RACE, SPACE, AND PLACE: THE RELATION BETWEEN ARCHITECTURAL MODERNISM, POST-MODERNISM, URBAN PLANNING, AND GENTRIFICATION

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Introduction

Gentrification in United States urban housing markets of the 1970s, 1980s, and 1990s continues to be a controversial and complex phenomenon.[1] During the past twenty years, gentrification's effects on the core cities of the U.S. have been analyzed and evaluated many times over.[2] Descriptions of gentrification have spanned the ideologi-

1. *See* Peter Marcuse, *Gentrification, Abandonment and Displacement: Their Linkages in New York City*, 28 WASH. U. J. URB. & CONTEMP. L. 195, 198-99 (1984). Gentrification occurs when new residents—who disproportionately are young, white, professional, technical, and managerial workers with higher education and income levels—replace older residents—who disproportionately are low income, working class, and poor, minority and ethnic group members, and elderly—from older and previously deteriorated inner-city housing in a spatially concentrated manner, that is, to a degree differing substantially from the general level of change in the community or region as a whole. *See also* Business Ass'n of Univ. City v. Landrieu, 660 F.2d 867, 874 n.8 (3d Cir. 1981); Michael H. Lang, *Gentrification, in* HOUSING: SYMBOL, STRUCTURE, SITE 158 (Lisa Taylor ed., 1990); *see infra* parts V.A-B.

2. *See, e.g.,* ROGER MONTGOMERY & DANIEL MANDELKER, HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 162 (2d ed. 1979); *see also* DANIEL FUSFELD & TIMOTHY BATES, THE POLITICAL ECONOMY OF THE URBAN GHETTO (1984); ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE 11-26 (1979); CHARLES L. LEVEN ET AL., NEIGHBORHOOD CHANGE: LESSONS IN THE DYNAMICS OF URBAN DECAY 34-47 (1976); William Alonso, *The Population Factor and Urban Structure, in* THE PROSPECTIVE CITY 32, 39 (Arthur Solomon ed., 1980); Lawrence Kolodney, *Eviction-Free Zones: The Economics of Legal Bricolage in the Fight Against Gentrification*, 18 FORDHAM URB. L.J. 507 (1990); Peter Marcuse, *To Control Gentrification: Anti-Displacement Zoning and Planning for Stable Residential Districts*, 13 REV. OF L. & SOC. CHANGE 931, 935 (1985); Molly McUsic, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Market*, 101 HARV. L. REV. 1835 (1988); Neil Smith, *Toward a Theory of Gentrification: A Back to the City Movement by Capital, Not People*, A.P.A. JOURNAL, Oct. 1979, at

cal spectrum, from laudatory embraces of gentrification as the solution to urban decline to denunciatory critiques of gentrification as another symptom of the widening gulf between the haves and the have-nots in America.[3] This Article critiques gentrification, adding an additional explanatory element to the ongoing account of the dynamics of American cities in the 1990s. The additional element is the relevance of a major aesthetic realignment in architecture and urban planning from a modernist to a post-modernist ideology in the 1970s and 1980s. This shift involved an aesthetic and economic revaluation of historical elements in older central city buildings, which accelerated the rate of gentrification, displacement, and abandonment.

This Article describes how certain shifts in the aesthetic ideology[4] of urban planners and architects affected suburban and urban spatial distribution in the United States during the nineteenth and twentieth centuries. These ideological shifts arose from deeply embedded American attitudes toward city and rural life that had emerged in American town planning and architectural theory and practice by the mid-nineteenth century. Part I of this Article examines the emergence of an anti-urban Arcadian strand in nineteenth century American town planning rhetoric.[5] This anti-urban Arcadian strand was one of many factors behind the late nineteenth to the early twentieth century expansion of the suburbs beyond the urban core.

Part II traces the parallel rise of a utilitarian efficiency-based

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543; Michael Stone, *Housing and the Economic Crisis: An Analysis and Emergency Program, in* WHAT IS TO BE DONE? (Chester Hartman ed., 1983).

3. *See* Lang, *supra* note 1, at 158.

4. *See* Clifford Geertz, *Ideology As A Cultural System, in* THE INTERPRETATION OF CULTURES 193 (1973):

> Culture patterns—religious, philosophical, aesthetic, scientific, ideological—are "programs"; they provide a template or blueprint for the organization of social and psychological processes. . . .
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> . . . It is . . . the attempt of ideologies to render otherwise incomprehensible social situations meaningful, to so construe them as to make it possible to act purposefully within them, that accounts for the ideologies highly figurative nature and for the intensity with which, once accepted, they are held . . . .
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> . . . Whatever else ideologies may be—projections of unacknowledged fears, disguises for ulterior motives, emphatic expressions of group solidarity—they are, most distinctively, maps of problematic social reality and matrices for the creation of collective conscience.

Id. at 216-20.

5. *See* HELEN GARDNER, GARDNER'S ART THROUGH THE AGES 212-13, 621-23, 651 (Horst de la Croix & Richard G. Tansy eds., 6th ed. 1975). Arcadia was an ancient rural Greek district which has come to represent rustic and bucolic values. Arcadianism in the arts is a tradition with deep roots stretching back to Classical Greece and Rome. *See* BARBARA NOVAK, AMERICAN LANDSCAPE PAINTING IN THE NINETEENTH CENTURY (2d ed. 1979); DAVID WATKIN, THE ENGLISH VISION: THE PICTURESQUE IN ARCHITECTURE, LANDSCAPE AND GARDEN DESIGN (1982); *infra* parts I.A-B.

strand[6] in urban planning, examining the impact of new early twentieth century technological and engineering developments, such as automobiles, highways, electricity, and skyscrapers, on U.S. urban and suburban spatial distribution. Ironically, these new developments combined with the anti-urban Arcadian strand of American town planning to begin producing spatial distributions which were strictly segregated along economic, social, cultural, and racial lines.

Part III examines the role of the massive and continuous twentieth century northward migration of displaced southern black agricultural workers as yet another factor with major consequences on spatial arrangements in U.S. urban and suburban areas. The pervasive rise of various land use controls, zoning, and urban renewal programs exemplifies the response of both suburban and urban planners to this steady northward migration. Zoning and urban renewal became vehicles for maintaining homogeneity in the face of strong countervailing social pressures for change. Both were premised on deep-rooted, value-laden nineteenth century assumptions, which favored the Arcadian ideal, as embodied by the single family suburban house, over urban pathology.

Part IV discusses the paradoxical synthesis of the Arcadian and utilitarian strands in the theory and practice of twentieth century architectural modernism. The widespread effects of the adoption of modernism as the "official style" of the midcentury bureaucratic/corporate state is also discussed in this Section.[7] Part IV also discusses the concomitant rise of the post-World War II suburban tracts, insofar as their rise represented a synthesis of the Arcadian and the utilitarian approaches. Additionally, the effects of massive government interventions in post war housing markets are discussed. These interventions were partially based on implicit, but powerful, assumptions

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6. *See* JEREMY BENTHAM, A COMMENT ON THE COMMENTARIES AND A FRAGMENT ON GOVERNMENT 393 (J.H. Burns & H.L.A. Hart eds., The Athlone Press 1977) (1776); *see also* JEREMY BENTHAM, THE LIMITS OF JURISPRUDENCE DEFINED BEING PART TWO OF AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 11-12 (Charles Warren Everett ed., Columbia University Press 1945) (1789). *See generally* HENRY SIDGWICK, THE METHODS OF ETHICS 411-509 (7th ed. 1907).

7. *See* OSCAR NEWMAN, COMMUNITY OF INTEREST 291 (1980):

  It is also possible that the failure of modern architecture runs much more deeply: that it is in fact the architectural profession that has been unable to define and adopt a useful role for itself in twentieth-century society. The modern architectural movement provided the vehicle to allow such an evolution, but this aspect of modernism was shunted. The general practitioner, because he persisted in viewing himself in the traditional role of Renaissance Man, failed to appreciate the new tasks required of architectural form in the twentieth-century. Modernism was reduced to the status of a new style and functional planning became the maidservant to form.

by planners and bureaucrats,[8] which privileged the semi-pastoral ideology of the middle-class suburban tract house over what had come to be perceived as the dangerous urban pathology of the core cities. These simultaneous and sometimes contradictory trends produced pervasive homogeneity and segregation on virtually all levels of the urban and suburban environment.

