possibility of public transport due to development at a density too low to support public transit. Instead, inconvenient occasionally-operating buses generated a rush to develop an automobile-based land-use lifestyle. The land-use pattern prompted workers to buy automobiles with their first paycheck. Yet, Americans could enjoy their piece of the outdoors with a partially wooded football-field sized yard, some a bit more modest, but many even more generous. Farms became sites for future low-density suburban subdivisions. The small farm was endangered by suburban sprawl, as agricultural roads filled with automobiles. Nuisance litigation brought by encroaching urban development, and generous offers from land developers and corporate farms resulted in the conversion of agricultural lands into residential subdivisions. Increased automobile usage generated traffic congestion and an escalating need for carbon burning.\textsuperscript{25} Nuisance litigation was brought by encroaching development to no avail, as most states adopted "right to farm" laws to exempt agriculture from such lawsuits as a pyrrhic effort to save family farms and protect agricultural land.\textsuperscript{26}


\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Id.}

\textsuperscript{25} See also David Biello, Electric Cars Are Not Necessarily Clean: Your Battery-Powered Vehicle is Only as Green as Your Electricity Supplier, Scientific American, May 11, 2016, available at https://www.scientificamerican.com/article/electric-cars-are-not-necessarily-clean/ (last visited Sept. 18, 2019) (reporting that cars and trucks are responsible for roughly 24\% of U.S. greenhouse gas pollution—nearly 1.7 billion metric tons per year and that while hybrids generate pollution, even all-electric vehicles -- in California, which has one of the highest proportions of clean electricity in the country, in Texas and Florida, the electric vehicle would produce only 100 grams per mile, half that of the hybrid. In the Midwest and South, where coal fuels the bulk of electricity generation, a hybrid produces less CO\textsubscript{2} than an electric car; and in fossil fuel–dependent Minnesota an electric car would actually emit 300 grams per mile of greenhouse gases).

C. Internal Revolt

Following revolutions in the United States and France in the Eighteenth Century, Europe braced for proletariat revolt, and defense shifted from concerns of invading armies to concerns of internal threats such as local revolt. Protesters attacked Barcelona's Citadel in 1843. Paris, with Haussman's plan, had to destroy old Paris to develop the new boulevards, while in Barcelona under Cerda's Plan, the city had only to build the grid layout of squares that enclose the old city as a variation on the French model. Haussman's plan included paving 400 miles of streets, developing 260 miles of sewers and 71 miles of new wide boulevards. The Haussman plan also included expanding Paris's 47 acres of parks to 4,000 acres. The result was broad boulevards to move armies, weapons, and supplies to quell local uprisings. With new roads came high density housing around boulevards and local streets, the perfect land use pattern to support the convenient Metro.
Rome, by contrast developed boulevards to accommodate pilgrims, but had not established a citadel because it believed it was safe as the empire extended boundaries in all directions. Nevertheless, Rome was developed based on dense urban settlements.

Despite Europe continuing to be a battleground, European cities underwent a policy of de-wallification, as modern weapons, including the large cannon of the Nineteenth Century, rendered city walls superfluous for defense. The removal of battlements and city walls throughout Europe in the latter part of the Nineteenth Century resulted in the creation of parks and recreation infrastructure. Barcelona demolished the walls of the citadel between 1854 and 1865, to make way for broad avenues, promenades, parks, and botanical gardens.

**D. The Automobile**

Although the Haussman plan in Paris generated a beautiful and accessible city, automobile use rose from 500,000 in 1940, to 4.5 million automobiles by 1990 and by 2019, the population of Paris reached 2.5 million. By 2000, the population of Amsterdam was at 1.8 million, Vienna contained 1.6 million, and Rome housed 3 million. The population of Rome in 2019 is 4.5 million. Despite its excellent Metro system, Paris has been transformed to accommodate an automobile lifestyle. Paris was the most transformed capital in Europe with an historic core ten times the size of the Amsterdam historic core and its canals and four times as large as Rome within its

---

32 Id. at 32-43 (2011).
Mitigation of the planet’s harshest of climate impacts requires eliminating personal automobiles in urbanized areas is paramount along with eliminating other uses of fossil fuels.

**E. Tourism and its Effects**

In the Nineteenth Century, a first wave of mass tourism in Europe generated an improved infrastructure for travel and accommodations, largely for the wealthy. In the latter part of the nineteenth century, the European Grand Tour became a mandatory rite for the wealthy. Following and advancing ahead of tourists was improved travel infrastructure. The tourist economy generated jobs, tax revenues, and further planning to expand the tourism economy.  

In Venice, tourism generates 7 million annual visitors and brings economic benefits but with it significant physical deterioration from an excessive number of power boats and the sinking of its iconic islands facing rising tides.

A second mass tourism wave commenced in Europe in the late 1950s. For many towns and cities, tourism provided the economy to comfortably accommodate visitors. Tourism drove urban attractiveness, and those towns that failed to preserve or rebuild their historic city cores following World War II have not significantly participated in the modern tourist economy.

**F. Regulatory Traditions**

To fully appreciate cultural distinctions between the cities of Europe and the United States, it is important to understand their unique regulatory traditions as well as the prevailing ethic of land in the community. Today we hear talk about socialism in the United States. The Republicans and moderate Democrats define socialism as the Communist experience in Russia, Cuba, or China. Nevertheless, conservatives consider any spending on social needs of the nation as this sort of socialism, perhaps reflecting a belief that people are poor because of their own lack of work ethic or other fault.

---

41 Id. at 309 (2001).

42 Robert Hughes, *Rome* 310-29 (2011) (London to Rome when all travel was for the rich).


Europeans and more progressive Democrats use socialism to describe programs designed to improve the human condition, typically health care, housing, transport, education, employment training, the conditions of employment including wages, child care, and other needs of special populations such as the elderly or the disabled. On the other hand, even conservative political parties in Europe support an environmental regime that would preserve the land, resources, and quality of life. In European communities, the electorate generally share a deep commitment to the environment and sustainability, and thus it is easier for elected officials to design initiatives to serve those values. In the United States, many politicians have long advocated smaller budgets, fewer and lower taxes, and have eschewed environmental regulation as inconsistent with growing the economy. The Republican Party in the U.S. is the only known political party worldwide that denies climate change or human responsibility for such climate change. Urban design focused on lower density suburban sprawl has generated a public dependent upon the automobile, seeking lower fuel prices, more free parking, and less public transport. Suburban densities are typically so low that it is not likely that residents can walk to the store, a friend’s house, or even school without a ride; subdivisions are not built on the grid pattern associated with towns and cities that would have encouraged walking. Public transit is economically unsustainable due to inadequate ridership. By comparison, Europeans are eager to elect candidates with a strong environmental ethic who in turn, support more sustainable policies and projects, such as public transport improvement.

Conservatives in the U.S. oppose environmental protection to control climate change by denying any negative environmental consequences particularly where environmental regulation may threaten jobs and the well-being of voters in their district or the well-being of their campaign contributors. Despite the debates over social policy in the U.S., the nation is still committed to military hegemony, which requires ignoring, to a significant degree, the problems of the workforce, the disappearing middle class, and the diminishment of the quality of life. Having generated dependency on campaign contributions, corporations hold control of Congress in the making of regulatory and fiscal policy.

---


II. CURRENT DILEMMAS

Beyond monuments and architecture, the cities of Europe and the United States contrast significantly in facing modern challenges in urban planning. This section discusses the interrelated problems of public transport, sustainability and climate change, urban sprawl and growth boundaries, and housing policy.

A. Public Transport

Well there's girls out on the beach
and they're so fine but so out of reach
'Cause I'm stuck in traffic
down on Fifty-third Street.47

Bruce Springsteen

San Francisco is higher density than typical American cities and as a result has a more developed transit system and offers better service than that found in almost all U.S. cities.48 Los Angeles is marked by low density, but with sprawling suburbs and the city, on the regional scale it is actually higher in density than New York City.49 Yet, the L.A. transit system serves relatively few, despite having one of the Nation's largest bus systems50 and an expanding rail program.51 By comparison, Berlin contains its population in a higher density city offering superior public transit to any system in the United States. Berlin's vast metropolis is more walkable and safer than streets in U.S. cities.52 Barcelona, similarly, has a most

47 Bruce Springsteen, Sherry Darling, in Bruce Springsteen, Songs 104 (1998).
49 Dennis Romero, L.A. Weekly, (Oct. 23, 2014) (Los Angeles has 7,000 people per square mile as compared to New York's 5,319).
walkable city center but tends to reflect some signs of sprawl as more affordable housing is usually sited on the periphery, and that pattern is replicated in Madrid.

Europe was able to develop passenger trains, trams, and buses that facilitated inexpensive transport within the city and tended to maintain the city density. Dependency on public transit discourages sprawl development beyond convenient transport. Although sufficient density permitted the development of heavy rail subways and elevated trains only in New York, Philadelphia, and Chicago, the land use patterns were too spread out to allow convenient transport to all districts and neighborhoods. In the early part of the Twentieth Century, more than seventy-five cities developed street cars, either based on trains or cable cars. However, these streetcar systems were typically designed to serve suburban land on the near-outskirts of towns, and were often owned by real estate developers, including the local electric power company, and they were able to inexpensively power the streetcar lines. The streetcars, often like the suburban rail-serving systems in the U.S., were being developed, not so much to remove traffic from streets but to market suburban land on the urban fringe. Ultimately, this filled the bucolic suburbs with traffic congestion so that eventually what was a ten minute drive to the mall exceeded half an hour or more on Saturdays and holidays. By comparison, European transport supported density and restricted sprawl. Nevertheless, America's street car suburbs were limited by the rail service, thus keeping the lower density residential development relatively close to the urban center. Today numerous cities have developed rail systems, but absent adequate density, systems will continue to serve a modest segment of regional population and require a very deep subsidy and a corresponding tax increase. The farebox is not a reasonable mechanism to support transit, especially where there are trains to nowhere in distant suburbs that simply offer a transit alternative for those who by happenstance simply live near a station.

1. Combatting the Effects of Automobile Use

The Climate Crisis presents us with an Inconvenient Truth. It means we are going to have to change the way we live our lives. Whether these changes involve something as minor as using different light-bulbs, or as major as switching from oil and coal to other fuels, they will require effort and cost money. But many of these needed changes will actually save money and make us more efficient and productive. We all must take action so that our democracy creates
laws to protect our planet, because we simply can't afford not to act.\footnote{Al Gore, \textit{An Inconvenient Truth} 179 (2006).}

\textit{Al Gore}

A myriad of tools must be explored by cities to combat the damaging effects of automobile use. Local legislatures should tax vehicles to reflect street damage, air quality degradation, public health costs such as respiratory diseases of those residing near highways, as well as health costs for crash victims. Revenues can generate expansion of public transit. Fees and bridge tolls should also reflect maintenance and operation and other public costs caused by motor vehicles. Rising medical and property costs from accidents, including injured pedestrians, cyclists, drivers, or passengers, can cumulatively generate very large hospital bills. The injury damages that result from the automobile, including traffic that constitutes a quarter of the nation's greenhouse gas generation,\footnote{David Biello, \textit{Electric Cars Are Not Necessarily Clean: Your Battery-Powered Vehicle is Only as Green as Your Electricity Supplier}, Scientific American, May 11, 2016, available at https://www.scientificamerican.com/article/electric-cars-are-not-necessarily-clean/ (last visited Sept. 18, 2019) (reporting that cars and trucks are responsible for roughly 24% of U.S. greenhouse gas pollution—nearly 1.7 billion metric tons per year). See also \textit{EPA, Sources of Greenhouse Gas Emissions}, available at https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (last visited Apr. 28, 2020) (reporting that transportation yields 28% of greenhouse gases).} requires extraordinary public expenditures and prohibits the possibility of mitigating climate change. Additionally, owners of electric automobiles, by avoiding payment of the extremely modest highway tax funded by gasoline sales, fail to pay their share of infrastructure costs.\footnote{Steve Hanley, \textit{How Should Electric Car Drivers Pay For Using Roads?}, Clean Technica, June 24, 2019, available at https://cleantechnica.com/2019/06/24/how-should-electric-car-drivers-pay-for-using-roads/ (last visited Sept. 18, 2019).} Electric vehicles are also anything but green when considering the source of electric power. Electric vehicles produce only 100 grams per mile, half that of the hybrid in California, while in the Midwest and South, where coal fuels the bulk of electricity generation, a hybrid produces less CO$_2$ than an electric car, and in fossil fuel–dependent Minnesota an electric car would actually emit 300 grams per mile of greenhouse gases.\footnote{David Biello, \textit{Electric Cars Are Not Necessarily Clean: Your Battery-Powered Vehicle is Only as Green as Your Electricity Supplier}, Scientific American, May 11, 2016, available at https://www.scientificamerican.com/article/electric-cars-are-not-necessarily-clean/ (last visited Sept. 18, 2019).} There also exists extensive carbon generation from manufacturing and transportation of the vehicle, parts and
batteries. Similarly, trucks generate most street and highway damage and are not taxed in proportion to their impact. In addition, delay costs to commuters due to traffic congestion imposes substantial societal costs.

Like the successful programs in London, Stockholm, and Oslo, legislatures could impose fees on vehicles entering traffic-congested districts, fees upon those who park, and fees upon land used for parking. Ideally, significant fees for parking spaces could be avoided by the conversion of parking capacity to housing development. Congestion pricing policies, in fairness to U.S. drivers, would have to be sensitively implemented as the cities, unlike most European cities, do not have an efficient and convenient transit system to which drivers could easily shift. Fees would be applied as public transit becomes available. Yet government, particularly the federal government, in opting to support suburban sprawl, mandated automobile use, and created today's urban development pattern. If there is to be correction of a failed planning system focused on accommodating


automobiles and suburban sprawl, it will also likely come from alternative
government policy.

2. Life on the Street

There must be eyes upon the street, eyes belonging to those we
might call the natural proprietors of the street... The sidewalk must
have users on it fairly continuously, both to add to the number of
effective eyes on the street and to induce the people in buildings
along the street to watch the sidewalks in sufficient numbers.
Nobody enjoys sitting on a stoop or looking out a window at an
empty street. Almost nobody does such a thing. Large numbers of
people entertain themselves, off and on, by watching street
activity.  

Jane Jacobs

An urban neighborhood is not successful where there is little life on the
street except that contained in vehicles, buses, and trams stalled in traffic. Despite
the availability of arguably convenient public transit, people arriving at the new
development office districts in U.S. cities will likely have traveled by private
automobile. Where housing is placed on transit-accessible sites, a high percentage
of the new residents will use their private automobile for work and other
commuting, rather than convenient transit. Part of the cost of traditional
development comes from the effects of traffic.

In Berlin, during the 1990's and following reunification, the city was one of
the largest development sites in the world (until that honor moved on to China) with
the construction of many thousands of new housing units, the transfer of the state
(Länder) offices, and the move of the federal government from Bonn to Berlin. To
make matters even worse, East Berliners and other former GDR residents,
enamored with automobiles, (their ancestors having been restricted to expensive
heavy-polluting plastic Trebants), are also contributing to congestion. One would
anticipate that the reunification and extensive development producing a city full of

---

63 Tina Kim, SB 743 and Newhall Ranch’s Net Zero Emissions Project: Impacts on the GHG
Emissions Threshold and Implications for Greenfield Development in Los Angeles, 28 S. Cal.
Interdisc. L.J. 275, 285 (2018) (a project's location near transit, by itself, is not enough to assume
that the project will reduce driving and thereby help promote GHG reduction goals, particularly in
a polycentric region such as Los Angeles).
new buildings, offices, housing, entertainment, and the relocated federal
government to the new capital of Germany, would have generated impossible
traffic congestion. Yet, Berlin's traffic did not significantly increase, mostly due to
the safe, reliable, and convenient public transit system. The new buildings are
located throughout the city, but focused on the former "no man's land" between the
Berlin Wall and West Berlin and within Berlin's extraordinarily beautiful
Tiergarten, that city's "Central Park." In American cities, higher density in the
absence of attractive public transit simply generates additional traffic congestion.64
Recent studies demonstrate that higher density does not reduce automobile travel.65
Nevertheless, future development calls for higher density transit-served
communities.66

3. Parking

Parking costs could be tied to the cost of any parking garage or facility and
its operation, maintenance, and management, and they should be imposed on
vehicle owners. Otherwise, the typically pricey residential units contained in the
new high-rise districts as well as transit-based housing have parking subsidized by
the residents of the development, including those who live car-free and utilize
public transit. Transit-accessible housing in U.S. cities does not typically house
transit users, particularly where parking facilities can double rents and prices.67

64 Wendell Cox, Los Angeles Traffic: Likely to Worsen with Higher Densities, New Geography
(Mar. 2, 2017), available at http://www.newgeography.com/content/005552-los-angeles-traffic-
likely-to-worsen-with-higher-densities

65 Fanis Grammenos, Three Studies That Show Density Doesn't Determine Car Travel, Planetizen,
mpaign=news-10072019&mc_cid=f285fb615&m_cid=wSNsxvo0n2 (last visited Oct. 17, 2019)
(reporting on studies from the U.S. and Canada).

66 For further discussion of high-density urban planning alternatives, see generally Peter
Calthorpe, The Next American Metropolis: Ecology, Community and the American Dream
(Princeton Architectural Press 1993); Peter Calthorpe & William Fulton, The Regional City:
Planning for the End of Sprawl (Island Press 2001); Peter Katz, The New Urbanism: Toward an
Architecture of Community (McGraw-Hill 1994); Robert Cervero, Growing Smart by Linking
Transportation and Urban Development, 19 Va. Envtl. L.J. 357, 365 (2000); James A. Kushner,
Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and
Their Impact on the Poor and Minority Ethnic Populations, 21 UCLA J. Envtl. L. & Policy 45, 52
(2002-2003); Edward H. Ziegler, Urban Sprawl, Growth Management and Sustainable
Development in the United States: Thoughts on the Sentimental Quest for a New Middle
codes, design elements could result in “sprawl with front porches”).

67 Tina Kim, SB 743 and Newhall Ranch’s Net Zero Emissions Project: Impacts on the GHG
Emissions Threshold and Implications for Greenfield Development in Los Angeles, 28 S. Cal.

Published by Reading Room, 2020
Such transit-adjacent housing is typically too expensive for the typical American transit riders and typically houses occupants with private automobiles.