Part V describes and critiques the "filtering theory" of housing markets. Often embraced by conservatives as an apology for the lack of support for new construction of low-income housing, filtering theory rationalizes why new construction on the high-end of the housing ladder improves housing conditions for those at the bottom of the housing ladder. This Article argues that once the extreme simplifying assumptions of the traditional filtering model are relaxed in ways reflecting the operation of actual housing markets, the filtering model breaks down. After critiquing the filtering model, Part V analyzes and articulates multicausal micro- and macro-factors[9] contributing to the distortions in the urban housing markets of the 1970s, 1980s, and 1990s. These distortions have manifested themselves in a wave of rampant abandonment, speculation, gentrification, displacement, and homelessness.

Part V also analyzes gentrification from a new perspective by considering the rise of a major ideological shift in urban planning and architectural thought in the late 1960s. This movement, represented in part by architectural post-modernism, provides an additional explanatory variable augmenting conventional gentrification analysis.[10]

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8. *Id.* at 317.

9. *See* ROBERT B. REICH, THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST CENTURY CAPITALISM 197 (1991):

[B]etween 1977 and 1990 the average income of the poorest fifth of Americans declined by about 5 percent, while the richest fifth became about 9 percent wealthier. During these years, the average income of the poorest fifth of American families declined by about 7 percent, while the average income of the richest fifth of American families increased about 15 percent. That left the poorest fifth of Americans by 1990 with 3.7 of the nation's total income down from 5.5 percent twenty years before . . . . And it left the richest fifth with a bit over half of the nation's income—the highest proportion ever recorded by the top twenty percent.

Id.

10. *See* KENNETH FRAMPTON, MODERN ARCHITECTURE: A CRITICAL HISTORY 307 (rev. ed. 1985).

If there is a general principal that can be said to characterize Post-Modern architecture, it is the conscious ruination of style and the cannibalization of architectural form, as though no value, either traditional or otherwise can withstand for long the tendency of the production/consumption cycle to reduce every civic institution to some kind of consumerism and to undermine every traditional quality.

This shift toward post-modernism in the 1970s and 1980s fostered a major aesthetic and economic revaluation of urban spaces and buildings, which prior to the 1970s had been considered as unsightly, unmodern urban blight. Once these formerly-disdained urban spaces could be seen as being imbued with postmodern "ambiance," planners, architects, investors, and developers began marketing and renovating such revalued spaces for the taste of upscale young "baby boom" buyers, eager to return to the same core city that many of their forbearers had fled a generation or two earlier.

This Article concludes by critiquing the post-modernism embrace of a facile and ironic historic ambiance as well as its abdication of social responsibility for the effects of urban design and planning on the buildings, neighborhoods, cities, and regions that affect our living environment.

I. Strands of Modern Town Planning (1890 - 1940)

The professionalization of the field of architecture during the middle to late nineteenth century was a major trend affecting the consciousness of nineteenth century American town planners.[11] The American Institute of Architects (AIA), founded in 1857 in New York City, was the first national professional architectural organization. Its establishment engendered a significant change in the meaning of the word "architect," which in early nineteenth century America usually referred to a generalist "builder." Following the founding of the AIA, however, the word became synonymous with "design specialist." Virtually overnight, the architect became a professional with esoteric skills, a licensed monopoly, elevated occupational status and a professional lobby.[12] Thereafter, the formerly integral "building" profession conceptionally divided itself into "architecture" and "civil engineering," a split setting "aesthetics" apart from "utility" as if they were unrelated concepts.[13] This cleavage was

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Id.; *see also* ROBERT VENTURI, COMPLEXITY AND CONTRADICTION IN ARCHITECTURE 16 (1966).

11. *See* WILLIAM H. WISELY, THE AMERICAN CIVIL ENGINEER (1852-1974) 300 (1974). *See generally* TURPIN BANNISTER, THE ARCHITECT AT MID-CENTURY (1954); HENRY SAXLOR, THE AIA'S FIRST HUNDRED YEARS, PART II (1957).

12. *See* RICHARD PLUNZ, A HISTORY OF HOUSING IN NEW YORK CITY (1990). Once the positivist nineteenth century intellectual separation of aesthetics and utility was underway, architecture was pushed in opposing directions, simultaneously towards historical eclecticism and toward ahistorical functionalism (the "Arcadian" and the "Engineering" strands).

13. *See generally* BURTON J. BLEDSTEIN, THE CULTURE OF PROFESSIONALISM: THE MIDDLE CLASS AND THE DEVELOPMENT OF HIGHER EDUCATION IN AMERICA (1976); THOMAS L. HASKELL, THE EMERGENCE OF PROFESSIONAL SOCIAL SCIENCE: THE

reflected in the subsequent emergence of a "high" discourse of professional architects concerned with aesthetics, and a "low" discourse of builders and developers. Ideas passed infrequently between the "high" and "low" discourses, and those that did were either misinterpreted or distorted. Concerns about middle- and low-income housing, for example, were relegated to the profit-driven realm of land developers and were generally ignored in "high" architectural discourse.

As architecture assumed exclusive aesthetic jurisdiction over housing design in the late nineteenth century, the new class of professionals turned their attention to the mainstream City Beautiful movement, responsibility was generally shunned for the social consequences of formal design schemes.[14] Problems of housing the poor did not readily fit into the professional ideologies of mainstream nineteenth century architects and were thus largely ignored.[15] Late nineteenth century architects channeled what concerns they might have had about housing the poor into political support of housing reform movements lobbying for legislative change.[16] These architects did not see themselves as being in the business of elaborating design innovations that directly addressed social problems.[17]

Little professional architectural attention was given, for example, to the problems of tenement construction. The professional assessment that low-income housing construction was not worth the attention, economic or aesthetic, of nineteenth century mainstream

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AMERICAN SOCIAL SCIENCE ASSOCIATION AND THE NINETEENTH-CENTURY CRISIS OF AUTHORITY (1977); PETER NOVICK, THAT NOBLE DREAM: THE "OBJECTIVITY QUESTION" AND THE AMERICAN HISTORICAL PROFESSION (1988); EDWARD A. PURCELL, JR., THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM & THE PROBLEM OF VALUE (1973) (professionalization of the social sciences and law); ROBERT H. WIEBE, THE SEARCH FOR ORDER: 1877-1920 (1967).

14. *See* CHARLES MULFORD ROBINSON, MODERN CIVIC ART, OR THE CITY MADE BEAUTIFUL 257-58 (1903).

> We have first to remind ourselves, then, that our own subject is not sociology but civic art . . . . We may reasonably assert, however, that civic art need concern itself only with the outward aspect of the houses, and therefore that for such details—sociologically pressing though they are—as sunless bedrooms, dark halls and stairs, foul cellars, dangerous employments, and an absence of bathrooms, civic art has no responsibility, however it earnestly deplores them.

15. *See* PLUNZ, *supra* note 12, at 21-39; *see also* JACOB A. RIIS, HOW THE OTHER HALF LIVES (Francesco Cordasco ed., Garrett Press, Inc. 1970) (1890); LAWRENCE M. FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION (1968).

16. *See* RICHARD HOFSTADTER, THE AGE OF REFORM: FROM BRYAN TO F.D.R. (Alfred A. Knopf 1972) (1955); ROY LUBOVE, THE PROGRESSIVES AND THE SLUMS: TENEMENT HOUSE REFORM IN NEW YORK CITY: 1890-1917 (1962); WIEBE, *supra* note 13.

17. *See* NEW YORK STATE SENATE, REPORT OF THE TENEMENT HOUSE COMMITTEE OF 1884. *But see* Coppage v. Kansas, 236 U.S. 1 (1915); Adair v. United States, 208 U.S. 161 (1908); Lochner v. New York, 198 U.S. 45 (1905); *see infra* note 43.

architecture left the planning and design of tenement housing by de-
fault in the builders' jurisdiction. Nineteenth century builders, who
received little or no guidance or control from state or municipal au-
thorities, were driven by the economic need to maximize tenement
profitability.[18] They achieved their objectives by packing building lots
to 90 percent site coverage,[19] a practice leading to smothering densi-
ties and obscene overcrowding in mid- to late-nineteenth century
tenements.

However, in the late nineteenth century a small but increasingly
influential group of progressive reform-minded American architects
turned their attention to the unhealthy, squalid conditions of the poor
in the industrial city.[20] Seeking to design and promote healthful "so-
cial" housing, they looked toward the developing English tradition of
functionalism and social housing, derived from John Ruskin and Wil-
liam Morris.[21] This tradition sought to improve occupants' living
conditions by introducing such design elements as internal court-
yards, light shafts that brought external light and ventilation to com-
mon stairwells, as well as radically reduced site coverage and
inhabitant density.[22] (Unfortunately, Ruskin's and Morris's ideas
also had a marked anti-urban bias, which later urban planners
adopted and amplified.) The reformers applied these elements in phil-
anthropic housing projects in urban and suburban areas during the
period from 1880-1920.[23] The tenements they produced were pri-
vately funded and developed by limited dividend companies.

These reformist tenement architects equated lower site coverage
and densities not only with their immediate objective, improved con-
ditions for inhabitants, but also with their larger goal of social reform.
The struggle for reform was arduous, however, and was fought
against the staunch resistance of the builders and speculators who

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18. *See* PLUNZ, *supra* note 12, at 15-16; *see also* LEWIS MUMFORD, STICKS AND
STONES: A STUDY OF AMERICAN ARCHITECTURE AND CIVILIZATION 36-37 (rev. ed.
1955):

 In nineteenth-century city planning, the engineer was the willing servant of the
 land monopolist; and he provided a frame for the architect . . . where site-value
 counted for everything, and sight-value was not even an afterthought . . . . That
 a city had any other purpose than to attract trade, to increase land values, and
 to grow is something that . . . never exercised any hold upon the minds of the
 majority of our countrymen.

19. *See* PLUNZ, *supra* note 12, at 1.

20. *Id.* at 88-121, 123; *see infra* parts I.A., III.A.

21. *See* EBENEZER HOWARD, GARDEN CITIES OF TO-MORROW (F.J. Osborn ed.,
1946); *see infra* part I.B. Garden Cities.

22. *See* PLUNZ, *supra* note 12, at 88.

23. *See infra* part I.B.

viewed any mandatory reduction of coverage as a threat to tenement profitability.

The world in which the housing philanthropists lived was changing rapidly. New building technologies made large-scale construction projects a reality, and the financial environment facilitated ambitious undertakings. The industrialization of America created regional markets out of local ones, and national markets out of regions. These larger markets needed standardized components to function—steel, coal, lumber, etc. Housing, too, reflected a growing preference for standardized elements like nails, screws, milled lumber, and plumbing pipe.

As the United States rapidly industrialized in the late nineteenth century, masses of people gravitated to urban manufacturing centers that were unprepared for the influx. The absence of carefully considered central plans to absorb this new population resulted in increased densities and the proliferation of disease and unrest in the nation's cities. Developers, desiring to maximize profits in a promising marketplace, built structures of poor quality cheaply and fast, adding frequent fires and building collapse to the growing panoply of urban hazards. Late nineteenth century social reformers, appalled by the dangerous and unhealthy city, turned to pastoral values in their search for solutions.

Among these reformers were landscape architects such as Frederick Law Olmsted, who advocated a picturesque town layout as a panacea for the city's grime and monotony. Olmsted was a critic of the harsh Manhattan 25' x 100' lot gridiron[24] and stressed the importance of integrating informal natural beauty through the use of winding pathways and asymmetrical clusters of buildings.[25] He adhered to the four principles of the picturesque garden: irregularity, intricacy, movement, and roughness.[26]

The romantic picturesque garden was first popularized in the United States by Andrew Jackson Downing as an antidote, not only to the inflexible purism of the Greek Revival of the 1830s and 1840s,[27]

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24. *See* PLUNZ, *supra* note 12, at xxix, 1.

25. *See* FREDERICK LAW OLMSTED, SR., FORTY YEARS OF LANDSCAPE ARCHITECTURE: CENTRAL PARK (Frederick Law Olmsted, Jr. & Theodora Kimball eds., 1973) (1928); *see also* ROBERT SMITHSON, *Frederick Law Olmsted and the Dialectical Landscape, in* THE WRITINGS OF ROBERT SMITHSON: ESSAYS WITH ILLUSTRATIONS 117 (Nancy Holt ed., 1979).

26. *See* WILLIAM H. PIERSON, JR., AMERICAN BUILDINGS AND THEIR ARCHITECTS, VOL. 2: TECHNOLOGY AND THE PICTURESQUE, THE CORPORATE AND THE EARLY GOTHIC STYLES 10 (1978).

27. The early nineteenth century Greek Revival was a response to several effects of rapid industrialization: the movement of farm workers to city factories and the resulting

but to the geometries of a quickly industrializing land.[28] In the face of growing urban industrialization, the Arcadian idea flourished, both as an aesthetic ideal and as a moral principle, sending the message that "the country is good for you," and implicitly, "the city is bad for you."[29]

Olmsted adopted Downing's principles of picturesque plot planning, implementing them on the grand scale of Central Park. In Central Park, Omlsted utilized winding roads, underpasses and a sustained illusion of natural variety in the heart of New York City. Elements of Olmsted's vision were later picked up and further elaborated by the Garden City movement, Frank Lloyd Wright and Le Corbusier (Charles Edouard Jenneret) [hereinafter Le Corbusier]. As popular as Olmsted's work was, his picturesque aesthetic ideology was very much in tension with the growing standardization and gridification of industrial life in the late-nineteenth and early-twentieth centuries.[30]

Often standardized forms prevailed. With the rise of sawmills in the nineteenth century, came the mass-production of thin, easily transported structural wood studs and joists, which replaced the older massive handcrafted mortised and tenoned frames. These new framing methods exploited new structural possibilities, such as the "balloon" frame. Structural elements became lighter, thinner, and more numerous, held together by mass produced nails, making a tense, skeletal cage. This style of wood frame construction has been referred to as a "basket of sticks."

Onto this "basket of sticks," Downing and his followers sought to simultaneously moralize and rationalize (as John Ruskin did with the mid-nineteenth century Gothic revival in England) turning the "stick style" into a moral movement. As advanced by Downing's Camden Society, the stick style was premised on "reality" as a moral imperative in architectural form. "Reality," a mediation between ethics and materialism, required the use of unadorned common materials and structural supports that were emphasized rather than concealed by a

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abandonment of the farming sector; and the Second Great Awakening, a quasi-religious movement seeking to restore the moral/religious fervor that had been weakened by industrialization. The austere geometry of the Revival expressed a desire to recapture a lost classical social and moral stability. Ironically, an entire different set of considerations, such as economy and functionality, contributed to the harsh geometries of mills and factories of the period. While this austerity had widespread influence, it was nevertheless at odds with the swiftly changing mood of an increasingly fluid and heterogeneous country.

28. *See* PIERSON, *supra* note 26, at 10.

29. *See* GARDNER, *supra* note 5.

30. *See* VINCENT SCULLY, AMERICAN ARCHITECTURE AND URBANISM 91 (1969).

decorative facade. Because the wood frame skeleton demanded to be expressed in the name of "reality," the American house as articulated by Downing virtually shed its horizontal sheathing skin and clad itself in vertical boards and battens, thereby expressing its vertical studs.[31] Light framed porches were pushed out as picturesque viewing platforms and pretexts for further visual exploitation of the constituent frame. Downing was a rare nineteenth century architect because he spent a significant portion of his professional time designing cottages for middle-income residents. However, because such projects had to be completed on a smaller scale and with less expensive materials, Downing was forced to use uniform and simple construction techniques. He tried, though unsuccessfully, to counteract this uniformity with ornamentation such as small porches or bay windows. Thus, despite all the talk of expressing "reality," the general development in wooden suburban home-building, from 1840 to 1870, was toward increasingly standardized forms.