Tenants residing in transit-served developments could be offered a 25% to 50% rent break if they do not own a vehicle, reflecting the cost of any parking garage or facilities. In addition, as is done in some German car-free developments, a free local transit pass can be purchased and held for residents.

Many will arrive at the new districts using local and regional transit, where available, placing a significant load on an already over-loaded system. Over-development and the failure to expand transit results in crowded buses, trams, and subways and waiting lines for escalators and turnstiles. The occasional conditions of overcrowded cars, train delay, service disruption, or reporting of serious crime on transit further encourages private automobile use.

4. Transportation Network Companies

Many arriving at the new development offices will arrive by Uber or Lyft, or other transportation network companies (TNCs). These systems present the least environmentally-friendly transit alternative. Uber-type automobiles drive to pick up, drive to the destination, and perhaps back to a waiting area or the next call. The same three or four and possibly eight-way trips are served by a personal car in two trips: to the destination and the return. TNCs are extremely popular, particularly to the young. They are generally convenient and provide modest relief for gig workers struggling to survive in a technical world with few opportunities. In many cities, Uber and Lyft drivers converge on downtown areas from throughout the regional area—generating a significant portion of central city traffic, particularly on weekends. The Uber economy evokes the economy of Manila or Mumbai rather than anything in Europe or the U.S.

The next economic development trend could be every mom and pop serving meals and snacks out in front of their apartment or selling their home-made clothing (possibly not involving the legal minimum wage, nor produced in the seller's home); the idea of the shared economy is not a quest for idyllic libertarianism or a

Interdisc. L.J. 275, 285 (2018) (a project's location near transit, by itself, is not enough to assume that the project will reduce driving and thereby help promote GHG reduction goals, particularly in a polycentric region such as Los Angeles).

Hippie commune, but is mostly a technique to seek exemption from some law or taxes and costly health and safety regulations. Beyond transport, the deregulated economy, as attractive as it may appear, is a license to sell snake oil, defrauding many and causing catastrophe for many in need of prompt medical treatment or a safer environment. This can include deleterious foods, dangerous toys, and all the evils which the state's police powers are designed to address. Similarly, the on-line home rental platform, Airbnb, is too often the scene of crimes, too frequently imposing a destructive effect on neighborhood character, and undermining housing discrimination laws in licensing private bias. 69

5. Land Ethics Towards Open Land

Intellectually, and literally, Americans saw land as an unlimited resource, discouraging considerations of conservation.70 Land was so plentiful that the wealthy and later the managers began leaving the cities for mansions and more modest homes in the suburbs. The suburbs lacked the increasing crime, noise, and pollution of the city, and affordability made the pattern successful. On the other hand, Europe reflects a profound sense of limited land and the need of conservation of open spaces, encouraging higher density land use patterns that happen to support public transport, and result in a higher density walkable center.

Cultural traditions also play a large role in consumer demand and satisfaction. Europe has been developed with strong town centers and neighborhood amenities such as parks and shopping streets connected to desirable, walkable street plans. Consumer preference is for an urban apartment or house that is convenient to public transport and the amenities of the city. By comparison, the U.S. population, in most instances, lacking the attractive higher density accessible


city, has displayed a cultural preference for land, large yards and quiet roads in pursuit of suburban sprawl.

6. Corporations and the Destruction of Public Transportation

In the United States, large corporations have enjoyed comparative liberty and have often been successful in obtaining favorable legislation. Monopolies triumphed in the Nineteenth Century, and while a more populous government imposed minimal regulation on monopolies, corporations to the present day enjoy favorable tax benefits and some, while accepting the imposition of environmental regulation, are nevertheless enjoying de-regulation. In the early days of the New Deal, following and during the continuing depression, powerful corporations fought for the regulation of public utilities, arguing that they may exercise monopoly power. The legislation required that local power companies divest themselves of business unrelated to power generation and marketing and the legislation prohibited electric utilities from venturing into other businesses because the activity might be monopolistic. Electric utilities operated the electric street car and cable car systems in most American cities prior to the New Deal. The lobby for the legislation was a conglomerate of automobile manufacturers, automotive parts and tire manufacturers together with oil refining companies, and their target was the street cars and cable cars of American cities: public transit itself. At the same time the legislation was passed, General Motors, Firestone Tires, and Standard Oil formed an entity called the National Car Lines to generate the capital to purchase and destroy existing transit and to allow replacement by buses. Now

---


76 Id.
developers were no longer limited to a central city and street-car suburbs located adjacent to cities. Bus transport allowed suburban sprawl as distant communities could be minimally served, and relatively cheap rural land could be converted to subdivisions of homes.

The conspiracy was criminally prosecuted, generating a slap on the wrist followed by a promise to cease the process. However, the prosecution and relief occurred after the destruction of the transit systems in more than seventy-five American cities. The elimination of the rail systems, the desire for land, and the accessibility of the outer suburbs created a nation primed for hyper-urban sprawl. With the mass availability of private automobiles and rubber-tire buses, only roads limited suburban sprawl. Home seekers could venture further into the rural areas to find their piece of open space of an ostensibly unlimited supply of land. Traffic without transit is a free ride for developers and a serious problem of traffic congestion on local and feeder streets. In San Francisco, lip-service is given to traffic and transit concerns, and projects are likely to be subject to an impact fee to finance public transit. However, a contribution does not guarantee that service will be enhanced, that the building is adequately transit-served, or that its intended occupants will even utilize public transit.

7. The Role of Transit on Both Sides of the Atlantic Ocean

In Europe, despite deregulation and the reduction of the social service net, the general rule is "build nothing not transit-served." Although in certain new communities, such as the VINEX communities built tightly around existing cities in the Netherlands, development preceded the extension of fixed rail trains or trams, but buses were in place to allow residents to live car-free. An example of this is Leidse Rijn outside of Utrecht. However, residents followed recent European trends and became automobile owners. In Stockholm and Vienna, housing tracts

77 Id.
78 Id.
79 Russ Bldg. Partnership v. City & County of San Francisco, 44 Cal. 3d 839, 750 P.2d 324, 244 Cal. Rptr. 682 (1988) ($5 per square foot downtown office space developer transit impact development fee as condition for building permit or occupancy certificate applied to the project under construction, the court finding notice in the permit and environmental impact report indicating a transit problem requiring some program to provide funding).
and shopping centers demand the extension of public transit pre-development. Most Viennese, for example, own a transit pass purchased for a few hundred dollars a year, and the average Viennese uses public transit 600 times annually.

Even in San Francisco, with the highest urban density outside of Manhattan, and where transit serves more neighborhoods than any other city in the nation, transit is so inadequate in developing high-rise districts that the public is being warned to walk to sports and entertainment events as traffic can be impassable and public transit lacks adequate capacity. Nevertheless, development is likely to continue in the capital city of high-tech. The local legislative body is likely to raise issues of affordable housing and traffic, designed to exact a modest increase in the affordable housing units to be developed and perhaps a modest increase in transit impact fees.

San Francisco's next door across-the-bay neighbor, Oakland, is celebrating its apparent gentrification dividend, welcoming the headquarters for Kaiser Permanente. The HMO giant planned to construct a 29-story high-rise tower that would have been the largest building on the west coast by volume at 1.6 million square feet. Kaiser's planned headquarters joined 1.5 million additional square feet of offices currently under construction in Oakland and joins another 2 million


square feet of offices already approved.\textsuperscript{86} It does not take an urban planner to note that BART, the San Francisco Bay Area’s over and underground rail system, is at commuting capacity and there are no planned transit improvements to mitigate the obvious shortfall which Oakland's officials apparently assume will somehow be met by BART. Insufficient parking and excessive Uber and Lyft vehicles should guarantee that Oakland's traffic renders that growth city more like San Francisco, Rome or Istanbul. BART, the San Francisco Bay Area's over and underground rail system functions like many transit improvements across America's cities as a stimulator of sprawl. The initial BART system was designed to serve the land beyond the suburbs. The extension allowed the development and effective marketing of homes in hyper-sprawl outer communities. In this way, transit functions more like a highway than the alternate or antidote to traffic congestion. The system supports environmental impact reports and allows the marketing of distant subdivisions as transit-served and sounding sustainable. The result was the self-fulfilling prophecy of crowded trains and hyper-congested roads. Ironically, BART was to be gentrified: BART, facing a steep rent increase, was to vacate its current Oakland headquarters; the rent increase has been caused by the proposed Kaiser Permanente office building, relying on BART to demonstrate sustainability benefits.\textsuperscript{87} BART, having lost its ridership during COVID-19, and facing rising construction costs, has cancelled its new headquarters plan.\textsuperscript{88}

Better transportation will not come from expanding automobile infrastructure nor from welcoming Uber, Lyft, or other transportation network companies. America needs a federal public transport fund, not unlike the infrastructure program that is needed to maintain and replace aging roads, bridges, transportation, and utility systems. Regional rail systems linking cities can fuel economic development, intercity commuting, and can reduce housing overcrowding and costs. Stops that restrict growth to walking distance from stations could provide a needed supply of housing and assist in transformation to a sustainable land use development pattern. In addition, cities should plan a system build-out that would provide efficient service throughout the city, so that future development can support future transportation extension. Communities should use the technique of concurrency to assure that development does not occur until the


\textsuperscript{87} Roland Li, \textit{BART Considering move across street}, S.F. Chron., Sept. 6, 2019 at C1.

proposed transit is in place.\textsuperscript{89} Under concurrency, development permits would be conditioned on the completion of supporting infrastructure such as transit, roads, and utilities. Los Angeles at one time considered a Disney-like people mover from the downtown city center to the convention center to the South. Although it was never realized or seriously promoted, it made its way into the city’s comprehensive plan, and higher density development has occurred because it was located at a proposed people mover stop.

Even with a hypothetical trillion-dollar transit fund, subways and heavy rail, except inter-city trains, are not likely to be affordable to all districts. Lighter rail trams are realistic alternatives. Cities can designate dedicated transit corridors, which would include bus rapid transit which has proven to be efficient and comfortable, by avoiding traffic on automobile-clogged streets. In traffic-snarled cities, congestion pricing should be implemented, taxing motorized vehicles to enter city streets. The proceeds can be used to reduce the time schedule to extend transit. Increased parking meter fees universally placed will generate many open spaces, avoid drivers cruising to find a meter, and will generate more public transit funding.\textsuperscript{90} Similarly, institutional lenders should be pressured to allow a reduction of maximum parking limits and the unbundling of parking and rents so that those who use parking and automobiles pay for the cost, rather than be subsidized by those living car-free.

8. Alternate Modes of Transport

People used to walk, bike, and take transit in droves before the world was rebuilt to make driving as convenient as possible.\textsuperscript{91}

\textit{Lawrence Frank, Peter Engelke & Thomas Schmid}


\textsuperscript{90} Donald C. Shoup, \textit{The High Cost of Free Parking} (2005).

Walking is the only sustainable form of transport. It is essential to establish walkable communities with pedestrian trails. Walking is also a good form of exercise. Transit is simply a system to extend the range of the pedestrian.

Dedicated paths for bicycles should replace dangerous white painted lines on streets. Most bicycle paths in the U.S. permit vehicle parking and access by motor vehicles making right-hand turns, creating dangerous conditions. Berlin, already a candidate for the World's best transit system, will spend $31 billion during the next 15 years expanding its rail and subway system. Berlin found that patrons prefer fixed rail over buses.92

Based upon the existing transit-served communities, in the future, cities should limit all urbanization to within one to two miles from a station or stop. An essential precondition for a transit-served city is densification along transit routes. Transit requires densities of 50 workers per acre or a FAR (floor area ratio) of 4.0 (which means that the development permitted by zoning could be 4 floors on the entire parcel - or 8 floors on half the parcel, and so forth, leaving the remainder as open space), as compared to average suburban densities of 0.3 to 0.4.93 Developers can build even taller buildings where the FAR ratio is higher or where the developer can purchase or lease the unused development rights on parcels that do not utilize the full FAR ratio. In the U.S. it is also common to grant additional density for the inclusion of public space, the inclusion of an arcade, or some other element such as a green planted roof. In the United States, only New York, Chicago, and Philadelphia enjoy a density sufficient to support public transit.94 A 20% increase in floor space for retail in office buildings can generate a 4.5% increase in car pool, van-pool, or public transit usage, and thus provide some additional efficiency.95

The United States has long-supported deep subsidies for the automobile-driving public.96 The subsidy for fossil fuel in the U.S. is $1 trillion annually, or $2,700 per person. In order to remove this subsidy, gas prices would have to

96 James A. Kushner, Global Climate Change and the Road to Extinction 166-69 (2009).
increase to $6 per gallon or more. Another way to view carbon subsidies is that the actual costs of automobiles, including social costs, to the United States is $1 per gallon. Annual subsidies for burning fossil fuel in the remainder of the planet is $700 billion. Congress and the state legislatures refuse to adequately support transit, and thus systems are forced to continually raise fares. The result is that the cost of transit encourages the commuting public to use an automobile. The policy should be reversed, low or no fare should encourage drivers to give up their expensive automobiles. The Simpson-Curtain rule holds that for every 10% fare increase, the system experiences a 3.8% drop in ridership. The farebox will destroy transit. Nevertheless, transit systems face higher labor and capital costs, along with costly responsibilities towards the poor and homeless, generating pressure for higher fares. A carbon tax would make a significant start toward a level playing field for renewable energy and sustainable energy generation and consumption. An appropriate carbon tax could be increased annually until the property is accessible to public transit, when the tax would increase substantially. Those living outside urban areas would have increasing taxes until they were off the grid or the grid were powered by non-fossil-fuel energy and vehicles were electric. Every development should establish a transit plan to reduce congestion, for example a contribution to speed up transit extension plans or marketing and development to attract transit users and discourage automobile ownership and parking.

In 1960, 64% of workers drove to work, rising to 84% in 1980. In 1960, 22% took public transit or walked, and by 1980 6.4% used public transport, and

---

97 See also Andrew D. Appleby, Pay at the Pump: How $11 Per Gallon Gasoline Can Solve the United States’ Most Pressing Challenges, 40 Cumb. L. Rev. 3 (2009-2010).
99 Id. at 66-74; Naomi Klein, On Fire 283-84 (2019) ($775 billion.)
102 See generally Joel Walljasper, Europeans Reclaim Their Cities from the Car, Toronto Star, July 15, 1993, A25 (Final ed.) (22% of non-pedestrian traffic in Heidelberg by bicycle; Bremen, Heidelberg, and Lubeck in Germany have designated bicycle-only streets); Jay Walljasper, Star Tribune, Apr. 7, 1991, 29A (in Amsterdam, 24% of all urban trips by public transit, 20% walking,
5.6% walked. By 1990, transport use was down to 5.3% and by 2000, transit users were down to 2.7%. Public transit use continues to decline today. In the fourteen cities investing in rail transport in the U.S. over the past 30 years, the share of commuters taking public transport dropped to 6% by the year 2000. From 1970 to 2010, all forms of travel grew in Europe, but auto and air travel grew the most. Air’s share of total travel grew from 1.5% to 8.0%, while the automobile’s share grew only from 73.9% to 74.7%. Bus, urban rail, and intercity rail all lost market shares. Amsterdam, by comparison, enjoys an excellent transit system that is far superior to any in the U.S., and additionally 30% to 70% of commuters always or sometimes use a bicycle.

Local legislatures in the United States should commit to a development plan to expand and improve the public transport system with a goal of having the vast majority of local trips take place by transit, walking, or bicycle. Cities might remove 10% of their streets annually, allowing the creation of pedestrian streets, parkways, and community gardens. Legislatures can remove 10% of parking annually, including city-owned lots and on-street parking. This would allow wider sidewalks in villages to accommodate more outdoor coffee, bar and restaurant use of the sidewalks, particularly where the former street has been pedestrianized for outdoor dining, bars, and sales. Other streets might be set aside for food trucks. San

and 20% bicycle; West Berlin tripled bicycle usage from 1986 to 1991, accounting for 6% of urban travel, with plans to increase to 12% with new exclusive lanes and traffic “calming” or slowing and reduction techniques). The United States is going in the other direction. Between 1980 and 1990, 22 million new single-occupant drivers were added to the commute (while only 19 million new workers joined the commute during the same period), while transit lost 200,000 riders, 4 million stopped carpooling, and 650,000 stopped walking to work. Department of Transportation, Transportation Statistics: Annual Report 1994 at 53. See also Jane Jacobs, The Death and Life of Great American Cities 354 (1961) (95% of travel in Los Angeles by private automobile).


105 Id.

106 Id.

107 Id.

Francisco, and most cities, are at their best during farmers' markets and street festivals. San Francisco has been closing some streets containing restaurants to allow the street to be used for outdoor dining during the pandemic.  

To introduce the public to the alternatives to motor vehicles, and in addition to the substantial investment in infrastructure needed if cycling and walking are to be safe, four different evenings a week, a mile or longer ring of streets should be closed except on each day, either for bicycles, skaters, runners, or walkers. Cities should participate in the world car-free day (exempting taxis and public transport) and have more district-based days of closing streets in the business area on one weekend or day each month. I frequently hear favorable comments from people recalling days when the Embarcadero streets in San Francisco have been closed to automobiles. There appears to be universal approval of the removal of the Embarcadero Freeway in 1991 following extensive damage from the 1989 Loma Prieta earthquake, enhancing the enjoyment of walking along the Embarcadero bayfront.

**B. Sustainability and Climate Change**

The climate crisis has already been solved. We already have all the facts and solutions. All we have to do is to wake up and change.  

*Greta Thunberg*

Although Berlin and Barcelona have efficient transit, Los Angeles and San Francisco are struggling to develop systems that can serve the public and allow an attempt to reduce traffic congestion from streets, bridges, and highways. Berlin and Barcelona have engaged in policies to achieve sustainability such as improving the public transit system and transitioning from fossil fuels. Europe invested in efficient high-speed passenger rail, which is popular, but apparently not economically sustainable, at least in France and Spain. Europe, the reverse of the U.S, in failing to create a system of commercial freight to transport goods, continues to be largely dependent on the trucking industry. San Francisco enjoys an environmental ethic

---


among its citizens found only in Europe, yet it lacks a policy to improve sustainability and reduce carbon burning. Los Angeles is a nightmare of carbon burning from the millions of private automobiles, buses, and trucks participating in the daily traffic to the lack of green architecture that requires enormous amounts of power to continuously run air conditioning.