The colonial grid-iron town layout, the geometrical purism of the early nineteenth-century Greek Revival, and the winding and irregular shapes of the picturesque mode supplied the basic urban configurations upon which later twentieth century urban planners would draw.[32] However, the ideological content with which this rudimentary vocabulary of form was to become invested was yet to emerge. The grid would become charged with modernist content (as would the geometrism of the Greek Revival) and the pastoral asymmetry of the picturesque mode would become denuded of historical content as it reappeared in the twisting freeway cloverleafs and sprawling landscaped parking lots of the twentieth century.

Rapid industrialization was, nevertheless, a force to be contended with through the early 1900s. During this period, in both the U.S. and England, certain industrialists developed an unusual solution to the peculiar problems presented by pervasive mechanization and the

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31. *See* A.J. DOWNING, THE ARCHITECTURE OF COUNTRY HOUSES (De Capo Press, 1968) (1850).

> There are two modes of constructing the exteriors of wooden houses. . . . [T]he most common mode is that of covering the frame on the outside with boards or narrow siding in horizontal strips; the other is, to cover it with boards nailed on in vertical strips (up and down).

> . . .

> We greatly prefer the vertical to the horizontal boarding, not only because it is more durable, but because it is *an expression of strength and truthfulness* which the other has not.

Id. at 50-51 (emphasis added); *see also* Vincent Scully, *Romantic Rationalism and the Expression of Structure in Wood*, ART BULLETIN, June 1953, at 121-43.

32. *See* SCULLY, *supra* note 30, at 88.

rise of urban manufacturing. Motivated generally by paternalism and self-interest, they established "philanthropic" model towns to house their workers.[33] These "company towns," while furthering the objectives of employers, were also grounds for experimentation with innovative zoning schemes, land use controls, street designs and town layouts. Their low density arrangements reflected the designers' concerns with the social implications of their designs and helped lay the foundation for acceptance of later "social functionalist" philanthropic housing in the 1920s. Their partial success also influenced and provided a model for later government intervention in urban housing markets during World War I and the Great Depression.

In 1880 in Illinois, George M. Pullman established Pullman, a model town for railway employees with a large public park, a separate area of family houses and tenements, stores, a library, a theater, and a railway to service factories located at the town's edge. Other model towns experimented with tree-lined roads and houses with back and front yards.[34] A tension developed between the idea of a company town with overtones of externally-imposed control, and the asymmetrical imagery of a rustic idyll. This tension partially caused "Model Communities" to fall apart in the antagonistic atmosphere of early twentieth century labor-management relations.[35] However, many of their experimental features found their way into both the Beaux-Arts-influenced City Beautiful movement and the English-influenced Garden City movement.[36]

The French Beaux-Arts tradition was the main inspiration of the new professional generation of U.S. architects that appeared after the formation of the AIA. In promoting their City Beautiful movement, this group emulated the Beaux-Arts concern with an intensely historicist elaboration of monumental civic structures.[37] Drawing on the layout of the heavily Beaux-Arts influenced 1893 Columbian Exposition in Chicago,[38] these architects used grand imperial vistas and total

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33. *See* FRAMPTON, *supra* note 10, at 48. *See generally* ANDREW JACKSON DOWNING, A TREATISE ON THE THEORY AND PRACTICE OF LANDSCAPE GARDENING ADAPTED TO NORTH AMERICA (1841); ANDREW JACKSON DOWNING, COTTAGE RESIDENCES (1842); DOWNING, *supra* note 31.

34. *See* DANIEL J. BOORSTIN, THE AMERICANS: THE DEMOCRATIC EXPERIENCE 281 (1973); *see also* PLUNZ, *supra* note 12, at 114.

35. *See generally* Marcuse, *supra* note 1.

36. *See infra* part I.B.1.

37. *See* PLUNZ, *supra* note 12, at 40-41; *see also* EDWARD RELPH, THE MODERN URBAN LANDSCAPE 52-55 (1987); LOUIS H. SULLIVAN, THE AUTOBIOGRAPHY OF AN IDEA 314 (1949).

38. The architectural style of the 1893 Exposition was that of ancient Rome, imported to the U.S. via the French Ecole des Beaux-Arts in Paris. The Exposition utilized

landscaping to produce impressions of cleanliness, order, and civic pride, all derived from a comprehensive total plan. Daniel Burnham, the Beaux-Arts architect behind the 1893 Columbian Exposition, was one of the main exponents of the City Beautiful movement. The Exposition underscored the obliviousness of Burnham and his colleagues to the pressing problem of housing the poor by failing to acknowledge the Panic of 1893 and its resultant economic and social upheavals and dislocations.[39]

Burnham was less concerned with the quandaries of the poor and working classes than with the interests of his wealthy clients, the "captains of industry." His work was also inspired by Baron George-Eugene Haussmann's radical recreation of Second Empire Paris between 1853 and 1870. Haussmann, Director of Public Works for the Paris Region, had reconstructed the avenues and major urban parks of Paris on a central plan, simultaneously installing new water and sewerage systems, and establishing strict design guidelines for new buildings. In an attempt to improve Parisian traffic circulation, Haussman gutted the medieval Latin Quarter, running over 85 miles of new avenues through it and demolishing over 12,000 extant structures, thereby displacing large numbers of urban poor.[40] Haussmann's new central street layout also facilitated the efficient deployment of troops in the event of an uprising; this in spite of Haussmann's belief that the lot of Parisians was generally improved, making them less inclined to revolt.

Burnham, like Haussman, sought to transform narrow and cluttered urban streets into wide, tree-lined avenues. He focused on erecting grand civic facilities such as ornate theaters, libraries, city halls,

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the latest electrical, mechanical and structural innovations, but was clothed in the symbolic architectural garb of the Roman Empire, emphasizing monumental elements.

39. *See, e.g.,* ARNOLD M. PAUL, CONSERVATIVE CRISIS AND THE RULE OF LAW 82-83, 104-30 (1969) (discussing unrest of the Panic of 1893). The Panic of 1893, another periodic dip in the American business cycle, was similar to the Great Depression of the 1930s. The stock market had collapsed due to widespread fraud and manipulation. Vast unemployment, riots and civil unrest followed, and the poor and working classes bore a disproportionate share of the economic burden. As unions gained force, violence between labor and management increased, and dislocations resulted when management responded to strikes by hiring all too available black "scab" workers to replace strikers. Increased racial tensions were a necessary consequence of this turmoil.

40. *See* ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK (1975); FRAMPTON, *supra* note 10, at 23-25; Martin Filler, *Baron Haussmann, Urban Designer Par Excellence*, N.Y. TIMES, March 24, 1991, § 2, at 32 (noting the parallels between Haussmann in mid-nineteenth century Paris and Robert Moses, a century later in New York City, such as radical transformation of major cities and their disregard for democratic procedures). *See generally* FRANCOIS LOYER, PARIS: 19TH CENTURY (1988).

and museums that recorded and monumentalized the grand march of human progress in imperial Beaux-Arts style.[41] In 1909, Burnham released his proposal for Chicago, laying out a "master plan" toward which development could proceed.

For Burnham, social myopia was a major shortcoming. His master plan exhibited little concern for provisions of lower-class housing or progressive social reform as embodied by a city's master plan. Focusing instead on majestic and clean civic facades, Burnham seemed to assume that placing impressive exteriors on a town would work to cure internal social problems.

The businessmen and industrialists who supported Burnham got political mileage from the City Beautiful movement's idealized rhetoric of civic pride. The movement's core idea was that an urban environment should be planned to instill civic values in the working class. By uplifting the workers through the awareness of a common civic bond, the theory went, their demoralization and discontent could be defused. This simplistic rationale allowed business and industry to side-step much of the sordid realities of early twentieth century lower-class urban life.[42] While many city governments were initially taken by such rhetoric, the City Beautiful movement petered out by 1920, as pressing needs for new automobile roads, mass transit, sewer, and other infrastructure systems burdened city budgets, placing budgetary limits on construction of inspirational concourses.[43]

A. Cellars, Shanties, Rookeries and Tenements

Housing conditions for the poor and working classes in the nineteenth century American city were atrocious. From the perspective of the 1990s, one has difficulty appreciating the squalor of the nineteenth century slum.[44] While there have been grave flaws and calamitous missteps in providing affordable low-income housing in contemporary America, combinations of public and private initiatives have delivered an astonishing amount of quality housing in the twentieth century that has helped to overcome the legacy of the nineteenth century's grave housing predicament.

In the nineteenth century, the urban poor found shelter in cellars,

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41. *See* PLUNZ, *supra* note 12, at 40-41.

42. *See generally* ROBINSON, *supra* note 14; ALAN DAWLEY, CLASS AND COMMUNITY: THE INDUSTRIAL REVOLUTION IN LYNN (1976); STEPHEN ROSS, WORKERS ON THE EDGE: WORK LEISURE AND POLITICS IN INDUSTRIALIZING CINCINNATI (1984); MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW: 1780-1860 (1977).

43. *See* PLUNZ, *supra* note 12, at 183.

44. *Id.* at 21-49.

shanties, rookeries, and tenements, where cholera,[45] smallpox, yellow fever, and tuberculosis were endemic.[46] Cellars, which were filthy, unlighted, overcrowded, and dank, provided the most common and probably the worst nineteenth century housing option for the urban poor. They were frequently filled with poisonous gases and vermin from primitive sewers. Their occupants used the infamous "school sinks," from which excrement was removed by hand, if at all, to be dumped and allowed to drain into the ground or the street sewer.[47] Cellars were subject to periodic flooding when the water table would rise following a storm, and were notorious breeding grounds for disease.

The typical Rookery was an abandoned older building, not initially designed as a multi-family tenement, that had been reinhabited at an extremely high density. These buildings were formerly two or three story single-family wood frame houses prone to sudden collapse and to fire. Poor maintenance and overcrowded conditions led to accelerated structural deterioration.[48]

Shanties were cheap temporary shacks erected by squatters on undeveloped areas of New York, such as the large area which eventually became Central Park. The illegality of these shanties allowed real estate speculators who owned the property on which shacks were built to charge ground rents from the squatters, as an additional method of making money while their property technically sat vacant and appreciated in value.[49] Because the shanties were temporary in nature, reformers and legislators who were appalled by the conditions of cellars and rookeries, tended not to subject shantytowns to the same level of scrutiny.

In mid-nineteenth century New York, developers laid out tenements to achieve maximum site coverage, generally 90 percent, of the standard 25' × 100' gridiron lot. Tenements were built contiguously, so that the only light entering the building would be from two windows facing the street; rear windows opened onto the rear windows of another tenement, often only a few feet away. These buildings were generally five or six stories high and were divided up into railroad flats

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45. *Id.* at 21.

46. The 1863 New York City draft riots were motivated in part by the anger and frustration of the poor at the execrable slum conditions they confronted daily. A movement to reform the worst of these conditions was partially motivated by a sense of self-preservation among the wealthy who were alarmed by the threats of disease and insurrection.

47. PLUNZ, *supra* note 12, at 16.

48. *Id.* at 15-22.

49. *Id.* at 53-55.

with multiple families sharing primitive sanitary facilities. Tenements were built with little or no regard for their tenants' safety or health, but rather their goal was to realize maximum possible ground rents.[50]

Until the second half of the nineteenth century, states and municipalities imposed few constraints or standards on tenement developers and owners.[51] The discourse of most newly professionalized mainstream architects had little to do with the discourse of real estate speculators and tenement developers. The problem of housing the urban poor was largely left to builders, who devised design solutions that maximized their own profits at the expense of the health and safety of poor and unorganized tenants.

However, by the mid-nineteenth century, social reformers and political progressives began lobbying for state and municipal legislation that would impose minimum standards on tenement development and construction.[52] Partially in response to such lobbying efforts, the New York State Legislature passed the Tenement Housing Act of 1867, which mandated external fire escapes for all nonfireproof buildings and required that there be at least one water closet for every 20 inhabitants.[53] The 1867 law also prohibited cellar dwelling and created a Metropolitan Board of Health to enforce the Act.

The next phase in the ongoing battle over tenement design in New York City came in 1878 when architect James E. Ware developed the "dumbbell" tenement in response to mounting criticism by reformers that tenements had virtually no ventilation or access to light. The dumbbell tenement attempted to reach a compromise between reformers who sought to create mid-building recesses that made small light and air slots possible between adjoining tenement buildings, and developers who needed sufficient site coverage (80 percent) and tenant density to repay the builder's investment. Nevertheless, many reformers criticized the dumbbell tenement's design because it allowed builders to continue building at a high site density and profitability with minimal real improvements in light, sanitation, and ventilation.[54] Builders of dumbbell tenements could claim they had complied with the law and, speciously, that they were also advancing housing reform.

In response to this problem, Ernest Flagg, an architect with an in-

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50. *Id.* at 15.

51. *See* MUMFORD, *supra* note 18, at 48.

52. *See* PLUNZ, *supra* note 12, at 23-24.

53. *Id.* at 23; *see also* ROBERT W. DeFOREST & LAWRENCE VEILLER, THE TENEMENT HOUSE PROBLEM 306-09 (1903).

54. *See* PLUNZ, *supra* note 12, at 24, 27, 33; *see also* MUMFORD, *supra* note 18, at 48-49.

terest in progressive social housing began experimenting in the late 1890s with designs larger than a single $25' \times 100'$ lot. Flagg's designs radically expanded the heretofore small internal light and air shaft into a courtyard surrounded by a building perimeter, allowing substantially more light and ventilation than the single-lot dumbbell tenement.[55] Flagg's larger multi-lot tenement designs proved popular with real estate speculators and larger developers who saw possibilities of greater profits arising from economies of scale. In these larger buildings, the sharing of structural systems (such as plumbing, gas lines, and heat) by a large number of tenants gave rise to substantial savings. Similarly, it was far more economical to provide management and custodial services to one large conglomeration than to several single-lot tenements.

In 1879, the New York State Legislature passed the Tenement House Act of 1879, which mandated some of the dumbbell tenement's design ideas for new construction. Shortly thereafter, in 1884 the Tenement House Committee, which had been appointed by the New York State Legislature to recommend reforms in the 1867 Act, urged the adoption and enforcement of design requirements such as 65 percent site coverage, elimination of "privies" or outhouses, fresh water supply on each floor, and electric street lighting in tenement districts of the city. Ultimately, these recommendations were defeated by the powerful lobbying of anti-reform real estate speculators aided by a conservative state judiciary harboring a deep antipathy to progressive housing reform efforts.[56]

During the last two decades of the nineteenth century, populist and progressive housing reformers tried focusing popular attention on the squalor of New York City's sprawling tenements.[57] While the main thrust of these housing reformers tended to be politically progressive,

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55. *See* DAVID P. HANDLIN, AMERICAN ARCHITECTURE 136-37 (1985).

56. *See* In re Jacobs, 98 N.Y. 98, 114-15 (1885). *Jacobs* struck down an amendment to the Tenement House Act of 1879 which imposed controls on the non-residential use of tenement buildings. The stricken legislation prohibited the manufacture of tobacco products in apartments, and sought to force tobacco manufacturers to take more responsibility for workplace conditions of tobacco workers. The court said:

> Such legislation may invade one class of rights today and another tomorrow, and if it can be sanctioned under the Constitution . . . we will not be far away . . . from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed and the keeping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions.

Id. at 114-15.