While Berlin is encircled by the hard edges of farms, San Francisco's edge is established by the Pacific Ocean to the West and Northwest, the San Francisco Bay on the East and North East, and adjacent developed sprawling suburbs to the South. Across the Bay is Oakland and its surrounding suburban cities, all arguably additional suburbs of San Francisco. Each of the metropolitan cities have faced urban sprawl and have dealt with it in various ways. Of course, geography can pose a problem or solution to sprawl, as in the cases of the San Francisco Bay and the Bay of Biscay that limit eastern growth in San Francisco and Barcelona, respectively. Even when the developable open space in a city has been exhausted, permissive zoning can allow higher height limits and mixed uses and coincidentally the land for prime office, commercial, and luxury housing. Inappropriately planned vertical growth continues to replicate in developing cities.

Sustainability must be an essential component of all development, yet American building codes fail to mandate such standards, and the green component of building is left to developers. In Portland, developers attain both prestige and greater profits from building “green” as the city has demonstrated a strong market for green buildings. Portland-based corporate leadership also tend to embrace sustainability concerns, and a perfect symbol is a green headquarters. There exists in Europe both a demand for sustainable development and the political will to impose standards and conditions on development. It seems that wherever one goes in Germany there exist policies of zero surface water runoff. Moreover, when I speak with Europeans, even those who support conservative political parties, they invariably support a strong environmental regime, recognizing the loss of open space, the need to conserve resources and the necessity to reduce carbon consumption. Unfortunately, only a few countries (most significantly, Germany and China) have made sufficiently substantial investments in the renewable sector to see a rollout at anything like the speed required. Germany's energy transition has created 400,000 jobs in renewables in just over a decade. Many energy grids


are owned and controlled by hundreds of cities, towns, and cooperatives, so that Germany has not just cleaned up energy but has made its distribution fairer.\footnote{Id. at 130, 282.}

Portland, with its standard sprawling suburbs and central town, is the American poster child for undertaking anti-sprawl and sustainable policies.\footnote{Oliver A. Pollard, \textit{Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies}, 19 Va. Envtl. L.J. 247 (2000) (arguing that even in Portland style regulation, that regulation is still too relaxed to achieve Smart Growth); Yan Song & Gerrit-Jan Knapp, \textit{Measuring Urban Form: Is Portland Winning the War on Sprawl?}, 70 J. Am. Plan. Ass'n 210 (2004) (at the neighborhood scale but on a regional level sprawl still in evidence); Edward J. Sullivan, \textit{Urban Growth Management in Portland, Oregon}, 93 Or. L. Rev. 455 (2014) (generally praising the urban growth boundary policy); Symposium, 8 Hous. Pol'y Debate 1 (1997) (laudatory review of the effectiveness of planning in the Portland Region with a central focus on the use of urban growth boundaries).} Other than having its downtown partially encircled by the Willamette River, Portland is not distinctly different from other American cities. The city has heavily invested in transit and bicycle infrastructure. It has encouraged green buildings, replaced a highway with parks and walkways, and converted a parking lot to a paved park and the downtown’s most popular public space. Portland carries a message of sustainability which the city is comfortable with, and it continues to pursue that goal. What is extraordinary about Portland is that half of all development in the past decade has occurred within one block of a street car route, raising those property values between 35% and 40%.\footnote{Alex Wilson, \textit{Driving to Green Buildings: The Transportation Energy Intensity of Buildings}, Envtl. Bldg. News, Sept. 2007, available at http://www.buildinggreen.com/auth/article.cfm/2007/8/30/Driving-to-Green-Buildings-The-Transportation-Energy-Intensity-of-Buildings/} This also mirrors the appreciation in housing sited near fixed-rail stations in many American cities.\footnote{Jeffery J. Smith & Thomas A. Gihring, Victoria Trans. Policy Institute, \textit{Financing Transit Systems Through Value Capture} (2006), available at http://www.vtpi.org/smith.pdf (last visited Jan. 5, 2007) (as a matter of economic theory).} This appreciation demonstrates the attractiveness of a pedestrian and transit-based lifestyle. At the same time, simply because property is located near a transit stop does not guarantee that rents and property values will rise, and that neighborhoods will be redeveloped as can be seen in the lower income minority neighborhoods of Los Angeles and Philadelphia. Where housing markets are soft and location discourages investment, stations are often of no benefit to redevelopers. Where demand for development exists, fixed rail transit is likely to have a gentrification impact. The increase in property value presents a transit paradox, whereby extending transit to achieve greater service and a smaller carbon footprint in
developing cities and districts is likely to generate gentrification and displacement. Resolution of competing concerns will require rent and price regulation.

In most other cities in the U.S., the car-driving population wants newer, wider highways, and more parking, despite rhetoric and policies designed to reduce Greenhouse gas generation. Unfortunately, greenhouse gas mitigation in Oregon is undermined by the lack of efforts elsewhere. The cultural aspect to urban development at the very same time leads Europeans generally to prefer dense walkable cities. Americans were forced to adopt the automobile-based lifestyle—and a fix will be challenging because it will be extremely difficult to replace or convert inefficient land use policies. By comparison, Houston, with no zoning and no wetlands to protect the low-lying areas from massive flooding during storms, is undertaking a massive freeway widening project, ostensibly to aid in future evacuations.118

The challenges of climate change greatly aggravate all urban problems. Large urban cities in the United States are all acknowledging climate change and claiming to pursue some form of carbon neutrality—but adequate mitigation to slow or reverse climate change and adaptation are ignored. The U.S. cities have pledged future compliance with internationally-set standards, but there is no sign of the political will to reduce the use of trucks and private automobiles or to impose a regime of green building and planning. By comparison, Barcelona and Berlin are engaging in many environmentally-sensitive policies, the most important being the continued policy of expanding efficient public transport. The development policy of each of the cities is to expand in high density transit-served communities. In Los Angeles and San Francisco, although there are notable transit extensions, from a metropolitan standpoint, the cities lack the will and capital needed to expand public transit and to reduce the number of automobiles.

Symbolic efforts exist to mitigate greenhouse gasses, such as the development of electric cars, modest solar and wind energy development, and the relatively rare green building. Joe Biden, the presumptive U.S. Democratic presidential candidate, may address the progressive ideas on climate change, but may be far too moderate to avoid failing to achieve the mitigation necessary to avoid the more serious damage of climate change. Republicans are already attacking the idea of a “Green New Deal” that would create economic development and employment through a policy of replacing the use of fossil fuels with renewables. Naomi Klein, the author of On Fire, and a strong advocate for the proposal to shift energy to renewables and away from carbon generation while

118 Experts to Share What TxDOT’s 1-45 Project Means for Houston, Rice Kinder’ Inst. for Urban Research: The Urban Edge (June 3, 2019), published at Planetizen (June 6, 2019).
creating a massive jobs program in the expanding industry, has nevertheless criticized the policy that retains a private nationally managed grid and has advocated that where possible, community-owned power distribution is superior to centralized ownership that is likely to result in hydroelectric dams and retaining fossil fuel power.\textsuperscript{119} It is appropriate that energy policy include a program to reduce the disparity of wealth and power as "almost 50% of global emissions are produced by the richest 10% of the world's population."\textsuperscript{120} California has proposed statewide Green New Deal legislation.\textsuperscript{121} Although the ambitious program carries many benefits, unfortunately the developed world simply consumes too much and even green energy components depend on excessive carbon emissions and often disguise the unavoidable continuation of carbon generation.\textsuperscript{122} Jeff Gibbs, in his documentary film “Planet of the Humans”, argues forcefully that we are losing the battle to stop climate change because we are following environmental leaders who have taken us down the wrong road – selling out the green movement to wealthy interests and corporate America.\textsuperscript{123}

Greta Thunberg has argued that "we need to start cooperating and sharing the remaining resources of this planet in a fair way."\textsuperscript{124} But the population continues to increase, there is more traffic than ever, carbon burning is increasing, the planet is warming, and the sea is rising. This is the moment to establish a fund to assist nations, cities, and individuals to convert from fossil fuels and personal automobiles. The mitigation fund should establish incentives for the developed nations to join such as a larger fund distribution and should offer a lower local matching share to encourage the participation of lesser-developed nations. Legislation and treaties can support the retraining of fossil fuel workers for alternative energy employment and allow governments to shift to clean energy production with tax incentives to support mitigation efforts. Such a fund would not supplant the need to move as fast as possible beyond fossil fuels.

We know that European cities look different from those across the pond, but are they approaching the carbon crisis more effectively? European cities, national governments, and private enterprise have moved unhesitatingly towards

\textsuperscript{119} Naomi Klein, \textit{On Fire} 39 (2019).

\textsuperscript{120} \textit{Id.} at 45.


\textsuperscript{122} Planet of the Humans (2020).

\textsuperscript{123} \textit{Id.}

\textsuperscript{124} Naomi Klein, \textit{On Fire} 53 (2019).
reducing their carbon footprint, particularly in energy generation and carbon reduction. That effort, however, along with that of other nations, is simply not progressing towards carbon neutrality and is certainly insufficient to achieve the mitigation of climate changes already underway. The result is that the failure to mitigate leaves only extremely disruptive and expensive policies of adaptation.

C. Urban Sprawl and Growth Boundaries

America finds itself nearing the end of the cheap-oil age having invested its national wealth in a living arrangement--suburban sprawl--that has no future.”

James Howard Kunstler

During the 1960s and 1970s, the cities in the United States were surrounded with sprawling subdivisions of low-density single-family detached homes on large personal lots. Although today’s zoning is a bit more sophisticated and flexible, the industry-supported zoning ordinances were ubiquitous. The pattern was mandated by law and connected into a tight-woven regional blanket of detached home subdivisions. In establishing the outer suburbs, communities incorporated and passed zoning legislation that mandated large lots, prohibiting the density necessary to sustain public transport, and largely prohibiting apartments that could house those of lower income. Developers were delighted to be able to market homes that did not reflect the cost of public transport. Congress aided the sprawl development by funding roads, utilities extensions, parks, and even municipal


buildings and easy access to home loans.\textsuperscript{131} Local zoning ordinances established minimum lot sizes, typically at a minimum of a one acre lot (the equivalent of a football field or soccer pitch), and occasionally at five acres per lot; some were set at two or four homes per acre.\textsuperscript{132} Many neighborhoods lack sidewalks, further discouraging automobile alternatives. Larger cities have rings of suburbs averaging one-acre lots.\textsuperscript{133} Not only did the pattern demand private automobile travel, the low density destroyed the possibility of a transit-served community. Dependency on the automobile demanded a different land use pattern. The cities were required to plan for adequate parking, automobile servicing and sales, convenient highway access ramps, and heavily trafficked streets. Since Americans tend not to walk, streets often lack any interest or attraction for pedestrians, other than in the few attractive shopping districts. These districts are located in affluent communities or the lively Spanish-speaking neighborhoods with shops and places for refreshment limited to a few areas. Such commercial entertainment districts are frequently located in shopping malls that have outlived their economic success and modern attractiveness. The dominant planning view during the development of the suburbs was that shops were incompatible with residential uses so that commercial districts and shopping centers were segregated from housing and sited along busy roads and highways, further discouraging pedestrianization. Today, much of the retail in the United States occurs in large national store chains in shopping centers and industrial districts, with acres of parking and convenient highway access. They are surrounded by wide boulevards to allow easy automobile access. The pattern is stark in denying the experience of walking attractive streets to do neighborhood shopping – at one time available to the residents of America's city neighborhoods and the earliest developed street car suburbs, and in towns developed around a creative master plan.\textsuperscript{134}

The American style of community building was subsidized through federally-funded infrastructure extension, and the availability of mortgage lending which vastly expanded the numbers eligible to obtain home loans. The deductibility

\textsuperscript{131} National Housing Act, P.L. No. 73-479, 12 U.S.C. §§ 1701 (1934) (Federal Housing Administration mortgage insurance).


\textsuperscript{133} \textit{Id.} at 46-49.

of mortgage interest and property taxes from federal income tax, made the choice of home ownership over rentals nearly automatic.\textsuperscript{135} In building with war-time industrial-like production techniques, community design was left entirely to each individual political jurisdiction. Yet, curiously it all looked about the same except for a few design-conscious planned communities. The miracle of similarity is best understood as the wholesale adoption of standard plans or plats shared throughout the industry. Local control resulted in town legislators that sought to limit access to wealthier home seekers in an effort to increase local home values and generate additional real estate taxes to cover the increasing demand and cost for services. Only in extremely progressive communities, often attached to a university, were American towns able to impose a different regime on land use. Yet, any cost-increasing regulation, whether land use or environmental controls, will send investors and developers leapfrogging further out to avoid anti-development regulator regimes. In developing regions, high housing costs are sending home seekers into the rural areas beyond the suburbs generating further environmentally damaging low-density suburban sprawl\textsuperscript{136} and generating super commuters, driving up to six hours daily from outside the metropolitan area. This explains why anti-sprawl policies of small communities not applied in a regional pattern can become the unanticipated cause of further sprawl. Only regional consolidation or participation mandated by the state or federal government, with urban growth boundaries can prevent development leapfrogging into an unregulated rural area upon execution of a rational growth plan, absent needed state or federal legislation that prevents urbanization outside of set urban boundaries and served by transit.

1. Regionalism

Reform advocates have long called for regional regulation as cities, suburbs and nonmetropolitan areas are connected and affected by the development patterns of adjacent municipal governments.\textsuperscript{137} Traffic, transportation, air pollution, job

\textsuperscript{135} IRC §§ 163 (mortgage interest deductibility), 164 (property tax deductibility).


location and housing access are all regional issues, and therefore, it makes little sense to render planning excessively local. Europe has sought to address regionalism through participation in planning and development decisions at the state or provincial levels of government or through the application of nationally-established criteria. In the United States, state’s rights have had special meaning for states distrustful of policies set by the federal or state governments. Cities and counties celebrate home rule and independence from state or regional preemption or shared decision-making, zealously defending local autonomy and supporting provincial planning.

NIMBY (not in my backyard) interests, such as excluding LULUs (locally unwanted land uses) carry a powerful veto on initiatives that might bring affordable housing or the density necessary for a transit corridors. Housing and transit proposals are feared to be linked to traffic, noise, crime, homelessness, homeless shelters, public disorder, and harm to educational quality. Such proposals are believed to generate an increase in the number of lower socio-economic residents and the need for costly services. This is a central problem (some would say blessing) of the American model of provincial land use control, as local action rarely concerns itself with regional problems or sustainability.

The zoning system in the United States contrasts sharply to the use of zoning in Europe. In Europe, land use decisions are typically based upon concerns of preserving open space, achieving sustainability, and supporting transportation improvements such as maintaining adequate density and assuring accessible parks and supporting infrastructure. The American distrust of government and city hall reflects the popular belief that elected officials are more concerned with satisfying current and future campaign contributors rather than constituents. European countries experience a much greater trust of government. This contrast is due in

---


part to the power of unions in Europe and due to the fact that elected officials share
the same experience as their constituents and are typically not aligned with
development interests. Europeans do not see politicians as different from
themselves as most are from a similar union background. A democratic-socialist
state would finance needed services, such as housing, healthcare, and the related
needs of the homeless, so that local governments need not seek to exclude people
for budgetary reasons. Although citizen participation in development, both at the
neighborhood level and on a city or region-wide basis should be enhanced, local
communities should not be able to veto critical national and state sustainability
goals. National standards could generate high density transit corridor development,
timed to coincide with the availability of convenient public transit.

2. Corporate Planning and Development and Suburbia

Any cost-increasing regulation, whether land use controls or environmental
protections, will send investors and developers leapfrogging further out to avoid
anti-development regulatory regimes. Because the U.S. is such an automobile-
planned nation, it has lost out on the commercial district benefits from pedestrian
shopping streets that have thrived in Europe, whether it is the Stroget in
Copenhagen, the Drottninggatan in Stockholm, the Hauptrasse in Heidelberg, or
the shopping streets and districts of every European city.

Although cities in America have experienced the significant influence of
corporate planning for generations, European cities are currently experiencing the
rise of the same corporate planning influence. Home building in the suburbs is
commonly a product of many small builders, but a number of developers purchased
farms and properties on the far edge of the outer city development in the United
States. The patient speculators sometimes those who held out the longest and those
able to obtain development approval, often profiting more on the speculative land
investment return than on the profit from home sales. Generous profits can be
returned on land development and building, but fortunes can be accumulated from
land appreciation on the urban undeveloped edge. Of course, local corporations
influence power in most communities and are able to encourage more road building
and community growth. In the U.S. and Europe, large banks and institutional
lenders, together with large developers, increasingly work to promote development
in cities that promise the greatest sustainable profits. Prime office, shopping malls,
and luxury housing are favored over moderately priced housing, suburban housing
development, and other development opportunities. Developers generally profit
more per square foot developing prime office, commercial space, and luxury
housing. Development of apartments and lofts in the urban center is generally more
profitable than suburban development. Today there is little interest in expanding the suburbs because of declining demand, prices, and profits on the urban fringe.140

The population growth of singles and the decline of immigrant families141 changes the dynamics of demand. Historically, America pursued a policy of mandating low density, sprawling suburbs of single-family homes. That land use model demanded automobile use as virtually nothing is walkable. Of greater consequence is that such low density precludes the availability of alternate modes of transportation whether the bicycle, scooter, skateboard, or transit. The result is that destinations are far from home, the automobile the only available mode of transport, and traffic congestion the only likely result.

3. A European Model

In Europe, communities first assure that a new development is conveniently served by public transit, and that the design of the development is appropriately dense. European communities, in planning for industrial sites and office needs, condition projects on accessible public transport. In European cities, high density around transport is the norm. This is virtually the opposite of the American model.

European communities also plan for mixed uses within developments. Offices, housing, and shops are often included within larger developments or smaller projects sited on adjacent land. It is important to note how Europe uses zoning and development controls to generate mixed-use walkable and transit-served neighborhoods. America, by comparison, uses zoning to achieve the segregation of land uses.142 Housing is located far from commercial or office projects, just as a shopping or office district may be just that and no more. The

140 Dowell Myers, Immigrants and Boomers (2007) (describing the vanishing recent and second generation immigrant home seekers and a preference of the young for urban living).


engine for sprawl remains the ability to convert agricultural land to residential subdivisions allowing urban development. Germany and the Netherlands, by comparison, have regulated heavily through zoning to avoid taking farmland for urban development.\textsuperscript{143} It has not been a perfect foil to farmland conversion in Europe, as powerful development interests are occasionally successful in obtaining the extension of urban boundaries, albeit in a pattern that is relatively de minimis, at least outside of Italy.\textsuperscript{144} The surrounding open space and farmlands, together with higher density development around transit has resulted in very walkable friendly streets.