57. *See* RIIS, *supra* note 15; Jacob A. Riis, *The Clearing of Mulberry Bend*, 12 REV.

undercurrents of populist xenophobia appeared in some of their statements. Many of the reformers were from upper-class elites who felt that the hideous slum conditions arose in part from the immoral character and habits of newly-arrived immigrants. Others who were also active in promoting temperance, associated ghetto-squalor with alcohol and immorality. Additionally, many Eastern European immigrants brought with them the specter of socialist/anarchical political ideas that had gained currency in social sectors of their former homelands. Given that many new immigrants had very little in the way of access to capital or property, it seemed possible that socialist "rabble-rousers" might organize and incite them to violence.[58] This middle-class moral unease and anxiety about the potential for socio-political disruption significantly was directed toward immigrants who by the late nineteenth century, comprised close to 40 percent of New York City's population and were almost totally concentrated in tenement districts, like New York's Lower East Side.[59]

In 1901, the New York State Legislature created yet another Tenement House Committee to report and make recommendations. The 1901 Committee presented a comprehensive "scientific" documentation of slum conditions in New York City utilizing extensive maps and charts and made comprehensive recommendations for reform. While the New York State Legislature eventually passed the Tenement House Act of 1901, it ignored many of the Committee's recommendations. However, the Act did set site coverage at a maximum of 70 percent, specified minimum backyard and airshaft dimensions, required every new apartment to have running water and a water closet,

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OF REVS., Aug. 1895, at 172; Charles F. Wingate, *The Moral Side of the Tenement-House Problem*, 41 CATHOLIC WORLD 160 (1885). Wingate states:

> Probably seventy-five percent of the maladies in the cities, which often pass over into the better quarters, arise from the tenement houses. Ninety percent of the children born in these dens die before reaching youth. The amount of sickness is proportioned to the death rate. There is a gradual physical degeneracy. Wasting diseases prevail. Infantile life is nipped in the bud; youth is deformed and loathsome; decrepitude comes at thirty.

Id. at 160-62.

58. *See* Allen Forman, *Some Adopted Americans*, 9 THE AMERICAN 46, 50 (1888). Forman notes:

> The Poles, Russians and lowest class of Germans come to us imbued with Anarchistic notions—notions which are fed by the misery and disappointment of their life in this country where they had looked for affluence without work, and fostered by the freedom of speech which is permitted by laws which were framed to govern a people of entirely different character to those who have been pouring in upon us from the slums of Europe.

Id.

59. *See* PLUNZ, *supra* note 12, at 36.

and created the Tenement House Department, to which it delegated vigorous enforcement powers.[60]

These new requirements, particularly the provisions regarding airshaft dimensions and site coverage, required developers to resolve spatial problems of great complexity, thereby making compliance with the law more difficult than it ever had been. The airshaft requirements could be met most optimally when four 25' x 100' lots were combined, but were impossible to meet on sites of less than two combined lots. Smaller developers and builders who had worked on a lot-by-lot basis were legally foreclosed from developing tenements under the new law, and after 1901, new tenement building rapidly fell under the aegis of highly capitalized large developers. The latter needed architects to help them obtain maximum occupancy through larger projects that would still comply with the law.[61] The net result of this complex interaction between reformist, real estate, and professional design interests was that tenants received higher amenity levels, developers and architects made more money and the municipal building bureaucracy thickened.

B.　Garden Cities, Garden Apartments, and Neighborhood Units

1.　Howard's Garden City

Many different ideas came together in the early twentieth century under the rubric of town planning. These ideas had underlying utopian aspirations that influenced the attitudes and procedures of town planners. The Garden City was one such synthesis, an optimistic attempt to bring together broad utopian ideas in a specific physical town plan.

Ebenezer Howard initially proposed the Garden City idea in England in 1898. It was to be a community consisting of satellite towns outside the metropolis,[62] combining the "best of town and country," and supposedly resolved the problems of both urban congestion and the isolation of the country.[63] At its essence, the Garden City was a suburb rationalized with denser planning, a town center, and some industry. Its central goal, to promote the well-being of the user-client,[64] was an idea that found further expression in the later post-

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60. *Id.* at 47-49.

61. *Id.* at 49.

62. *See* FRAMPTON, *supra* note 10, at 47; *see also* Hazel Conway, *Environmental Design in* DESIGN HISTORY: A STUDENTS' HANDBOOK 168-69 (Hazel Conway ed., 1987); MUMFORD, *supra* note 18, at 111.

63. *See* SCULLY, *supra* note 30, at 161; *see also* RELPH, *supra* note 37, at 60-61.

64. *See* Norman Pressman, *New Towns, in* HOUSING: SYMBOL, STRUCTURE, SITE,

World War II New Town planning.[65]   An underlying vision of nineteenth century urban life as drab, squalid, and dreary, inducing physical, social, and moral pathologies in its residents[66] imparted considerable force to the Garden City idea.[67] The concept was, therefore, not only aesthetic and architectural, but was heavily and deliberately freighted with economic, social, moral, and medical implications as well.

Architectural styles of the Garden City were supposed to be a pleasing mixture of vernacular revivals, with red tile roofs and a rustic Georgian look, adapted from William Morris's mid-nineteenth century romantico-socialist polemics[68] and were yet another incarnation of the Arcadian ideal. The Garden City rejected grandiose Gothic or Classical revivalism, seeking instead to evoke the spirit of medieval cottages.[69] Howard's insight that people did not want to live in identical modules was a significant influence on later planners, as were his revivals of ambiguous historical pedigree, which subsequently became extremely popular in mid-twentieth centruy suburban developments.

As envisioned by Howard, Garden Cities were to be limited to around 30,000 people and were to contain adequate employment opportunities, rendering themselves economically self-sufficient. They were to be "spaciously laid out to give light, air, and gracious living well away from the smoke and grime of the factories and surrounded

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78-79 (Lisa Taylor ed., 1990). *See generally* FREDERICK J. OSBORN & ARNOLD WHITTICK, NEW TOWNS (3d ed. 1977); CLARENCE S. STEIN, TOWARDS NEW TOWNS FOR AMERICA (1951).

65. *See* Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74 (1980); *cf.* Marsh v. Alabama, 326 U.S. 501 (1946). Problems of physical isolation and social control as well as paternalism of the private entrepreneur presented themselves. This problem can be seen in the dilemma of contemporary Homeowner's Associations—one can buy tranquility or security but at uncertain cost to one's autonomy. *See* Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. PA. L. REV. 1519 (1982); Gerald E. Frug, *Cities and Homeowners Associations: A Reply*, 130 U. PA. L. REV. 1589 (1982); Uriel Reichman, *Residential Private Governments: An Introductory Survey*, 43 U. CHI. L. REV. 253 (1976). For a discussion of this idea in the different guise of eighteenth century English legal doctrine, see Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 209, 211-21 (1979), in which Professor Kennedy discusses the etiology of what he calls the "fundamental contradiction" in classical liberal thought, that is, "that relations with others are both necessary to and incompatible with our freedom."

66. *See* HOWARD, *supra* note 21, at 145.

67. *See generally* SAM B. WARNER, JR., STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900 (1982) (detailing the move of the wealthy residents of Boston outward in annular rings from the old walking city, facilitated by the development of streetcar service in the late nineteenth century).

68. *See* PIERSON, *supra* note 26, at 7; *see also* FRAMPTON, *supra* note 10, at 42-50; WILLIAM MORRIS, NEWS FROM NOWHERE (1890); JOHN RUSKIN, THE STONES OF VENICE 157-90, 244-45 (J.G. Links ed., 1960).

69. *See generally* SCULLY, *supra* note 30.

by a greenbelt that would provide both farm produce for the population and opportunity for recreation."[70] Howard's decentralized planning principles heavily influenced later American and European urban planners, particularly his emphasis on smaller size and lower density, the relationships between components of a community, suburban-style physical layout, segregated land uses, environmental healthfulness, and visions of an island of economic self-sufficiency encircled by a rustic greenbelt. Clarence Stein, Frank Lloyd Wright, and Le Corbusier all attempted to implement these elements.

While the Garden City concept embodied many progressive social-reform principles that were foward-looking for its time and context, early attempts to implement the Garden City model on a large scale failed.[71] Later critics attacked Howard as a paternalistic authoritarian[72] and were intensely disillusioned at the results, not only of "high" modernism—as embodied in the work of Le Corbusier, Walter Gropius, and Wright, who were all influenced by Howard's Garden City—but of the proliferation of "low" versions of modernism, interpreted by builders and developers who had never heard of Howard, but sought to achieve a "modern look" using cheap materials.[73] Characterizing Howard as naive, these critics also sought to discredit and undermine the idea of government intervention in housing markets, pointing out many disasters wrought by twentieth century urban planning theory.

2.   *"Social" Housing of the 1920s: Garden Apartments and Neighborhood Units*

The Garden City model set an influential precedent for large-scale governmental involvement in regional planning and housing markets in the later twentieth century. Before the turn of the century, in urban planning and design, the federal, state, and local governments were thought of as mere agents setting the stage for private economic development. Rarely these agents would act to alter the props of the economic stage itself so as to insure equity and reform, but the norm

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70. *See* Pressman, *supra* note 64, at 78-79.

71. *See* PLUNZ, *supra* note 12, at 47.

72. *See* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 19 (1961) (In each case the plan must anticipate all that is needed and be protected, after it is built, against any but the most minor subsequent changes.); *see also* Duncan Kennedy, *Distributive and Paternalist Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power*, 41 MD. L. REV. 563 (1982) (observing the pervasiveness of paternalism in American law, despite protestations to the contrary).

73. *See infra* notes 237, 239.

was seen as non-intervention. The Garden City, with its vision of government in the active role rather than the passive, was a direct challenge to mainstream late nineteenth century urban planning, which saw itself as solely servicing private economic development. The entry of the United States into World War I began changing this attitude and the Garden City was a useful intellectual prototype for reformers seeking to involve government as a positive force in troubled housing markets.

Prior to World War I, the U.S. Government had not been involved in providing housing for low-income families. Such housing that did come into being was the product of either direct philanthropy or limited profit investment and dividend housing development companies with philanthropic agenda. These latter investment vehicles developed projects such as Forest Hills Gardens in Queens in 1908[74] or Homewood in Brooklyn in 1898.[75] The developments consisted of single- or double-family cottages and were provided specifically for the working classes as alternatives to crowded tenements in the core city. Development of working class housing in outlying areas of turn-of-the-century New York City was made possible by improving mass transit and the availability of large parcels of cheap land. The philanthropists behind these limited dividend companies also believed that the productivity and happiness of the residents would be enhanced by their separation from the urban environment.[76]

During World War I, the federal government faced the problem of shortages of housing for workers in newly-built wartime factories. In 1917, it established the Emergency Fleet Corporation and commenced the construction of housing for civilian workers in naval installations. In 1919, the U.S. Department of Labor formed the United States Housing Corporation, which started an emergency housing program for industries connected with the war effort. These entities would either lend money for construction to limited dividend corporations or would construct the housing themselves.[77] Their efforts resulted in emergency housing for thousands of civilian workers and their families in industries such as shipbuilding and munitions in areas surrounding large military facilities like the Brooklyn Shipyard. This massive intervention set a precedent for housing initiatives of the

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74. *See* PLUNZ, *supra* note 12, at 117-18, 120.

75. *Id.* at 116.

76. *See generally*, BUDGETT MEAKIN, MODEL FACTORIES AND VILLAGES: IDEAL CONDITIONS OF LABOUR AND HOUSING 351 (Lynn Hollen Lees & Andrew Lees eds., Garland Publishing, Inc. 1985) (1905).

77. *See* PLUNZ, *supra* note 12, at 125; *see also* MILES L. COLEAN, HOUSING FOR DEFENSE (1940).

New Deal and provided young architects hands-on experience in organizing large-scale housing production.

During this enormous emergency housing effort by the U.S. Government, a new generation of architects entered the profession, whose backgrounds and values set them apart culturally from the majority of mainstream architects of the time. These younger "housing" architects often had worked for the government at the beginning of their careers. They tended to be of a lower social and economic class than architects of the early twentieth century City Beautiful generation, and could not afford the requisite French Beaux-Arts education. Instead, they attended non-elite schools of architecture such as Pratt Institute or Cooper Union.[78] As the federal government pulled out of housing production abruptly in 1919, this younger generation of practitioners began entering the private practice of architecture with generally positive feelings about government intervention in housing markets and attitudes that were more receptive to progressive social change than that of the preceding generation.[79]

The World War I housing shortage had led to rampant abuses in the early 1920s by landlords, banks, real estate speculators, and building material cartels. Landlords in New York secured a law that allowed them to increase rents at will 30 days after a lease was signed. Banks put their money into the booming post-World War I stock market, instead of housing mortgage loans. What mortgage money was available was tainted by corruption and insider favoritism. Cartels of building material suppliers created artificial shortages. Evictions were frequent and numerous. Because tenants usually lacked legal protection and bargaining power, landlords could empty entire buildings and then sell them to speculators at enormous profits. Resistance to widespread evictions in New York City became mixed with socialist politics and coalesced into the Tenant Movement, which was later denounced as "bolshevist" by the New York City District Attorney.[80] Red-baiting[81] was rife among landlords, the courts, and

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78. *See* PLUNZ, *supra* note 12, at 124.

79. *Id.* at 126.

80. *See* Joseph A. Spencer, *New York City Tenant Organization and the Post-World War I Housing Crisis, in* THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1984, at 51-93 (Ronald Lawson & Mark Naison eds., 1986).

81. This was a form of name-calling that permeated the American political scene from the 1920s until the collapse of the Soviet Union, reaching high points during the 1920s and 1950s. It was a right-wing ploy to marginalize and dismiss social reformers as "commies," "pinkos," "bolsheviks," or "fellow travellers." When successful (for example, the Joe McCarthy campaign or Roy Cohn's 1950s communist witch-hunt) red-baiting succeeded in destroying careers by insinuating that liberal/social reform agendas and anyone who supported them, were less than fully "American" and, therefore, suspect.

politicians.

Against this backdrop of social unrest, the generation of "housing" architects became a progressive voice within the generally conservative architecture profession. They argued for, among other things, the continuation of World War I government-run housing programs, including increased housing production and municipal plans to buy land for construction of at-cost housing. Real estate and business interests vocally opposed these calls for government intervention, characterizing them as "socialistic."[82] Despite their protests the New York State Legislature gave indirect support for philanthropic housing through big real-estate tax exemptions for private companies and individuals investing in limited dividend corporations that constructed working-class housing.[83]

These corporations prospered in the post-World War I decade, attracting large investors such as insurance companies, and undertaking larger projects, thereby creating housing for the expanding middle-class. However from 1920 to 1929, steady inflation brought the cost of new housing to a higher baseline level, which only the growing upper middle-class could afford. This, in turn, stimulated debate about whether progressive housing reform efforts should center on the creation of new units or the rehabilitation of existing tenements. The economic boom of the 1920s temporarily quieted this debate although inflation continued apace. Fueled in part by the massive pre-World War I immigration, which had, by the mid-1920s, produced a huge surge of upwardly mobile immigrants, the boom produced an astonishing amount of high-quality middle-income housing. The newcomers for the most part, opted out of tenement living and demanded middle-class amenity levels in their homes. Thus, because the focus was on new apartment construction, the productive economy of this period did little for tenement rehabilitation.[84]

Nevertheless, the 1920s saw the development of social functionalism, a humanistic approach to the social problems of housing and architecture. The goal of social functionalism was to create architectural designs that responded to housing problems and their attendant social problems. This American trend ran parallel to architectural modernist developments in Europe, but tended to work on a smaller and less programmatic scale than its European counterparts.[85]

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82. *Strong Opposition Develops To Municipal Legislation*, 105 REAL ESTATE AND BUILDERS' GUIDE, Jan. 31, 1920, at 134.