Urban agriculture is another element of planning and land use that is popular in Europe. This takes the form of garden plots adjacent to housing or small allotment gardens available around and on the edges of cities. Europeans, facing cold winters and limited open spaces, possess a powerful appreciation and connection to nature. Gardening can yield food (possibly for donation to food banks), beautiful flowers to celebrate the spring and summer, shade on a warm day, and for many, a cool place to sleep on hot nights. Conversion from urbanized to green contributes to sequestering carbon, generating oxygen, and lowering the air temperature in cities. Although certain forms of agriculture are not appropriate on urban sites, garden allotments, squares, and parks would constitute a far better use than streets and parking lots. Cities would have to consult state law to determine the effect of converting a street to a walkway, bicycle trail, park, greenway, or garden allotments.\textsuperscript{145} Neighbors might agree to the plan as home prices will likely increase, like the park blocks in Portland where a broad boulevard has a park in what would be a median at the center of the street; but in some states it is possible that the land would return to the adjacent land owners, requiring an exercise of


\textsuperscript{145} James A. Kushner, \textit{The Post-Automobile City} 114-142 (2004).
eminent domain which would significantly increase project costs. In the near future, we will likely see efficient high-rise agriculture in cities.\footnote{146 Lisa Chamberlain, Skyfarming, N.Y. Magazine, Apr. 9, 2007, available at http://www.nymag.com/news/features/30020 (discussing the research of Dickson Despommier of Columbia University); Gretchen Vogel, Upending the Controversial Farm: Cities are Taking Over Farmland. Could They Someday Take Over the Job of Farming, Too, 319 Science 752 (Feb. 2008). See also Vertical Farming, Wikipedia, available at http://en.wikipedia.org/wiki/vertical_farming.}

In Germany, when you fly over the country, the towns come to a neat boundary of farms that has been generally protected against significant sprawl.\footnote{147 George Lefcoe, The Right to Develop Land: The German and Dutch Experience, 56 Or. L. Rev. 31 (1977).} Similarly, in the Netherlands, development is generally precluded in rural and agricultural areas. To protect the historic city centers, Dutch development has been restricted to the fringe areas of existing cities in what are referred to as the VINEX developments.\footnote{148 Wikipedia, Vinex-location, available at https://en.wikipedia.org/wiki/Vinex-location (last visited Sept. 19, 2019) ("Vierde Nota Ruimtelijke Ordening Extra" (VINEX), translates as Fourth Memorandum Spatial Planning Extra).} Most of Western Europe has used zoning to restrict sprawl and preserve agricultural land, although some countries have succeeded better than others.

American planning has generally rejected the idea of growth boundaries, reflecting a nation that believes that growth is the instrument that generates jobs, goods, and economic success. American cities, large urban centers and small communities on the urban fringe all finance their city services and education system primarily through property taxes.\footnote{149 Kenneth L. Sokoloff & Eric M. Zolt, Inequality and Taxation: Evidence from the Americas on How Inequality May Influence Tax Institutions, 59 Tax L. Rev. 167, 191-99 (2006).} The search for tax revenues, referred to as fiscal zoning, motivates planning authorities and local legislatures to approve questionably-planned projects as a means to generate more city services or to sustain the increasing cost of maintenance. In addition, communities will seek to exclude uses that might contribute only limited tax revenues or might increase the cost of service delivery. This is particularly the case where communities are funding burdensome retirement benefits for teachers, police, firefighters, other city employees and their managers. Politicians often receive campaign contributions from developers with pending and proposed projects and other potential or current city contractors. Large developments and their developers represent a system designed to extend the careers of local officials through campaign contributions, allowing them to consider re-election or to wage a campaign for higher office where
displaced by term limits, changing demographics in the district, or unfavorable political gerrymandering.\textsuperscript{150} Developers and other contractors are typically

expected to pay exactions in the form of impact fees, other payments, or approval
conditions requiring developer-financed improvements, and make political
campaign contributions to politicians who possess the apparent power of delaying
or facilitating development and public contracts. In San Francisco, prospective
contractors or developers with discretionary applications pending are prohibited
from making contributions, and existing contractors may not make any
contributions for one year following a significant contract approval or renewal.\footnote{San Francisco Code § 1.126, available at http://library.amlegal.com/nxt/gateway.dll/California/campaign/articleielectioncampaigns?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sanc=JD_Art.ICh.1 [last visited Nov. 16, 2019].}
In Los Angeles, there is agreement between members of the city council that the
council will vote with the council representative from the district where the
development is proposed, typically through proposals for zoning amendments,
variances, subdivision, or site plans.\footnote{Beth Shuster, One Zoning Law, Two Outcomes—Politics: The L.A. City Council recently voted to close a synagogue but, using the same rule, allowed a sex club to remain open. Homeowners question the rationale, Los Angeles Times, November 11, 1997, available at http://articles.latimes.com/1997/nov/11/local/me-52474 (last visited Feb. 1, 2014).} This allows legislators to have free reign
over whether the project is approved and thus facilitates corrupt exactions as a price
of development.

In Philadelphia, at least before that city’s recent overhaul of its zoning code,
zoning and other regulatory measures prevented developers from enjoying any
development of right. A development of right refers to the maximum building
envelope for a project site as defined in the zoning ordinance. The zoning ordinance
code informs potential developers of the use, size, and intensity of development
that is allowed under the law. The land use ordinances in Philadelphia, were so
complicated that every development project required the equivalent of a variance,
and thus the system allowed the exploitation of developers seeking approvals. In
many communities, all but the smallest of projects require some form of
discretionary approval in the form of subdivision, site plan, variance,
comprehensive plan or zoning amendment, and thus political exploitation is
facilitated. Even eliminating the potential corruption impacts on local land use

\begin{itemize}
\item Urb. Law. 669, 669 (2006) (summarizing “reported cases and opinions documenting allegations of unethical conduct involved in land use planning and zoning decision making”); Kris Wernstedt, Terra Firma or Terra Incognita? Western Land Use, Hazardous Waste, and the Devolution of U.S. Federal Environmental Programs, 40 Nat. Resources J. 157, 182 (2000) (“[F]ew areas of local government administration have been skewered by charges of cronyism and corruption as have local land use decisions.”); Harlan Draeger, A Crime Wave for Aldermen, Chi. Sun-Times, Jan. 1, 1992, at 1 (reporting that seven of the eighteen Chicago aldermen convicted of criminal offenses since 1970 were convicted for bribery or extortion related to zoning).
\end{itemize}
controls, legislators are often limited and blinded by a crisis calling for increased tax revenues, proposals that all come from similar large lenders and developers, and their limited understanding of planning and the lack of imagination to interpret community goals into the legal structure. Nevertheless there are rational arguments for focusing on local interests and local action to achieve sustainability. One's opinion may be affected by whether one is in a state where the government is seeking to damage the environment as compared to a state seeking to protect the environment.

4. U.S. Cities Should Experiment with Successful Policies Undertaken in Europe

It is imperative that both national and local creative leadership work together to overcome the harm caused by suburban sprawl. Unless the nation reverses the impacts of automobile-centered planning and its effect of continuing to worsen climate change and foreclosing the possibility of mitigation necessary to avoid more expensive adaptation and more serious warming, cities will not survive. Stockholm’s city council, its legislative body, has in excess of 100 elected members, making group decision-making discursive and its decisions arguably more transparent. With so many decisionmakers, corruption by payoff or campaign contribution is much more complicated and therefore, less likely. Another practice that carries a number of benefits is the sharing of decision-making between local, county, and state or provincial governments, or with the national government. In the United Kingdom, local development projects call for consultation with the county—utilizing national standards and the national process. In the Netherlands, traditionally, significant projects require agreement of the provincial government

153 Jan G Laitos & Rachel Martin, Zombie Subdivisions in the United States and Ghost Developments in Europe: Lessons for Local Governments, 4 Wash. J. Envtl. L. & Pol'y 314 (2015) (examining both the causes and effects of these abandoned, non-completed developments, and compares how America and Europe have had similar, but also distinct experiences; suggesting that a bottom up, local approach is preferable to one relying on state or national solutions and offers lessons to be learned by local governments in America and Europe so as to enable both the removal of these eyesores, and the advancement of policies that avoid the specter of future reappearing zombie or ghost properties).


(the equivalent of an American state), with the local government, but subject to national standards. The Dutch "Bestemmingsplan" requires that state (province in the Netherlands) and city concur in development plans, a system that precludes unilateral sprawl development and results in the maintenance of a clearly defined urban boundary, generating projects arguably less likely to involve corruption.

In Germany, the concepts of “Aussenbereich” and “Innenbereich,” under which development is restricted to built-up centers and precluded in open space and rural areas, prevent the conversion of rural and green space for urbanization. In Germany, similar to the Netherlands, the state (“Länder”), must be consulted and it must approve significant local projects and plans. This is similar to the Swiss policies of “Bauzonen” (building zones), “Landwirtschaftszonen (agricultural zones), and “Schutzzonen” (conservation zones).

Great Britain and Korea utilize green belts of open space around cities to prevent sprawl and encourage urban density. In Stockholm, the city acquired all of the surrounding suburban land to establish both a greenbelt and municipal hegemony over development policy. Unfortunately, throughout Europe, due to recession and the decline of federal or state subsidies, land development decisions are becoming more a function of local control. In the United States, the call for local autonomy has prevented any participation by the federal, state, county or regional governments, leaving local land use decisions to

---


the local city council, commission, or planning board. In Maryland, zoning and development decisions are carried out by professional hearing examiners rather than purely political bodies and have been credited with superior discretionary decisions.\footnote{John J. Delaney, \textit{Tribute to Judge Rita C. Davidson}, 44 Md. L. Rev. 236, 238 (1985) (Maryland's zoning hearing examiner system has in turn become something of a model for the nation and has been emulated in several states); Stuart Meck & Rebecca Retzlaff, \textit{The Zoning Hearing Examiner and its Use in Idaho Cities and Counties: Improving the Efficiency of the Land Use Permitting Process}, 43 Idaho L. Rev. 409 (2007).}

In the United States, vested interests of office holders, corporations, and developers, as well as opposition by voters will typically prevent meaningful experimentation with best practices from abroad. Curiously, communities in the United States are unwilling to experiment with successful strategies and continue to embark on a completely failed experimental national policy of urban sprawl.

Related to the issue of corruption in public contracting and land development is corporate capture of local government, or in fact, corporate capture at all levels of government. Local government may excessively defer to developers, banks, or other institutional lenders. This may be particularly the case where local government, strapped for tax revenues, closes or reduces the size and capacity of its planning department and code enforcement administration. Related to the problem of fiscal zoning is the plight of shrinking cities or developing cities following closure of a community's largest employers. Often, the fear or threat of canceling a project and the promise of tax base expansion may have the desired effect of generating project approvals. Historically, many European cities had significant planning infrastructure and were able to impose their design preferences in the form of national development standards and local plans.\footnote{George Lefcoe, \textit{The Right to Develop Land: The German and Dutch Experience}, 56 Or. L. Rev. 31 (1977).}

In the Netherlands, it was typical for the community and local government, with the approval of the provincial state-regional government, to promulgate a comprehensive specific plan and only then invite private developers to execute a portion of the plan.\footnote{George Lefcoe, \textit{The Right to Develop Land: The German and Dutch Experience}, 56 Or. L. Rev. 31 (1977).} In recent years, cities throughout the world face globalization, increased competition, and the need to reduce taxation in search of enhanced competitiveness for locally-produced goods. At a time when imagination and planning are critical, planning departments' budgets have been reduced or eliminated. At the same time, large-scale international capital investors and developers have become ever-larger players in local development, offering their own planning expertise. Local government is simply overwhelmed in attempting to
analyze and oversee development projects. In the same way, large developers and large projects have become particularly attractive to budget-conscious municipal government in the United States.

5. The Lessons of Portland

Portland, Oregon, is the best-known example of American urban growth boundaries\textsuperscript{164} where according to state legislation, cities are obligated to plan their boundary based on anticipated growth in jobs and population and to restrict development to within the city. This legislation has been effective in restricting sprawl and preserving agricultural and rural landscapes.\textsuperscript{165} Most jurisdictions have fought limits on growth,\textsuperscript{166} at least until there was a water shortage, but several states have approved urban growth boundaries.\textsuperscript{167} By comparison to the zoning of


\textsuperscript{165} Michael E. Lewyn, Sprawl, Growth Boundaries and the Rehnquist Court, 2002 Utah L. Rev. 1, 4-5 (2002); Stephanie Yu, Student Author, The Smart Growth Revolution: Loudoun County, Virginia and Lessons to Learn, 7 Envtl. Law. 379, 399-400 (2001); Scott L. Cummings, Recentralization: Community Economic Development and the Case for Regionalism, 8 J. Small & Emerging Bus. L. 131, 145 (2004) (describing Portland's urban growth boundary); but see Daniel Brook, How the West Was Lost, Leg. Affairs 44 (Mar./Apr. 2005) (describing the impact of Measure 37 on Portland's urban growth boundary). See also Keith Aoki, All the King’s Horses and All the King’s Men: Hurdles to Putting the Fragmented Metropolis Back Together Again? Statewide Land Use Planning, Portland Metro and Oregon’s Measure 37, 21 J. L. & Pol. 397 (2005) (discussing Measure 37).

\textsuperscript{166} Ariz. Rev. Stat. §9-461.06.M (municipalities may not designate private land or state trust land as open space, recreation, agricultural, or conservation in mandatory plan open space or growth elements, without owner's consent); Delmarva Enterprises, Inc. v. Mayor and Council of City of Dover, 282 A.2d 601 (Del. 1971) (discriminatory service denial where other hookups allowed in past and lines in place, here disallowing creation of buffer zone around urban area through denial of water and sewer service); Volusia Citizens’ Alliance v. Volusia Home Builders Ass’n, Inc., 887 So. 2d 430 (Fla. 5th DCA 2004) (invalidating ballot measure designed to amend county charter and establish urban growth boundary as must give fair notice of contents without political rhetoric or subjective evaluation of impacts that boundary would not be self-executing but would be drawn through political process and according to planning agreements); Archers Glen Partners, Inc. v. Garner, 176 Md. App. 292, 933 A.2d 405 (2007), judgment aff’d, 405 Md. 43, 949 A.2d 639 (2008) (finding single-family subdivision consistent with subarea master plan and general plan under tier development with rural tier to slow growth to 0.75% of countywide growth over next 20 years, assuming a 1% growth rate as general plan controlled and no numeric growth objectives).

\textsuperscript{167} In re Title, Ballot Title and Submission Clause, and Summary for 1999-00 #256, 12 P.3d 246 (Colo. 2000) (per curium) (sustaining growth management initiative over technical challenge that violated single-subject or was misleading; measure required development consistent with growth
Europe or the green belts around English towns, Portland's boundary is quite extensive, allowing a great deal of development to occur with the city and suburban towns that lie within the urban growth boundary. Despite its permissive boundary, the city's extension of its Max Train and tram system is limited to stops that are receiving the bulk of new development and is generating a markedly improved land use pattern. The growth boundary assisted by its transportation policy is generating a better land use pattern than any other city in the U.S. A few states have experimented with statewide urban planning systems that have proven to be beneficial, unless dismantled by politics, as in Florida, but they have not been universally credited with the success of Portland and the State of Oregon. Along with transit investments, bicycle consciousness, and the encouragement of sustainable planning and housing, sprawl limits are certainly playing at least a supporting role in making Portland the closest U.S. city to allow a comparison,

maps, establishment of urban growth boundaries and a cap on population growth of rural areas and villages); Provincial Dev. Co. v. Webb, No. 7973 (Ky. Cir. Ct. 1960), reprinted in David L. Callies and Robert H. Freilich, *Cases and Materials on Land Use* 856 (1986) (sustaining development limited to urban service areas pursuant to plan); City of Arlington v. Central Puget Sound Growth Management Hearings Bd., 164 Wash. 2d 768, 193 P.3d 1077 (2008) (county could re-designate land from agricultural to commercial as parcel was already characterized by urban growth and was adjacent to other urban growth; county thus met the locational requirements for expansion of urban growth area; not required to show a change in circumstances, but rather burden was on Growth Management Hearings Board to show that county's action did not comply with the Act).


170 Stroud, *A History and New Turns in Florida's Growth Management Reform*, 45 J. Marshall L. Rev. 397 (2012) (arguing that the reduced scope and efficacy of the developments of regional impact (DRI) process, and the moribund status of the critical areas program leaves a regulatory gap, and the remaining “sector plan” process has yet to prove significant results; that the current retreat from meaningful state or regional authority to address those impacts is particularly worrisome, as Florida most certainly will continue to grow in the future. The state now has reduced its role to ad hoc protection of yet undefined “important state and regional resources and facilities,” with minimal administrative resources devoted to the task; sector plan changes anticipate that regional agencies will conform to the long-term growth plans in rural areas, not that long-term growth plans will conform to regional priorities; that the ideological underpinnings of this shift reflect a larger anti-government movement that may affect not only Florida's programs, but those in other states).
albeit a weak one, with Freiburg, Germany. Freiburg is arguably Europe's greenest city. Freiburg is arguably Europe's greenest city.

While the United States was largely developed on open space, Europe, recognizing the importance of retaining open space and agricultural land has focused its development and redevelopment efforts of cleaning and reusing older industrial sites. When considering anti-sprawl policies, an essential policy component is the cleaning and rebuilding on former brownfields in and around the cities. Brownfields refer to sites that were former industrial, military, or commercial site where future use is affected by environmental contamination. Instead of destroying farms and extending unlimited growth, development can be planned around transit on lands that were formerly used for industry. This is how European cities are pursuing growth without sacrificing the dense urban model. Although, the U.S. has had policies of either mandating cleanup by responsible polluters, or creating a fund to finance brownfield cleanup, unfortunately, as with other non-defense funding, Congress has not funded cleanup sufficient to encourage a significant anti-sprawl impact.

D. Housing

[C]oncentration is the genius of the city, its reason for being. What it needs is not less people, but more, and if this means more density we have no need to feel guilty about it. The ultimate justification for


172 Id.


175 Wikipedia, Superfund, available at https://en.wikipedia.org/wiki/Superfund (last visited Sept. 7, 2019) (Since 2001, most of the funding for cleanup of hazardous waste sites has been taken from taxpayers generally, irrespective of polluting. Despite the name, the program has suffered from under-funding, and Superfund cleanups have decreased to a mere 8 in 2014, out of over 1,200. As a result, the EPA typically negotiates consent orders with PRPs to study sites and develop cleanup alternatives, subject to EPA oversight and approval of all such activities).
building to higher densities is not that it is more efficient in land
costs, but that it can make a better city.\textsuperscript{176}

\textit{William H. Whyte}

Barcelona, Berlin, Los Angeles, and San Francisco face serious housing
challenges. The United States has inadequate assistance for renters and escalating
homelessness.\textsuperscript{177} Gentrification and rising rents and home prices threaten the
stability of cities, and the ability to house workers in San Francisco and the more
desirable areas of Los Angeles, New York City, and Washington, D.C. In
accommodating the housing needs of companies and their employees considering
relocation to the city, and in preserving the neighborhood character enjoyed in each
city, gentrification is exacerbated. One of gentrification's by-products includes
eviction of the poor and rising homelessness.\textsuperscript{178}

In the United States, and even more intensely so in Europe, the desirability
of urban life, being able to walk and enjoy the historic centers, attracts the relatively
wealthy to move to these districts, and this in turn, inflates rents and results in the
displacement of the relatively poor as owners can attract higher income tenants or
purchasers. This process of the wealthier willing to pay higher rents resulting in
displacement of the poor is called gentrification. To the urban poor and
preservationists, gentrification is an evil force that must be tamed. To cities,
gentrification is the only mechanism available to have neighborhoods updated and
improved without excessive public cost or intervention. Those living in Manhattan
and its boroughs, or in the San Francisco Bay Area, can describe how
neighborhoods are undergoing change and population growth as rents and home
prices escalate, requiring many poor and middle-class residents to move to more
affordable districts as the more affluent replace them. Manhattan has suffered a
dramatic change in its character from gentrification.\textsuperscript{179} Where central city
neighborhoods are attractive, rent inflation can be so significant that the poor can

\textsuperscript{176} William H. Whyte, \textit{The Last Landscape} 339 (2002).

\textsuperscript{177} Maria Foscarinis, \textit{Homelessness in America: A Human Rights Crisis}, 13 J. L. Soc'y 515 (2012);
Maria Foscarinis, \textit{Strategies to Address Homelessness in the Trump Era: Lessons from the Reagan
Years}, 27 J. Affordable Hous. & Community Dev. 161 (2018); Loftus-Farren, Zoe. Comment,
\textit{Tent Cities: An Interim Solution to Homelessness and Affordable Housing Shortages in the United

\textsuperscript{178} Emily Badger & Quoctrung Bui, \textit{83 Million Eviction Records, a Sweeping and Intimate New
Look at Housing in America}, N.Y. Times, Apr. 17, 2018, available at

be removed more rapidly and cheaply than through urban renewal which could take fifteen years and never result in new wonderful neighborhoods.180

1. Immigration and Gentrification

Immigrants and the aging population compete for apartments and walkable neighborhoods with other home seekers. The competition drives up rents and is another cause of gentrification in developing cities. Where neighborhoods are attractive to those willing to pay high prices or rents, the displacement of workers follows. In successful non-shrinking cities, even the middle class or those formerly considered affluent may be displaced by gentrification.

Patterns of gentrification displacement often reflect the historic impacts of urban redevelopment where Latinos and Blacks tend to relocate to neighborhoods that increase racial isolation. Race is the likely reason for the lack of a housing or social welfare system in the United States. The popular image portrayed by attacking politicians and the media identify minority groups as welfare recipients despite the fact that most poor in the United States are white.181 American whites rebelled against welfare because they saw it as using their hard-earned taxes to give Blacks medical and legal services that many of them could not afford for their own families.182 Although support for government-assisted housing was initially bipartisan, for the last two generations, Republicans have blocked extension and


retention of programs aggravating the impact of gentrification, generating evictions and homelessness. The consistent hostility displayed by gentrification often exists in shrinking cities where inflating rents and prices occur in desirable neighborhoods, including the more affluent prestigious suburban communities, or those neighborhoods associated with universities, attractive landscape or cityscapes. COVID-19 threatens to generate a tsunami of evictions and mortgage foreclosures unless the U.S. Congress, or individual states or cities, maintain or enact protection against displacement. It is estimated that 30-40 million are at risk.\footnote{Emily Benfer, et. al., \textit{The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk}, Aspen Institute Aug. 7, 2020 (anticipated during the next three months generating a long-time housing crisis) (available at https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/ (last visited Aug. 18, 2020).}

Rent control can be a significant deterrent to gentrification to the extent that it discourages rent increases and the motive to displace. Despite its economic inefficiency,\footnote{Compare Glen Whitman & Bruce Zucker, \textit{Rent Control and Land Use Regulations: A Legal and Economic Analysis of Recent Takings Jurisprudence}, 31 Real Est. L.J. 193 (2002) (inefficiency) and Richard A. Epstein, \textit{Rent Control and the Theory of Efficient Regulation}, 54 Brook. L. Rev. 1223 (1989) with W. Dennis Keating, \textit{Commentary on Rent Control and the Theory of Efficient Regulation}, 54 Brook. L. Rev. 1223 (1989) (inefficiency) (arguing that rent control is a political issue and for the legislature and rent control is not confiscatory and does not constitute a taking).} rent control is essential to preserving communities and combatting gentrification. Exemptions from rent control, such as for new buildings, or rents above a set floor will cause eviction of tenants under schemes to exploit the monopoly-caused inflation and further gentrification.\footnote{See also Miles Walser, Comment, \textit{Putting the Brakes on Rent Increases: How the United States Could Implement German Anti-Gentrification Laws without running Afoul of the Takings Clause}, 36 Wis. Int'l L.J. 186 (2018).} Where rent control is imposed on a predominantly white neighborhood, turnover will occur only occasionally, and racial, religious, or ethnic inclusion is not likely, and landlords, given the demand for rent controlled units, can choose friends, relatives, or their referrals, which may result in the perpetuation of the racial character of the neighborhood. At the very least, landlords, in choosing new tenants, have the ability to exercise racial preferences among the applicants.

Concomitantly, ceiling quotas on the extent of inclusion of those of lower income may also be essential to avoid further urban decline, particularly in shrinking cities and in districts in developing cities that are at the edge of stability. Ceiling quotas would operate as a variation to rent control whereby properties
would rent a percentage for those of lower income, typically a rent qualifying for § 8 vouchers, where a tenant pays a percentage of their income to cover a portion of the market rent and the housing authority-issued voucher covers the remainder. Market rate rents would be set to generate increased diversity yet seek to assure security of tenure and to avoid gentrification and exploitation by the property owner arising from their monopolistic status generated from restrictive zoning and the developed community. The increasing presence of the poor in a development or neighborhood where many alternatives exist in a shrinking market, can result in those of higher income moving away or refusing to reside there and the project or neighborhood converts to one of lower income. This phenomenon can occur at the edge of lower income distressed neighborhoods and in declining suburbs.

Cities must not only assure the security for those residing in affordable housing, it must guard against siting too much affordable housing in a single neighborhood. Suburban communities should establish neighborhood improvement districts modeled on the successful business improvement districts that assisted in the revival of many declining business districts. Communities could exact fees to be used to maintain vacant properties and augment police protection. Some studies have suggested that beyond a low percentage of the poor, typically 5%, absent huge unmet demand, developments and neighborhoods may tend to discourage residence by the more affluent. Developments in tight markets can likely achieve a 15% goal for moderate income occupancy. In developing cities


and districts, like San Francisco and many of its regional neighbors, housing is so tight that, short of developing high-density public housing for the poor, the cities are likely to remain stable only if there is an intelligent policy of rent control producing a more effective security of tenure so that those not earning tech and professional salaries can remain in their homes.

Berlin and Barcelona, like San Francisco, and Los Angeles, are experiencing gentrification, yet have performed better in meeting housing needs. Germany, prior to reunification, offered subsidized social housing. However, following the removal of the Berlin wall, the high-vacancy housing stock in the former East Berlin was available. Vacant housing stock remained after many in the German Democratic Republic migrated to West Germany and then other EU countries, or returned to their home countries after having served as guest workers. Central Berlin remains attractive and gentrification is expected to continue.

2. Housing Policy

Housing policy in Western Europe following World War II was directed to constructing high density housing (between 25 and 100 units per acre) with supporting infrastructure, such as parks, walking and bicycle paths at least in the Netherlands, Belgium, Germany, Austria, and in the Scandinavian cities. As the economies of Europe improved, countries typically subsidized housing for workers, families, and those with special needs.\(^{190}\) As globalization has forced tax reduction to generate trade and exports, the European countries have significantly reduced or eliminated the housing subsidy systems of the past. Rental housing production has slowed, particularly in Germany, where reunification generated a significant exodus from the German Democratic Republic and the former East Berlin within the (DDR), leaving extensive vacancies and increasing demand for suburban low-density single family detached housing. Automobile ownership is the preferred form of transit outside of Berlin today in the former DDR.

Subsidized housing policy in the United States was initially designed to assist the very poor.191 Public housing served as a significant temporary housing resource for soldiers returning from World War II. As cities embarked on urban renewal, public housing was often where families relocated following destruction of older blighted neighborhoods and later as a way to separate town centers from the neighborhoods of the urban poor. In the 1950s, urban renewal was employed to eliminate America's "skid rows" and to separate downtowns from neighborhoods of poverty and color.192 Urban Renewal became known as "Negro removal" as most displaced persons and residents of urban renewal districts were non-white. Whites leaving the city or displaced by public improvement, such as a highway or redevelopment moved to the affordable suburbs that were accessible only to whites.193 Blacks, typically the bulk of displaced persons, were relocated to already concentrated Black neighborhoods, further creating a pattern of public and later subsidized private rental housing that was almost all-Black and all-poor. The reputation of these projects further led to Congress eliminating most housing subsidies, allowing some aid for projects designed for the disabled or elderly and a relatively small number of vouchers, under which the government would pay part of the rent to a private landlord.194 At the outset, Blacks were excluded by subdivision regulations mandated by the federal government, conditioning mortgages on every parcel restricted to whites-only.195


192 42 U.S.C. § 1460(c) (Supp. I, 1966) (authorizing loans and advances to acquire “open land” projects for nonresidential development: “[I]f the governing body of the local public [[renewal] agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives); Daniel R. Mandelker, The Comprehensive Planning Requirement In Urban Renewal, 116 U. Pa. L. Rev. 25 (1967).


194 Id.

195 Robert C. Ellickson, The False Promise of The Mixed-Income Housing Project, 57 UCLA L. Rev. 983 (2010) (advocating vouchers to provide greater efficiency and fairness; Deborah Kenn, Fighting the Housing Crisis with Underachieving Programs: The Problem with Section 8, 44 Wash. U. J. Urb. & Contemp. L. 77 (1993); Mark A. Malaspina, Demanding the Best: How to Restructure the Section 8 Household-Based Rental Assistance Program, 14 Yale L. & Pol’y Rev. 287 (1996).

The so-called policy of separate but equal manifested itself in the establishment of a suburban subdivision in each region that was restricted by covenants to Blacks-only. The combination of redevelopment and the national policy of racial segregation resulted in the least sustainable urban form—high-density projects for the very poor, a form that extended the racially segregated pattern. The older shrinking central city homes were ineligible for federally-insured loans due to the policy of "redlining." Pursuant to redlining, appraisers and the Federal Housing Administration refused to make loans in central cities in lower-income minority neighborhoods based on the assumption that the inner-city property was too high a risk for the government to assume. The Black population and other minorities excluded from home ownership due to government policy were also necessarily denied the wealth accumulation enjoyed by white suburban homeowners. In addition, the pervasive system of housing discrimination by lenders, home sellers, landlords, and other real estate professionals such as brokers, further acted to generate segregated neighborhoods by steering clients to


Melvin L. Oliver & Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality 18 (1995); Richard Rothstein, The Color of Law 182-85 (2017) (Levittown homes that sold for $8,000 in 1948, without remodeling are now worth at least $350,000 and while the average white household in the U.S, is $ 134,000, while the average for Black households is $11,000).


E.g. Wharton v. Knefel, 562 F.2d 550 (8th Cir. 1977).

Subsidized rental housing, other than for special populations, such as the elderly or those with disabilities, is today limited largely to vouchers, under which the tenant is entitled to a subsidy payment, but the home seeker must find a landlord willing to participate in the program. Suburban landlords, and those in more affluent urban neighborhoods, typically refuse to participate in the program. The program steers the poor who are often non-white to shrinking neighborhoods in a more racially-segregated city. Only a few progressive cities proscribed discrimination against these subsidized renters, and attempts to argue that the refusal of landlords to participate in the program was itself discriminatory has, so far, only been established by a New York intermediate appellate court. The result is that predominantly white neighborhoods lack


205 Fletcher Properties, Inc. v. City of Minneapolis, --- N.W.2d ----, 2020 WL 4342651 (Minn., July 29, 2020) (city ordinance requiring landlords to accept federal Section 8 housing choice vouchers was constitutional).

206 Compare People v. Ivybrooke Equity Enters, LLC, 175 A.D.3d 1000, 107 N.Y.S.3d 248 (4th Dept. 2019) (rent subsidy vouchers were a source of income under the fair housing code prohibiting discrimination, and thus the landlord was required to accept the vouchers), with Dussault v. RRE Coach Lantern Holdings, LLC, 2014 ME 8, 86 A.3d 52 (Me. 2014) (landlord's policy of not including in its standard lease a tenancy addendum that binds the landlord to the requirements of the federal government's Section 8 Housing Choice Voucher Program did not constitute unlawful discrimination on the basis of her status as a public assistance recipient in violation of the Maine Human Rights Act (MHRA); MHRA does not create disparate impact liability in the context of claims of housing discrimination based on a landlord's decision not to participate in the voluntary voucher program established by Section 8); and Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107, 48 N.E.3d 394 (2016) (disparate-impact claims were cognizable under Massachusetts anti-discrimination law prohibiting landlords from discriminating against recipients of public assistance or housing subsidies, based on non-renewal of Section 8 housing assistance payments despite compliance with law and contract, in challenging as discriminatory the decision not to renew development's project-based Section 8 housing assistance payments contract (HAP) with HUD when its forty-year mortgage subsidy contract expired, and to instead accept from its tenants Section 8 enhanced vouchers, although owners and principals never committed a breach of their Section 8 contract and followed the federal and state requirements in deciding not to renew the project-based subsidies; owners and principals of rental development were not obligated to participate in project-based Section 8 subsidy program, but that fact alone did not shield them from an adequately pleaded claim of public assistance discrimination, however, discrimination was not proven as allegation that, without the benefit of project-based subsidies, the prospective tenants would almost invariably not be able to afford to live in the 67
affordable housing, and in urban centers, the programs exacerbate racial isolation.  

Today, discrimination and segregation can result simply by landlords inquiring of prospective tenants regarding their criminal records. In the past generation, a small number of cities and states have imposed obligations on developers to fund or include in their developments some units for the working

| 207 See Low Income Housing Tax Credit, 26 U.S.C. § 42 (a)-(b) (2012) (the Low-Income Housing Tax Credit was enacted in the Tax Reform Act of 1986 (TRA), Pub. L. No. 99-514, 100 Stat. 2085 § 252, as amended (codified at I.R.C. § 42 (1986); Inclusive Communities Project, Inc. v. Department of Treasury, 946 F.3d. 649 (5th Cir. 2019) (Treasury under the statutory allegation of administrative responsibilities for the Federal Low-Income Housing Tax Credit (LIHTC) program of the Tax Reform Act of 1986, lacked the power to coerce the Texas Department of Housing and Community Affairs (TDHCA), which had power under Act to allocate credits to specific affordable housing projects, and thus the non-profit organization did not establish causation between its alleged injuries and DOT’s conduct, as for Article III standing, for claims against Treasury alleging a violation of Title VIII for abdication of statutory duties and for a claim under Fifth Amendment equal protection, arising from Treasury’s alleged failure to regulate LIHTC program in a manner that furthered fair housing; for purposes of the redressability requirement for Article III standing, relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court); John Baber, Thank You Sir, May I Have Another: The Issue of the Unsustainability of Low Income Housing Tax Credits and Proposed Solutions, 4 U. Balt. J. Land & Dev. 39 (2014) (raising concerns that Affordable housing projects built today are routinely constructed in communities that are already geographically segregated, overburdened with debt due to unnecessarily high up-front development fees and other debts, and simultaneously limited in the amount of rental income they can generate; and state-run system of administering the Low Income Housing Tax Credit (LIHTC) and the federal tax credit statute itself, allows, and in some ways, indirectly encourages developers to construct affordable housing projects in already segregated communities; while these projects have a good shot at short-term profitability for the developers, they have a slim chance of being able to financially support themselves in the long-term--much to the detriment of the tenants who live there and the communities in which the projects are located; the author advocates that stricter distribution guidelines should be adopted); J. William Callison, Achieving Our Country: Geographic Desegregation and the Low-Income Housing Tax Credit, 19 S. Cal. Rev. L. & Soc. Just. 213 (2010) (arguing that the LIHTC program impact is to worsen racial separation and for the need to modify the program to be integrative); Myron Orfield, Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low-Income Housing Tax Credit Program, 58 Vand. L. Rev. 1747 (2005).

208 Valerie Schneider, Racism Knocking at the Door: The Use of Criminal Background Checks in Rental Housing, 53 U. Rich. L. Rev. 923 (2019).
The programs have been largely symbolic and have generated far more critical scholarship than actual housing. Congress established a low-income housing tax credit program to offer advantageous tax treatment for developments which include affordable units. Like subsidized housing and vouchers, participation is voluntary and thus the pattern of developments is again starkly racial, with projects developed according to traditional patterns of racial separation.

Ironically, the suburbs no longer provide the attraction enjoyed at the end of the last century, and the majority of Blacks now live in suburban communities.

209 2910 Georgia Avenue LLC v. District of Columbia, 234 F. Supp. 3d 281 (D.D.C. 2017) (application of D.C. Inclusionary Zoning Program (IZ Program), which required that 8% to 10% of gross floor area of new residential developments in the district be used for sale or lease to eligible low- and moderate-income households at certain maximum price levels did not constitute a regulatory taking); Home Builders Association of Greater Chicago v. City of Chicago, 213 F. Supp. 3d 1019 (N.D. Ill. 2016) (real estate developer failed to allege affordable housing ordinance, which required developers of specific residential housing projects, in exchange for permit, to dedicate 10% of the new units as affordable housing for rent or sale for 30 years or pay a fee per unit into an affordable housing fund); California Bldg. Industry Assn. v. City of San Jose, 61 Cal. 4th 435, 189 Cal. Rptr. 3d 475, 351 P.3d 974 (2015) (city’s “inclusionary housing” ordinance containing the requirement that a the developer sell 15% of its on-site for-sale units at an affordable housing price); Hochberg v. Zoning Com’n of Town of Washington, 24 Conn. App. 526, 589 A.2d 889 (1991) (condition on condominium permit could require at least 5 units under $100,000, and at least 10% under $125,000, as within enabling legislation); In re Egg Harbor Associates (Bayshore Centre), 94 N.J. 358, 464 A.2d 1115 (1983) (10 to 20% mandatory set-aside for low-income housing required for permits in coastal zone even absent clear enabling legislation). See generally Inclusionary zoning; Nico Calavita & Alan Mallach, Inclusionary Housing in International Perspective; Affordable Housing, Social Inclusion, and Land Value Recapture (2010).

210 Perkins, Alternatives to Inclusionary Housing Ordinances Exist, Inside Bay Area, Feb. 15, 2007 (claiming that Newark, California mandating 15% of projects be affordable and San Benito County’s requirement of selling 30% of units below market or pay an in lieu fee have generated not one unit of affordable housing and recommending linkage fees and other incentives such as rehabilitation of existing units rather than a mandatory inclusion ordinance that encourages builders to go to other less-regulated communities). See generally 2 James A. Kushner, Subdivision Law and Growth Management § 6:27 (2001 & Supp. 2020).


213 Alana Semuels, No, Most Black People Don’t Live in Poverty—or Inner Cities:
“Between 1960 and 2000, the number of African Americans living in suburbs grew by approximately 9 million, representing a migration as large as the exodus of African Americans from the rural South in the mid-twentieth century. More than one-third of African Americans--almost 12 million people--live in suburbs.”

The divide between many minority communities, which were now in the city and the older suburbs, and the more affluent communities, predominantly in white newer suburbs, became more pronounced. This occurred despite back-to-the-city moves, investment, the gentrification of attractive neighborhoods, and despite

---

In his Debates and Speeches, Trump Implies that African Americans Are Concentrated in Urban Cores. They're Not,

Andrew Wiese, Places of Their Own: African American Suburbanization in the Twentieth Century 1 (2004); Christopher Wilson, Trump Says Fear of “Low Income Housing” Will Bring the “Suburban Housewife to His Side”, Yahoo News, Aug. 12, 2020 (reporting a 2018 Pew Research study found that a third of suburban dwellers were nonwhite; suburban poverty is already increasing in many areas, while the “Wall of Moms” who took to the streets of Portland and other cities to protect Black Lives Matter demonstrators is at least as representative of today’s suburbs), available at https://yahoonews.com/trump-suburbs-attacks-biden-housing-policy-housewives-185303575.html (last visited Aug. 14, 2020).

Sheryll D. Cashin, Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America, 86 Cornell L. Rev. 729, 737-41 (2001); Paul A. Jargowsky, Take the Money and Run: Economic Segregation in U.S. Metropolitan Areas, 61 Am. Soc. Rev. 984, 990-91 (1996) (showing increase in economic separation. See also Inclusive Communities Project, Inc. v. Department of Treasury, 946 F.3d. 649 (5th Cir. 2019) (Treasury under the statutory allocation of administrative responsibilities for the Federal Low-Income Housing Tax Credit (LIHTC) program of the Tax Reform Act of 1986, lacked the power to coerce the Texas Department of Housing and Community Affairs (TDHCA), which had power under Act to allocate credits to specific affordable housing projects, and thus the non-profit organization did not establish causation between its alleged injuries and DOT’s conduct, as for Article III standing, for claims against Treasury alleging a violation of Title VIII for abdication of statutory duties and for a claim under Fifth Amendment equal protection, arising from Treasury’s alleged failure to regulate LIHTC program in a manner that furthered fair housing; for purposes of the redressability requirement for Article III standing, relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court).


See John J. Betancur, Can Gentrification Save Detroit? Definition and Experiences from Chicago, 4 J.L. Soc’y 1, 1-8 (2002); Lance Freeman & Frank Braconi, Gentrification and
that segregation between Blacks and non-Blacks is at its lowest level since 1920.\textsuperscript{218} Although minorities increased their presence in the suburbs\textsuperscript{219} and the affluent were returning to certain neighborhoods in the city,\textsuperscript{220} the divide between neighborhoods during this period was still characterized by hyper-segregation.\textsuperscript{221} Thus, while black-white segregation in metropolitan areas has declined in the past two decades and diversity has increased, the nation must nevertheless be characterized as having a high degree of racial separation.\textsuperscript{222} Majority-Black suburban neighborhoods generally provide fewer economic opportunities in terms of rising home values and access to good schools and jobs, making it harder for Blacks to catch up financially with whites.\textsuperscript{223} In 2005, “the average white person in the United States live[d] in a
neighborhood that [was] more than 80% white, while the average Black person live[d] in one that [was] mostly Black.”

African Americans are the most residentially-segregated group in the United States. Black suburbanization did little to desegregate metropolitan areas, for while the movement of Blacks to the suburbs signaled the lifting of the suburban-urban barrier, any optimism about greater residential integration between whites and Blacks was short-lived.

3. Affordable Housing Strategies and Sustainability

Just as roads, utilities, and transit should be in place prior to housing development, the affordable housing obligation should be in place as a condition of undertaking construction. Communities should use the technique of concurrency to assure that affordable housing is developed early in the development process so that affordable housing can be made available and that the obligation is not put on a back burner. Where affordable housing is to be included within a development, it could be approved in phases, with the first phase to include the affordable housing obligation.

While many advocate mixed income housing so as not to stigmatize the poor—often non-white populations, such architectural policies when imposed in stand-alone buildings may carry undesirable consequences where common areas and common walls may tend to generate noise levels and overcrowding that may discourage occupancy by those of moderate income, while attempts at separation

---


of income groups tends to generate racial isolation. Professor Audrey McFarlane argues that mixed-income housing is an increasingly popular approach to providing affordable housing and that the technique went largely unnoticed until developers of mixed-income housing constructed buildings containing entrances for rich and poor residents. The ensuing “poor door” controversy illustrated that mixed-income housing, as both a method of affordable housing production and an integration strategy, is in unacknowledged tension with itself and that mixed-income housing is implemented as a surreptitious form of racial and economic integration that accommodates and replicates prevailing race and class assumptions detrimental to the needs and interests of low to moderate-income individuals in need of housing and leads to gentrification displacement. Professor McFarlane stops short of accepting racial and economic segregation, endorsing mobility strategies to house the urban poor in middle-income communities and even recognizes the benefits of mixed-income housing, but fears it will not begin to solve segregation or the shortage of affordable housing. There also appears to be tension between the use of economic class as the equivalent of race and the existing antidiscrimination jurisprudence.

Germany would not likely mandate expensive parking, at least for the bulk of residential units. The Netherlands might prohibit all parking, except in more luxury units where lenders may drive building design. Although a few U.S. cities are experimenting with a cap on allowable parking, the automobile lifestyle is still expressly accommodated.

Cities might limit house sizes through zoning and by imposing a tax on dwellings that exceed 400 square feet per occupant. Climate change considerations require that housing demand be met with housing redesigned and retrofitted to assure a minimal carbon footprint as well as affordability. Housing policy should require buildings to be repurposed over new construction unless there is no adequate building site. States might legislate to set minimal building code green architectural standards. For example, California has adopted a statewide green building code. States should mandate the use of green building codes and cities

---

should tax non-green development and offer grants and loans to implement green retrofitting. Codes should call for reuse of existing structures because demolition for new development reflects a significant portion of our landfills. Building demolition generates half of all landfill and other solid waste. Through 2050, 89 million new or replacement homes and 190 billion square feet of new offices, institutions, stores, and other non-residential buildings are forecast to be constructed. Even if all development met a green building code, that development would not be green considering the waste and its transport together with the production and transport of materials and mechanical systems to be constructed and installed. Furthermore, cities should plant shade trees, and as in Vienna, permit parking no closer than the closest transit stop.

With the realities of climate change, many of America's cities will have to be redesigned and rebuilt, whether through adaptation to sea rise, or through relocation. To those who say we are vested in automobiles and suburbia, the answer is that two-thirds of all buildings projected to be constructed in the United States by 2050 have not yet been built. The development and redevelopment opportunities are sufficient to dramatically reduce the carbon footprint, and modify urban form to be a more sustainable transit-served and pedestrian-friendly design.

Europe has numerous examples of housing development and redevelopment that reduces the use of automobiles. These projects have become very popular with those seeking to live a more eco-friendly, minimalistic, and sustainable lifestyle. Some projects were developed on a car-free basis, while others included minimal parking. Still other projects were designed to be traffic free, or simply leave residents to find parking outside the project. Some other developments allow some traffic, such as for deliveries, and perhaps even some parking, but call for a traffic


If mitigation of climate change is to be more than a refrain such as "save the rain forest," communities must permit only new development that is either car-free, traffic free, or traffic reduced—all served by convenient public transport. Despite the influence of powerful developers and lenders, cities need to unbundle housing from parking. In some transit-oriented developments in the U.S., the underground parking facility may be as costly as the dwellings. The cost of parking is currently reflected in the rent or purchase price, whether the occupant owns an automobile or relies on public transport and walking. Setting rents based on the number of cars garaged or parked, or the absence of automobile use so that marketing apartments would significantly assist in generating more affordable housing is one solution. Absent controls or deep subsidies, most transit-oriented housing generates an automobile-lifestyle project because rents exceed a price that is affordable to most transit patrons, but which is attractive for those with automobiles when compared to escalating rents in the luxury housing market, and who choose to drive. Solving the affordable housing and homelessness crisis is made terribly difficult and expensive as most jobs even in developing cities, are low wage work exacerbating the demand and shortage of housing, and in San Francisco the minimum price of developing a unit of housing is approaching a million dollars.

4. International Finance

At the very moment when planning is needed more than ever to face the pandemic and climate challenge, planning and regulatory capacity is being dramatically reduced in both Europe and the United States. In the post-cold war

---


236 Yours for $225,000: A Place to Park, CNN Money, July 12, 2007, available at http://money.cnn.com/2007/07/12/news/funny/parkingspots/ (reporting that automobile condominiums in Manhattan can cost up to $225,000, a higher per square foot price than the finished condominium with which they are paired).


period, institutional lenders have enjoyed hegemony. As a result, what is being built in Barcelona, Budapest, Istanbul, Los Angeles, New York, San Francisco, and Warsaw, except for some facade colors and details reflecting local aesthetic customs, is identical.\textsuperscript{239} The developers tend to be large companies with substantial political and economic influence, and a substantial planning capacity. Following the Thatcher and Reagan years, nations on both sides of the pond are pursuing some form of deregulation, modestly reducing taxes, at least for corporations, and reducing the subsidization of services.\textsuperscript{240} Globalization forces lower taxes to enhance competition which in turn results in higher user fees and drastically reduced local planning capacity.

Campaign-contributing developers will continue to build as many hyper-profitable office units for which there exists strong demand in developing cities or districts and for which institutional lenders will support. Even if some developers could see profits in a differently designed, more sustainable community, such initiatives would likely be blocked by the banks and other institutional lenders. The lenders want to invest in the profitable, high-density prime office space, and they want to invest in high density luxury buildings with generous parking to assure that the building is more easily saleable in the future.

Local planners are frequently unable to properly analyze and oppose or properly condition local development to mitigate impacts because planning capacity has been reduced with more austere budgets. Local legislatures are hesitant to impose additional obligations on developers such as preparing a project impacts and mitigation analysis. Rather than traditional patterns of communities informing developers of what is to be developed, today cities are more frequently depending upon the planning capacity of large developers, and deferring to developer interests. Regulating communities have moved toward the use of impact fees to fund infrastructure expansion and to simply assess the square footage or number of dwelling units.\textsuperscript{241} Impact fees avoid officials' obligations to accurately assess and

\textsuperscript{239} Tuna Tasan-Kok, \textit{Budapest, Istanbul and Warsaw: Institutional and Spatial Change} (2007) (describing the capture of international development by large international capital investors).


forecast a development's impact on services and facilities. The fees may be woefully inadequate to expand service capacity to a level that properly supports planned development -- particularly where fees are limited by the state legislature. Where a developer contests the legitimacy of a permit condition, communities at the applicant’s expense should prepare an infrastructure impact report to determine if the fees and proposed conditions will mitigate the problem requiring the condition and whether there is service capacity for water, sewer, schools, transit, and other infrastructure necessary to accommodate the proposal. Many communities have imposed enormous permit fee conditions, anticipating every conceivable demand generated by new development, with fees for roads, trails, parks, recreation, housing, schools, transit, affordable housing, public art, and public utility connections, flood control, and even job training. The effect may be to exclude affordable housing and significantly raise construction and home costs, tending to exclude those of lower income and a significant portion of minority populations, thus exacerbating segregation and gentrification. HUD has instituted an investigation into whether delay and the failure to process and produce affordable housing in San Francisco might violate the Federal Fair Housing Act based on the impact of the process on race and national origin. Ironically, HUD has been steadily moving to weaken fair housing enforcement and to make such litigation infeasible.

---

242 E.g., Cal. Gov't Code §§53080 (fees levied by school districts), 65970 (school facilities authorization), 65995.1 (25¢ per square foot cap on school fees from new construction projects to be occupied solely by senior citizens, limiting conversion to other uses only on payment of such fees), 66000 to 66007 (impact fee statute), 65995 ($1.50 per square foot residential fee and 25¢ per square foot for commercial development authorized with caps to increase with inflation).


244 Dominic Fracassa, Feds Open Investigation into SF Affordable Housing Policies, S.F. Chron., Aug. 18, 2019. [author’s note: It is the author’s view that this investigation is part of the Trump Administration retaliation, along with an EPA complaint that the failure to clean up homelessness constitutes a violation of the Clean Water Act based on discharge into the bay, for California’s energy and automobile efficiency independence, the governor’s refusal to send National Guard units to the Mexican border, San Francisco’s independence as a sanctuary city, and the numerous lawsuits against the President Trump and his Administration brought by the state and city].

Pre-globalization, European communities heavily subsidized housing -- and not just for the very poor as was the case in the U.S.\textsuperscript{246} Ironically, the deductibility of mortgage interest and property taxes from federal income tax in the U.S. provided the equivalent of significant subsidies for the wealthy and the middle class, far exceeding the cost of housing production and subsidy of housing for those of limited income.\textsuperscript{247} Housing subsidies for the poor carried minimal public and political support, extending both racial segregation and neighborhood decline. Such decline was due to inadequate subsidies to allow satisfactory sites and the failure to pursue racial and economic class de-concentration. In Europe, housing blocks were not a stigma on a community and sites were typically designed to be easily accessible to transit, open space, and a commercial shopping district. Unlike American subsidized housing, social housing was actually designed to ultimately convert to market rate housing, and residents of social housing were not identifiable as to income. Cities in Europe and their developers located social housing on desirable sites because in Europe, unlike in the U.S., social housing has a time limit and after a number of years the housing can be sold as market-rate housing.

5. Redevelopment

Cities need old buildings so badly it is probably impossible for vigorous streets and districts to grow without them. . . . for really new ideas of any kind--no matter how ultimately profitable or otherwise successful some of them might prove to be--there is no leeway for such chancy trial, error and experimentation in the high-overhead economy of new construction. Old ideas can sometimes use new buildings. New ideas must use old buildings.\textsuperscript{248}

---


\textsuperscript{247} \textit{Budget Committee Asked to Cap Mortgage Interest Deduction}, 8 Hous. & Dev. Rep. (BNA) 855 (1981) (according to Cushing Dolbeare, President of the National Low Income Housing Council, the mortgage interest deduction will cost the government $35 billion in 1981 and expected to double in a few years, with total housing subsidies for 1981 at 6.9 billion).

In contrast to European social housing that is compatible with neighborhood development, housing for those of low and moderate income in the United States has historically been easily identifiable. Until this century, public housing and subsidized rental housing were identifiable by project, such as for public housing, housing the extremely poor, or subsidized housing for those of moderate income. Currently a number of cities are experimenting with mixed-income and mixed-architectural styles in a New Urbanist design. New Urbanism refers to European style recreations of an idealized vision of the European higher density neighborhood, ideally, a transit-served walkable neighborhood of mixed uses, including housing, offices, shops, and entertainment, featuring housing over shops and containing a pleasing pedestrian environment. \(^{249}\) Ironically, New Urbanism is a lot like old Europeanism. Several of these New Urbanist efforts have been led by local public housing authorities as in Seattle. \(^{250}\) Planning and managing a community that integrates different economic groups so as not to stigmatize the community may point towards a larger role for shrinking housing authorities as projects are demolished or upgraded. Older deteriorated public housing may be eligible for funds for modernization and rehabilitation.

Housing for those of lower income was historically sited only on land unattractive for private market rate housing development. \(^{251}\) Often, the tracts available for apartments were located along highways, or on remnants of land along large boulevards unsuitable for single family home development. The sites were usually restricted to central cities and towns, and almost universally excluded from suburban communities. In the U.S., in the Rust Belt (the former industrial Northeast and Mid-West that at one time was the site of industrial and job concentration),


\(^{250}\) Rainier Vista Multifamily Housing, available at https://tonkinarchitecture.com/rainier-vista-multifamily-housing/ (last visited Dec. 2, 2019) (Tonkin Architecture prepared masterplan); see also East Lake Meadows: A Public Housing Story, PBS, March 24, 2020, (the documentary that follows the conversion of Atlanta’s worst public housing neighborhood to the community’s 542 units – half reserved for lower income residents – are served by a new Publix, bank, and one of Atlanta’s best performing school systems, was produced by Ken Burns and made by his daughter, Sarah Burns, and David McMahon).

wealthier suburbs generally surround an unstable urban center. These urban center communities may have areas inhabited by the wealthy, but most central cities include between 20% and 30% of those of lower income. As neighborhoods decline because jobs are eliminated and rent levels preclude adequate maintenance, those with adequate wealth often migrate to the suburbs, leaving their neighborhoods to further decline. The city may house a shrinking population but also tens of thousands of abandoned houses. Under a free market economy, eventually, with enough of a drop in value, demand may make properties or the land attractive to a redeveloper. Just as the phenomenon afflicted central cities from the 1960s to this century, today suburban subdivisions on the edges of metropolitan areas are in decline. Following the experience of older cities demolishing tens of thousands of abandoned housing, demolitions may soon spread to the more modest suburbs.

This suburban decline reflects overbuilding in the face of declining immigration, the declining wealth of the working and middle class, the physical deterioration of older subdivisions, the increasing costs and delay of traffic congestion, and a changing vision of the good life.

Post-war redevelopment in the United States was often employed to displace the poor, often Blacks, to make way for the potential reuse of the land that might take a generation to actually realize redevelopment. Those displaced typically moved to the suburbs if they were white and to other overcrowded, deteriorating, racially-separate Black neighborhoods offering more affordable, albeit more expensive than pre-displacement rents, less community hostility, and less racial bias, if the displaced person was Black. This disparity between displaced persons reflected the racially segregated suburbs that persisted despite favorable


nondiscrimination laws and Supreme Court jurisprudence. Most suburbs, until the end of the last century, unfortunately remained racially identifiable. This further accelerated the decline of other non-redeveloping neighborhoods facing increased populations of the poor, having lost their home by displacement or eviction. Although smaller communities continue to grow at a fast rate,\(^{255}\) most older larger cities are experiencing job\(^{256}\) and population loss.\(^{257}\) A very modest back-to-the-city movement has taken route in the more attractive urban centers.\(^{258}\) Shrinking cities face job and tax loss, the rising cost of service delivery, pension responsibilities and the obligation to pursue debt reduction just to avoid facing bankruptcy.\(^{259}\)

How do we get these 25th Century canyons of flagship office blocks? These developments will not likely generate any new "villages" as in the case of so many older city neighborhoods with a good vibe, safe, friendly shopping streets, and entertainment. Local urban legislatures such as San Francisco's Board of Supervisors, for the most part vocally and legislatively address concerns of housing and homelessness, and even public transit. The result, however, appears to reflect a privatization of planning as cities appear to serve developers, fail to meet the goals and requirements of planning law, and ignore urban planning principles. Studies in

---


other cities demonstrate that campaign finance in local government looks mostly to those who are current or prospective contractors. The largest contributing contractors are land developers looking for a smooth journey to entitlements and permits and a bit more density in additional floors, the number of units, or greater square footage, and fewer exactions and fees for infrastructure, often in a community center ostensibly lacking any design guidelines. Curiously, that same Board of Supervisors that has led the demonstrably Democratic constituency has been selling out that same constituency on the livability and character of the nation's most beautiful city. The landmarks commission chairman in New York City was regularly offered bribes or visited with threats from organized crime and city politicians. It is likely that the same political ends can generate corruption in cities with regulatory authority.

Is the demise of the ideal city inevitable? In the long run, even the Roman Empire fell, but it may not yet be the time for the United States or Europe. Children are lecturing us that if we do not change direction on climate and sustainability, it is no longer a plea for the world of your grandchildren, it is the very lives and the opportunities of the younger generation and they are voting or eagerly looking forward to it. They reflect their intellectual leader Greta Thunberg who has famously said "act like your house is on fire. Because it is."

Developers are supportive of policies to redevelop neighborhoods to allow higher density around transit stops, typically walkable mixed-use neighborhoods that are transit-served. Well-planned pre-World War II communities designed around electric car lines and aesthetically pleasing variations of the English garden city are found in many American cities, suburbs and small towns. Such New Urbanist and higher density mixed-use transit-served developments can be twice as profitable per square foot compared to detached home suburban subdivisions. Developers may be more ambivalent regarding rent control but would have no likely motive for its support other than an honorable one. To be a bit cynical and truthful, there are stories of those with their high-rise completed, contributing to environmental organizations to challenge future developments - developments that would provide competition in the market and might not yield the developer the potential of rent inflation.

In metropolitan housing markets in the United States, cities encircle the central city, restricting development to expensive detached homes, thereby granted

261 Greta Thunberg, No One is Too Small to Make a Difference ch.5 (Our House is on Fire) (2019); Greta Thunberg, as quoted in Naomi Klein, On Fire 13, 285 (2019).
a monopoly status to central city landowners and landlords, allowing them to raise rents and prices for housing and commercial property. In the case of public utilities granted monopoly status, such anticompetitive regulation requires that a public utilities commission set rates. Cities that have granted landowners monopoly status through zoning and the unavailability of sites for housing or other development, have a responsibility to set prices and rents. The alternative is the unaffordable housing market, rampant gentrification, and escalating homelessness.

The demand for higher rents in developing communities and districts is likely to force out residents unable to compete with higher income new residents. This is particularly the case in developing cities and in the developing districts within the regional area containing shrinking cities or districts. It is a rather simple proposition that where land is scarce and desirable, the price will rise. Zoning, by significantly restricting the height and use for land provides landowners and landlords a monopoly, allowing exploitation of a city-created monopoly, through raising rents or prices, and hastening gentrification. Where land for housing, commercial, or office is nearly exhausted, what has been frequently referred to in the media as an "inflation" of rents or prices has little in common with monetary policy or the consumer price index. Rather, the increase in value, equity, or rents - beyond a reasonable fraction of consumer prices - is simply the result of an exercise of anti-competitive behavior. Such shortages allow monopoly behavior - behavior that in any other good or service would possibly face administrative and criminal liability. Prices and rents exceeding a reasonable rate of return should be recovered. The increment reflecting monopoly status can be prospectively recovered over an adjustment period, using the funds to finance affordable housing. Identification of such land monopolies in a city, district, or suburban municipality could trigger the adoption of a strict rent control regimen. The urgent emergency should require uniform protection and allow no exception regardless of the age, rent, or price level.

Gentrification will follow where luxury rents or the rents in newer buildings, or other exemptions such as those allowing condominium conversion or other adaptive reuse, are offered and frequently utilized. Without such a program, gentrification will continue to be the primary development process in the city, along with facilitating the building of high-rise office buildings of steel and glass, and their barren streets. Gentrification is a side effect of low vacancy rates and a desire of property owners to earn as much as the market will bear. It is another land use process that eliminates the possibility of affordable housing - both for the poor and those who identify as middle-class. As long as the dot-com world or other large employer prefers to have its flagship office structure in downtowns, gentrification will continue and homelessness will undoubtedly increase as construction costs and rents escalate. Project approvals for shops, housing for the affluent, and office approvals are relatively easy to obtain, and the demand for higher priced housing
is likely to result in the displacement of those of a more modest income throughout
the city. San Francisco, all U.S. cities, and all of Europe's cities will continue to be
friendly to the developer, the automobile, and displacement by gentrification. The
question is whether the pressure to increase tax revenues and campaign
contributions is simply too great for elected officials to overcome past errors.
Absent stricter ethics and campaign reform standards and enforcement, it is likely
that public officials will continue to succumb to the pressures to increase tax
revenues and will continue to collect campaign contributions. This is a system that
contributes to a downward spiral.

6. Jobs-Housing Balance

Modern high-rise buildings are becoming the normal scale of development
in the developing cities of the U.S., in the downtowns of many shrinking cities, and
in districts of most European cities. Such skyscrapers might receive awards from
their contemporaries since all architects design contemporary architecture. For
some, high-rise office building districts mirroring Singapore or Shanghai is a
welcome addition. Along with the many new taxpayers contributing to tax coffers,
office buildings contribute to tax revenues without demanding much in services,
such as schools for children. Yet, that view is incorrect because for every high tech
job created, there is also created a low-wage job. The overwhelming dominance
of office use and the minor housing role produces mostly empty streets at the end
of the work day, and probably insufficient residents to justify a proper grocery,
local shops, and book stores.

The jobs-housing imbalance, at least in the high-rise districts in San
Francisco, has been excessively friendly to profitable office development. In most
areas south and north of Market Street, streets are unwelcoming and empty of all
but the occasional pedestrian after work hours. In addition, most of the newer
housing is so expensive that only the wealthy are welcome, and the residents are
rarely on the street as they live an automobile lifestyle. Walking is often

262 J.K. Dineen, *Janitors vs. Coders: SF Created Nearly as Many Low-Wage Jobs as High-Paying
https://www.sfchronicle.com/bayarea/article/Janitors-vs-coders-SF-created-as-many-low-wage-
14537168.php (last visited Dec. 13, 2019)

263 [author's note: actually, I think book stores are vanishing, at least in the U.S.; My anecdotal
travels through the Netherlands and Ireland this year disclosed that book stores there appear
healthy. In addition, restaurants, cafes and bars, existing in the neighborhood for as long as can be
remembered, also appear to be thriving. More recently, in Boston in the center I found an excellent
used book store, when I inquired where I could purchase a new book, I was directed to a district
several subway stops away].
discouraged by long blocks of empty walls, and homeless encampments causing fear, rather than small shops, entertainment and healthy and safe life on the street.

European streets are safer and more inviting from dawn to late in the evening. Streets full of office workers during the day are replaced by residents returning and later those out for entertainment, shopping, or a stroll. The European experience is to achieve a goal of a 1:1 relationship between workers and housing units. This is the principle used in Munich and Vienna, and to some extent reflected throughout European cities. Statistics that tech job creation generates a low-wage non-tech job would suggest that two housing units for each generated high-tech job (a 1:2 jobs-housing relationship, requiring two housing units for each worker) is closer to the actual increased need and a better measure of the impact of job development projects. Perhaps the difference is that the United States lacks a national housing program or policy, while most European communities have national and local housing programs and policies to accommodate such secondary employment generation. Like London, San Francisco, for example, could provide tax or other incentives to encourage the conversion from offices to residential use in the after-work "dead streets" districts such as the Financial District or the South of Market District. Theoretically, within designated "neighborhood districts," cities might require alleys and small streets, instead of parking or access for trucks. These thoroughfares should be designed for restaurants, bars, coffee houses, and shops along pedestrianized alleys and streets, eliminating parking lanes and calming the streets in favor of wider sidewalks to accommodate cafes and restaurants.

Cities should consider a greenway trail connecting parks that can wind through mixed-use blocks. Each neighborhood could be empowered to establish its own jobs-housing balance to retain its unique character, but within a range that will generate the desired village neighborhood. There exists no reason why planning must await private developers. Communities can design what is to be built and invite developers to participate in executing the plan. The Dutch...

---

264 Robert Cervero, *The Transit Metropolis* 126 (1998); Robert Cervero, *Growing Smart by Linking Transportation and Urban Development*, 19 Va. Envtl. L.J. 357, 363 (2000) (reporting that Stockholm planners created jobs-housing balance along rail-served axial corridors. This in turn produced directional-flow balances--During peak hours, 55% of commuters are typically traveling in one direction on trains and 45% are heading in the other direction; That such balanced directional splits stand in marked contrast to the U.S. where, because of the lack of any concerted effort to coordinate infrastructure and urban development, trains and buses are often filled in the morning inbound but back-haul three-quarters empty).

“Bestemmingsplan” is a masterplan for all uses and infrastructure, including parks, schools, shopping districts, swimming pools, and bicycle paths. The plan must meet national planning standards and is cooperatively endorsed by the local city and the provincial government (similar to U.S. states and commonwealths). Developers can then come forward to participate in all or a portion of the plan.

American cities are designed for the automobile with wide boulevards leading to freeway access ramps and offering extensive parking and streets that are both a bit too prominent, too wide and too trafficked. Downtown streets tend to lack sufficient street level interest to attract pedestrians. Barcelona, by comparison, is a walking city, and the city has been very active in removing traffic and creating pedestrian streets.²⁶⁶ Madrid planned this year to ban non-electric automobiles from the few central streets that allow traffic.²⁶⁷ Unfortunately, for Madrid's air quality and sustainability, the next mayor successfully campaigned to return heavy, smoky exhaust and carbon-generating automobile traffic throughout the night, his nostalgic, unhealthy, and ostensibly popular memory of Spain's capital.²⁶⁸ It took a pandemic to keep Madrid’s streets empty, providing a reprieve from the city’s new traffic plan.

Modern American city legislatures, with an occasional dissenting voice, have consistently followed policies accommodating most projects that developers wish to build, obeying only the laws of capitalism, and planning for automobiles over people. San Francisco appears unable to establish new "neighborhoods" and is unlikely to safeguard the character of the wonderful neighborhoods that pivot on the brink of gentrification and redevelopment. The City’s recent closing of neighborhood streets to be used for outdoor dining for the pandemic may be the best planning initiative since the removal of the Embarcadero Freeway.

²⁶⁸ Raphael Minder, Madrid Shifts Into Reverse on Pollution, San Francisco Chron., July 2, 2019 (reporting that Madrid is the first European city to reverse the trend of restricting traffic in city centers and may face fines from the EU); TopixBuzz, available at https://www.topixbuzz.com/is-madrid-about-to-reverse-the-traffic-restrictions-that-solved-its-pollution-problem/ (reporting that José Luis Martínez-Almeida, who is set to be the new Popular Party Mayor of Madrid if a pact can be struck, vowed that his first job as new mayor would be to reverse the restrictions) (last visited June 19, 2019).
7. Commercial Gentrification

Developing cities and districts should consider commercial rent control before neighborhood character is gone along with favorite restaurants and stores. A system of commercial rent control was instituted in New York City between 1945 and 1963. Since repeal, many popular New York restaurants and bars have disappeared. Ground floors in neighborhood districts should be designed to avoid the gentrification of shops that can generate only expensive designer stores as in Paris, New York, Beverly Hills, or San Francisco. Although shrinking cities face a different set of challenges, successful expanding cities and successful districts within shrinking cities must be protected from the dangers of gentrification. Zoning and development regulations can require that the first floor, other than a reasonable lobby, be designed to accommodate small shops, restaurants, and bars in an "entertainment or shopping district."

To avoid the gentrification of shops throughout the city, the city can require and encourage the expansion of the supply of such uses to exceed anticipated demand. Landlords are known to withhold rental space from the market awaiting a lease to a national chain, promising stability and higher rents. San Francisco is considering taxing storefronts that remain vacant more than six months. If rent control and awarding a bonus density for including the design in new and remodeled buildings fail to achieve stabilization at reasonable rents, the city must be more proactive by subsidizing the rents for small businesses, including lower income landlords. A program of commercial vouchers, allowing a year-long subsidized rent to allow startups by lower income entrepreneurs to fill storefronts with pop-up shops and restaurants, and generate economic development rather than gentrified by national and international chain stores and restaurants. Cities can also impose design standards on their own buildings and other appropriate sites owned by the city. Such design can also be a principle of land use controls and administrative processes, such as subdivision, site plan, or conditional uses, while applying appropriate site standards. In San Francisco, commercial rents continue to escalate contributing to the appearance of more restaurant closings than openings, and not surprisingly, many vacant storefronts whose rents are not attractive to small businesses and restaurants. Non-franchise retail businesses, restaurants, and bars are also ostensibly disappearing. The pandemic has reduced residential rents in San


270 Id.

Francisco, giving relief to those sufficiently affluent to have evaded gentrification out of the city, and those not protected by rent control law, as tech workers and non-tech workers have moved from the city for better housing given the ability to work from home and others have emigrated from high rents and a limited job market. Although the residential sales prices are holding in many areas, the pressure comes from those searching for home offices and those believing suburban lower-density living patterns are safer than in the city in avoid COVID-19. The restaurants and bars across the U.S., just as most of those in Europe, have been closed for COVID-19. It remains to be determined when they could reopen, particularly following a second wave or another season of the corona virus, and whether reopening for most is possible and how rent and price levels will be affected. Unless government bails out small business and begins to nurture the entry and success of small business, rent levels, property values, and tax revenues are likely to decline.

**EPILOGUE: SHIPS PASSING IN THE NIGHT**

[W]hether the world we live in has a placeless geography or a geography of significant places, the responsibility for it is ours alone.272

Edward Relph

American cities appear unable to establish new "neighborhoods" that have a village feel found in historic local neighborhoods. Those same cities are unlikely to safeguard the character of those wonderful neighborhoods that pivot on the brink of gentrification and redevelopment. It is ironic that the most European-like city in the U.S., San Francisco, loved in large part because of that quality, is racing toward an opposite construct. In addition, throughout the world, modern civilization has destroyed much of the architectural fabric inherited from previous generations, creating a widening chasm between us and our past.273 Although most large cities now have some form of historic preservation laws, most are not aggressively enforced--ironically even Rome rarely obeys the law.274 When the Fascist Italian government and its successor completed the roads to create the modern city, one-third of its historic buildings within Rome's former imperial walls had been destroyed.275 The new boulevards, clogged with traffic that generated pollution contributing to the city's acid rain, caused advanced deterioration of the marble and

---

272 Edward Relph, *Place and Placelessness* 147 (1976)


274 *Id.* at 2.

275 *Id.* at 63.
travertine. Amsterdam and Vienna are models for the construction of beautiful social (subsidized) housing. To this observer, the social housing stock in Vienna is the most beautiful in the world. Unfortunately, that capital's earlier redevelopment reduced the city's legendary beauty. Vienna may appear a mere shadow of its former grandeur to an architectural historian. Vienna remains high on the beauty scale and well-worth a visit. Amsterdam reached a remarkable solution that was formulated to combat the combined problems of social housing, urban redevelopment, and historic conservation. Amsterdam elected to protect its architectural and planning heritage through higher density on the outskirts of the city served by transit and expanding the polder lands (water or wetlands filled and drained for development through the use of dikes). Amsterdam has sited industry as well as residential development on polder lands located on the outskirts and away from the historic center.

Gentrification is the conundrum that directly and intimately reflects the destruction of community. All of the cities of Europe are facing various forms of gentrification, whereby the less affluent are displaced as demand reflects businesses and residents willing to pay higher rents or prices. In the United States, the phenomena is most typically present in developing communities not suffering job or resident loss, or in wealthier or well-planned neighborhoods of modestly developing cities. These neighborhoods are often in city centers, around universities, on hillsides, or located along a body of water, where demand is substantial and supply relatively fixed by zoning. Even in shrinking cities, gentrification may exist in certain suburban areas or in highly desirable urban enclaves. In Europe and the U.S., greater profits are generated by developing office space as compared to housing. The developers exert pressure for a certain urban vision that does not reflect the desires or needs of urban residents. Gentrification as a tool that can upgrade neighborhoods without ostensible government cost is attractive to cities. However, a cost of gentrification is the closing of local businesses unable to afford market rents or purchase prices, only to be replaced by chain stores and franchise restaurants, where Starbucks and others are willing to triple rents to obtain their desired locations. Upper scale shopping areas look more and more like the famed shopping districts of Milan or Paris, and those in more

276 Id. at 63-64.
277 Id. at 9.
278 Id. [Author's note: Vienna is one of my favorite cities in the world, in significant part because it is so extremely beautiful. James A. Kushner, Growth for the Twenty-First Century -- Tales from Bavaria and the Vienna Woods: Comparative Images of Planning in Munich, Salzburg, Vienna, and the United States, 29 Urb. Law. 911 (1997) (describing the first of many return trips].
affordable areas may look like the shops that were formerly located in the nearly-abandoned or soon-to-be-closed shopping malls. Restaurants, bars, and one-of-a-kind shops typically struggle to survive in growth cities with excessive demand from prospective tenants and escalating rents. They also struggle to survive in shrinking cities with declining demand and an emigrating customer base.

This process of gentrification has dominated both American and European cities. Indeed, it has been a much greater problem in Europe where the historic central towns are attractive, vibrant, and safe. In much of Europe, such as in Madrid, Barcelona, and Berlin, housing for workers lies outside of the traditional central town. The control of gentrification will take sensitive redirection of development and increasing subsidies to maintain opportunities for workers to reside within the city. Should governments and non-governmental actors fail to undertake worldwide carbon mitigation, the Netherlands will be relocating and rebuilding its cities on land not anticipated to be deluged in a generation. Europe has also experienced a rise in affluence and with it has come the desire and demand for private automobiles and, for young families, a home in the bucolic suburbs. This expands the carbon footprint and undermines the European community leadership in power production and carbon reduction.

Communities across the United States, with demand for development and redevelopment, are experimenting with higher density and mixed uses in the form of New Urbanism, seeking to have transit-served, or at least walkable streets in a neighborhood with apartments, shops and entertainment. These developments

280 Daniel G. Parolek, Karen Parolek & Paul C. Crawford, Form-Based Codes: A Guide for Planners, Urban Designers, Municipalities, and Developers (2008); Nicole Stelle Garnett, Planning for Density: Promises, Perils and a Paradox, 33 J. Land Use & Envtl. L. 1 (2017) (reporting on studies finding that exclusively residential neighborhoods have lower crime rates, less disorder, and more collective efficacy than mixed residential and commercial neighborhoods, and cautioning that the appeal of the new urbanists may fail reflect the negative externalities, arguing that New Urbanist sustainable communities are not sustainable (emphasizing security concerns)—and ostensibly implying that single-family sprawl is—in what the author calls “planning for density and the people paradox”); Richard S. Geller, The Legality of Form-Based Zoning Codes, 26 J. Land Use & Envtl. L. 35 (2010);


are often attractive and desirable, yet remain symbolic in communities long built out with single-family homes on relatively large lots. In recent years, developers have attempted to retain the affordability of the suburbs by marketing homes on smaller lots at about seven homes per acre, but the demand for suburban living continues to decline in the U.S.\textsuperscript{282}

Ironically, it was the welcoming of workers from other countries that fueled population growth and demand for suburban homes.\textsuperscript{283} Half of the Latino households in the United States own their homes.\textsuperscript{284} The demand for suburban homes is waning with declining immigration, increasing emigration to live in countries of origin or the countries of ancestors, increasing vocal hostility towards immigrants, and Draconian treatment towards immigrants and asylum seekers in the Southwest.\textsuperscript{285} Furthermore, young people today do not desire large homes in the suburbs together with a private automobile either because they cannot afford them, or they are not attracted to the automobile-centered lifestyle.\textsuperscript{286}

Yet, these changes pose grave warnings for escalating gentrification as demand for urban living pushes rents higher. The choices for American cities include densification by redeveloping areas for higher density neighborhoods, or


\textsuperscript{283} Dowell Myers, \textit{Immigrants and Boomers} (2007) (describing the vanishing recent and second generation immigrant home seekers and a preference of the young for urban living).

\textsuperscript{284} U.S. Census Bureau, Housing Vacancies and Home Ownership (2007), available at http://www.census.gov/hhes/www/housing/hvs/annual07/ann07t20.html (showing a rise in Hispanic or Latino home ownership from 42.1% in 1995 to 49.5% in 2005).

\textsuperscript{285} Laura Kusisto, \textit{OK Boomer, Who's Going to Buy Your 21 Million Homes?}, Wall St. J., Nov. 23, 2019 (reporting that One in eight owner-occupied homes in the U.S., or roughly nine million residences, are set to hit the market from 2017 through 2027 as the baby boomers start to die in larger numbers, up from roughly 7 million homes in the prior decade; by 2037, one quarter of the U.S. for-sale housing stock, or roughly 21 million homes will be vacated by seniors--more than twice the number of new properties built during a 10-year period that spanned the last housing bubble; most of these homes will be concentrated in traditional retirement communities in Arizona and Florida).

\textsuperscript{286} Jeff Andrews, \textit{Why Aren’t Millennials Buying Houses?}, Curbed, July 11, 2018, available at https://www.curbed.com/2018/7/11/17541364/why-arent-millennials-buying-houses (last visited Sept. 8, 2019) (reporting on a study showing that student loans, high rent, and the despite to reside in developing urban centers from which they are typically priced out of the home ownership market are among the impediments to Millennial homeownership).
like Portland and some European communities, development of higher density transit-served neighborhoods within or around existing suburban land. The California legislature has twice failed to pass legislation that calls for higher density around transit stops. The idea is a good one, expanding public transit ridership, expanding housing density to put more people on the streets and to create a livelier community, and to reduce traffic. Resistance to the law also comes from small and suburban communities, and urban NIMBYs, who fear loss of neighborhood character and integrity, sometimes a neutral objection or justification, or the nostalgic desire to return the community to some bygone age, can mask a desire for racial or economic segregation. Most understand the need for density but insist it would just fit better somewhere else. Unfortunately, racial fears may motivate many.

There is also a controversial policy under which BART, the rail train which in larger communities such as San Francisco, Berkeley, and Oakland is a subway with the lines serving the surrounding area, BART is placing housing within the existing BART parking lots, and preempting the local planning authority. There should be incentives to use transit and disincentives to automobile usage such as rent reduction for not parking an automobile or increases in rent for each automobile. The idea has merit, particularly if residents are transit users and perhaps rents might include a transit pass as an incentive. The downside of these proposals is that they reflect a willingness to experiment with land use patterns, and that experimentation may prove a positive improvement or it might simply become another threat to community character. Cities should undertake a stop by stop plan, utilizing citizen participation, to develop higher density transit-served communities that are attractive for existing residents. It can be anticipated that at many stops there might be little opposition, yet an important initiative could be lost because of the fear that the character of all existing transit-served neighborhoods is endangered.

---

287 Alexei Koseff, Housing Measure Defeated in State Senate, S.F. Chron., Jan. 30, 2020, at A1, A7 (describing the failure of the year-long effort to pass SB50); see also Jenna Chandler, Proposal to Add Density Near Transit Stations Quickly Rejected in California Senate, Curbed LA, Apr. 17, 2018, available at https://la.curbed.com/2018/4/17/17249654/california-senate-bill-827-housing-transit-vote (last visited Sept. 8, 2019) (reporting that critics say it wasn’t strong enough on affordable housing and others argued that four or five story buildings were not compatible with small towns; ostensibly supported by the NIMBYs).

288 Rachel Swan, Berkeley Breaks Gridlock Over Housing on BART Lots, S.F. Chron., Jan. 30, 2020, at A1, A11 (describing the approved plan to build 1,700 units at two stations); see also John King, Building at BART Stations, S.F. Chron., July 18, 2019).
Ironically, Europe is moving towards a failed U.S. model of suburbanization while many American communities would like to pursue a vision of the desirable European city. Of course, the European city because of its density, transit system, and typically attractive architecture, remains strong, and the American city remains not quite right. But like ships in the night, each is pursuing an unrealistic and unsustainable urban land use pattern, without even a careful study of an alternative urban model.

Most importantly, cities should set a city-wide goal of a 2:1 relationship between housing units and workers, perhaps allowing residents of a community to participate in selecting a modest adjustment of the ratio to reflect the existing or desired character of the district. The 2:1 ratio would require housing for twice the number of households as jobs designated for the district. The extraordinary need for affordable housing in both developing cities and shrinking cities in the U.S. argues for a higher jobs-housing balance. It is also the jobs-housing balance that generates the mix that allows life on the streets and the possibility to create vibrant neighborhoods.

Cities should consider an architectural design commission to assure both compatible development and designs to accommodate neighborhood living. The work of planning commissions should be supported with adequate staff resources. Commissioners should be educated on planning law and the sustainability impacts of community design as well as alternative models of design. Commissioners should reconsider the community's comprehensive plan and work to advance community goals rather than simply acting as an agent for the appointing legislator. The education of commissioners should include regular appearances by local experts and activists. Design standards can assure some balance of aesthetic compatibility and quality site planning, leaving adequate access to open space and opportunity for sitting and walking in quiet squares amid adequate density to support transit. Vancouver, British Columbia has utilized its design review process to achieve exciting development that fits comfortably with its traditional character, while the city has significantly improved transit and has upgraded many historic neighborhoods. American cities should more closely reflect European planning that establish designated entertainment and shopping districts. Alleys and small streets, instead of parking or access for trucks, should be designed for restaurants, bars and coffee houses along a pedestrianized alley along the lines of Belden Alley in San Francisco, the Museum Quarter in Amsterdam, the Oudegracht in Utrecht, the Netherlands, or every other pedestrianized restaurant district in Europe. Greenway trails connecting parks could wind through mixed-use blocks.

Planning Commissions, supported by local legislatures should design the city for the projected population and assure adequate capacity in schools, transit,
medical services, parks, recreation, and housing. The city legislatures should designate camping grounds, shelters, navigation centers, mental and other health resources, transitional and permanent housing to accommodate the city's entire homeless population at least in the Pacific West. The U.S. Court of Appeals for the Ninth Circuit, with jurisdiction over much of the Western states, has ruled that the homeless may not be disturbed or moved when sleeping anywhere in public unless the city offers a housing alternative. Therefore, if Anchorage, Boise, Guam, Helena, Honolulu, Las Vegas, Los Angeles, the Northern Mariana Islands, Phoenix, Portland, San Francisco, or Seattle wishes to limit public camping on sidewalks and parks, it must expand the supply of housing. These various housing alternatives requires the provision of mental and other health resources, addiction treatment opportunities, assistance to search for employment, and emergency housing for the homeless and the evicted, particularly families with children. The need for these services argues for neighborhood centers that can centralize services, perhaps as well offering legal services in criminal and civil matters and a courtroom where matters affecting the homeless can be resolved. Evidence of successful housing policy is the dramatic and relative absence of homeless, beggars, and street people in European cities. However, within refugee populations and those excluded from work for lack of official papers such as the Romas in Northern Italy, there is an increase in trinket sellers. Health facilities and resources are available under national health systems, and housing policy and social services are directed to locating housing for those without homes.

In addition to geographic comparisons, cities are also a collection of neighborhoods, and the health, success, diversity, and security, both in terms of community safety, and security of tenure for those residing in the communities and those neighborhoods generate a significant piece of a city's desirable character.

Neighborhood character without displacement or gentrification can be regulated and preserved. The wealthy and powerful in most cities care a great deal for the arts and sports, and for the character of their neighborhoods and the historic city. Cultural entertainment, from the ballet to the opera is supported by wealthy donors, while professional sports are typically supported by local investors and corporations utilizing the suites and tickets for marketing and public relations, with the team heavily supported by costly tickets, food, parking and the sale of player jerseys, team uniforms other team logo goods, and local, national, and international radio and television rights. Surprisingly, some people without access to affordable

---

289 Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019), cert. denied, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). (Eighth Amendment prohibited the imposition of criminal penalties for sitting, sleeping, or lying outside on public property on homeless individuals who could not obtain shelter).
housing that would allow them to remain in their city, nevertheless purchase costly tickets and wear expensive player jerseys celebrating the city they cannot afford to live in. In each case, ticket prices exclude those of more modest incomes. The increasing inaccessibility to a city’s cultural achievements is a simile for gentrification and the lack of effort to provide security of tenure to preserve the character of existing neighborhoods. Not only is it difficult to recruit employees in high-price developing cities, but residents face displacement due to rent increase and gentrification. In San Francisco, despite rent control within older buildings, there has been a dramatic loss of the poor, particularly Blacks and Latinos.290 The result is exacerbated by the fact that each new tech or professional job generates the need the same number of low-wage workers, creating even more competition in a rising rent market.291

The creation of attractive districts in new or redeveloped American neighborhoods appears unattainable. Modern urban legislatures, with occasional dissent, have consistently followed policies accommodating everything developers wish to build. Cities are unable to establish new "neighborhoods," reminiscent of the failed attempt of the federal government to establish new towns.292 Cities are unlikely to safeguard the character of the wonderful neighborhoods that pivot on the brink of gentrification and redevelopment. According to Jane Jacobs:

“the greatest flaw in city zoning is that it permits monotony. Perhaps the next greatest flaw is that it ignores scale of use, where this is an important consideration, or confuses it with kind of use, and this leads, on the one hand, to visual (and sometimes functional) disintegration of streets, or on the other hand to indiscriminate

290 Dan Kopf, *Quantifying the Changing Face of San Francisco*, Priceonomics, May 5, 2016, available at https://priceonomics.com/quantifying-the-changing-face-of-san-francisco/ (last visited Sept. 25, 2019) (reporting that San Francisco was 13.4% African American in 1970, but its population as of 2016 was less than 6% Black; the population has steadily declined, and the trend seems likely to continue: from 2010-2014, there was annual net out migration of around 2,000 African Americans from the city. That represents a 4.6% decline of the population every year).


attempts to sort out and segregate kinds of uses no matter what their size or empirical effect. Diversity itself is thus unnecessarily suppressed.”\textsuperscript{293}

Witold Rybczynski maintained that Jane Jacobs was the party crashing iconoclast who so demoralized the city planning profession that had so committed to low density sprawl, that they gave up physical planning altogether.\textsuperscript{294} Yet climate, quality of life, and economic necessity concerns suggests that both Jane Jacobs and Professor Rybczynski were correct. As I sit in quarantine, awaiting passage of the COVID-19 pandemic or having a vaccine to free us to again participate in community life, and having reconsidered the planning challenges posed by both climate change and the pandemic, I remain convinced that the future, whether in a mitigated carbon-reduced planet, or in the massive rebuilding of the World’s cities if mitigation fails and nations are forced to proceed with an excessively expensive program of evacuation, relocation and adaptation—that the resulting cities will require rational planning incorporating efficient public transport, a pedestrianized metropolis, and diminution of motor vehicles. There will be an increasing pattern of home employment as an alternative to concentrated offices and to the extent feasible expect to see more self-contained buildings and communities containing its own grocery and other shops, bars and restaurants, coffee shops and restaurants. Yet regardless of experimental architectural designs, cities much be compact and served by convenient walking and public transit to reduce carbon footprints and discourage consumption. Despite the current belief of greater safety through personal automobiles, reduction of greenhouse gases and consumption is inconsistent with maintaining convenient automobile travel, parking, and traffic. In addition to a green new deal, nations must pursue policies to assure adequate income, healthcare, and safe and decent housing in attractive higher density mixed use neighborhoods.

Europe and the United States are like ships in the night. U.S. cities are looking at sprawl and traffic congestion and are beginning to consider New Urbanism and mixed-use projects served by transit, yet they pursue that model only on an experimental basis in a few communities.\textsuperscript{295} Europe on the other hand, has benefitted from powerful planning systems incorporating citizen participation.

\textsuperscript{294} Witold Rybczynski, \textit{Makeshift Metropolis: Ideas About Cities} (2010).
Nevertheless, Europe is experimenting with deregulation, devolution of planning and design to private developers and their lenders, and increasingly accommodating the automobile and those in search of the American-style suburban lifestyle.

Cities on both sides of the Atlantic are struggling to respond to urban obsolescence at the harbor, but redevelopment may not be a good investment in the face of sea rise. Given the extraordinary impact that climate change will have on cities sited by water as sea rise continues, it is remarkable that beyond strengthening dikes, or levees as they are known in the U.S., most cities are refusing to face anticipated catastrophe. European cities are leading the way towards a smaller carbon footprint, and will continue to be attractive in the short run, but both American and European cities are experimenting with an urban form that has proven to fail, both in achieving urban sustainability and in failing to comprehensively plan for the future. In Europe and the United States, major cities with harbors, or located on rivers and tidal lakes, face almost certain destruction as climate change generates the melting of ice, sea rise, more severe storms and flooding, and the need to relocate. Should the nations fail to mitigate the impacts of greenhouse gas generation, adaptation will require the rebuilding or relocation of the world’s great cities. Hopefully, the best practices to survive will be the European walkable transit-served communities, rather than the traditional American, and the increasing European, phenomena of planning for automobiles rather than people. For all their convenience and privacy, automobiles are responsible for a substantial part of our climate crisis and the likely destruction of the world’s great cities. When the survivors have navigated the demands of COVID-19, nations and their people will likely be pandemic-exhausted, but it is the time to reconsider planning for future pandemics, including the delivery of healthcare for all, and a universal minimum income at the same time future urban design is undertaken. We need coherent urban, economic, and environmental planning more than ever before. New Development should be sustainable and carbon-neutral.

They keep saying that climate change is an existential threat and the most important issue of all. And yet they just carry on like before. If the emissions have to stop, then we must stop the emissions. To me that is black and white. There are no grey areas when it comes to survival. Either we go on as a civilization or we don’t.296

Greta Thunberg

296 Greta Thunberg, No One is Too Small to Make a Difference Ch.2 (Almost Everything is Black and White) (2019).