83. *See* PLUNZ, *supra* note 12, at 151.

84. *Id.* at 127.

85. *Id.*

Its agenda was influenced by, in particular, Clarence Stein, a pivotal figure among the "housing" architects, together with Henry Wright and Andrew Thomas. Stein had worked for the United States Housing Corporation during World War I. In the subsequent decade he participated in the New York State Legislature Reconstruction Commission, producing extensive studies of the effects of various building configurations on cost, solar exposure, and ventilation. Persuaded by these studies, the New York State Legislature undertook large-scale housing projects at the edge of New York City, where they could take advantage of inexpensive land. These proposed projects utilized a much lower site coverage (40 percent-60 percent) and transformed the Ernest Flagg inner courtyard into a large internal garden, surrounded by a thin perimeter of apartment building. The internal garden gave rise to the name "garden apartment." The 1920s garden apartment was an interesting compromise between the rustic single-family cottage and the urban tenement. It included elements of both visions and totally rejected neither. It became an important example of the design innovations that, as a result of the nineteenth century reformist push for better tenement light, ventilation, and site coverage, became widely adopted for middle-class apartment housing in the 1920s.[86]

Backed by the remarkable prosperity of the 1920s the reformist housing architects, using a social functionalist approach, were able to increase the housing stock in outlying areas of New York City. Just as important, they also succeeded in reaching a balance between their reformist impulses and the private, profit-oriented housing market which, while unstable, was nevertheless able to supply large quantities of high quality housing at low prices. In the early 1920s, Andrew Thomas publicized the idea of lower site coverage in his detailed analyses of the relationship between building mass and configuration, reduced building costs, and increased access to light and air. These studies began persuading builders and developers that the dense massing of the nineteenth century tenement block was uneconomical and that the medium-density garden apartment might better serve their economic interests. Simultaneously, private development companies began widely adopting the garden apartment format for much middle-income housing produced in the 1920s.[87] This trend was symptomatic of major changes in the scale of housing production and of the organizations developing housing at this time. Large-scale development corporations, such as the Queensboro Corporation in New

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86. *Id.* at 164-66.
87. *Id.* at 130.

York, had entered the residential housing market and were working on a much broader scale than the lot-by-lot tenement developers of the nineteenth century.[88] These development corporations handled real estate acquisition as well as the design, construction, rental, and maintenance of their properties.[89]

Garden apartments of the 1920s illustrated the interaction between private development and a nascent municipal zoning and building regulation regime. Due to the convergence of a number of factors, many of the garden apartments built and maintained by large development corporations ranged from four to six stories. A section of the New York Building Code of 1916 for example, provided that only the first one or two floors of a building of six stories or less had to be fireproofed, whereas buildings of six or more stories had to be completely fireproofed. At the time, fireproofing was very expensive, motivating developers to build six story buildings in outlying areas and save in fireproofing costs and cheap land what they might have lost in reduced density and site coverage. Many actually increased their profits this way.[90] Additionally, in the 1920s, less expensive elevators became available, reversing the traditional tenant preferences for lower versus upper floor residence. Now upper floors were more attractive as they no longer needed to be reached by stairs and were substantially quieter than the ground level.

Garden apartments departed from the Beaux-Arts style and generally kept ornamentation to a minimum in the interest of eliminating unnecessary costs. Unlike European buildings of the same period, however, they were designed for the private market and had to cater to some degree to the varying decorative tastes of consumers. Thus, while a number of garden apartments utilized historicist motifs (such as Tuscan, Gothic, Indian, Japanese, Moorish, French Renaissance, Mayan and even German expressions) they were almost invisible.

While the private marketplace accounted for the lion's share of housing construction in the 1920s, labor organizations and collectives also engaged in several significant experiments, which exploited tax breaks and other incentives for new housing construction. These developments used the basic garden apartment structure but elaborated the social dimension by providing day care and education facilities for the project's children.[91] Unfortunately, the Great Depression took an enormous toll on these cooperatives, forcing them to either sell out to

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88. PLUNZ, *supra* note 12, at 130.
89. *Id.* at 122.
90. *Id.* at 123.
91. *Id.* at 151-57.

management companies or evict long-time residents.[92] The Depression also signalled the end of privately financed designs for planned communities that had begun to grow out of the garden apartment idea in the late 1920s.

The garden apartment was a clear manifestation of American social functionalism which had developed in response to the growth of the middle-class. The nineteenth century reformist agenda of reduced site coverage and salubrious living conditions forked neatly into social functionalism's agenda of structural and saptial experimentation.[93]

In keeping with this agenda, progressive social functionalists, Clarence Stein among them, founded the City Housing Corporation[94] in the 1920s. The corporation's objective was to build contemporary cities that would accommodate modern phenomena such as automobile use, growing specialization and mechanization, and a rising standard of living.[95] Stein, a "hybrid" architect who participated in both high architectural discourse and the lower discourse of housing, was among several who sought to bridge the gap between architecture and building, and to bring a consciousness of the profoundly social nature of the profession to their work. In Stein's Radburn project, for example—located in Radburn, New Jersey—the City Housing Corporation focussed on the problem of single-family suburban living.[96]

Radburn, begun in 1927 in a tradition as much Jeffersonian[97] as picturesque, was an attempt to bring "nature" into the city. It followed, although on a smaller scale, along lines developed by Frederick Law Olmsted[98] and Frank Lloyd Wright,[99] who had come to loathe the vertical density of the city and to scorn its jumbled, complex multi-use streets. In Radburn, Stein and the City Housing Corporation similarly addressed the new problem of integrating automobiles, highways, and individual residences, while advancing single-family homeownership.

In part, Radburn was designed to address increasing automobile usage and rising numbers of pedestrian-auto accidents in the 1920s. Radburn also signified a break with the traditional American grid layout, utilizing a type of curvilinear "superblock" with a rim of houses

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92. *Id.* at 161-62.

93. PLUNZ, *supra* note 12, at 149.

94. *Id.* at 168.

95. *See* CAROL A. CHRISTENSEN, THE AMERICAN GARDEN CITY AND THE NEW TOWNS MOVEMENT 61 (Architecture & Urban Design Series No. 3 1986).

96. *See* HANDLIN, *supra* note 55, at 181-83.

97. *See* SCULLY, *supra* note 30, at 45-53; GARDNER, *supra* note 5.

98. *See* OLMSTED, *supra* note 25; SMITHSON, *supra* note 25, at 117.

99. See *infra* part I.C. on Frank Lloyd Wright's plans for Broadacre City.

surrounding a landscaped park. Houses faced the park and pedestrian walkways, with their backs to the dead ends that provided access to connecting roads. Radburn segregated automobiles and pedestrians; it had a complete footpath, overpass, and bridge system so pedestrians could go from one end of the development to the other without encountering motor traffic.

The neighborhood unit was the organizing principle of Radburn.[100] It was conceptualized as a small, recognizable subunit of the city, its scale somewhere between the individual house and the city as a whole, and was part of a progressive response to a growing sense of urban crisis in the early twentieth century.[101]

Reflecting the growing influence of sociology in the 1920s, consideration of the social groupings and daily life of a neighborhood's residents was brought into the planning process via the "neighborhood unit." These units were to be contained by definite geographic boundaries. Major traffic arteries would carry heavy traffic, with internal streets restricted to more moderate residential traffic. Congestion and danger to children from traffic were minimalized. Containment and safety were emphasized, and pedestrian accessibility was given priority. To the planners, cars were seen mainly as ways of entering and leaving the neighborhood unit, and intricate street designs were conceived to reduce auto traffic.[102]

The planners of neighborhood units hoped that residents would develop feelings of community and belonging through constant organized social interaction. They sought to accomplish these ends in several ways: improving access between units and decreasing the distance between them by slightly increasing density per acre; strategic location of bus stops; communal playgrounds; shared lobbies, footpaths, and driveways; discouragement of fence-building and other privacy-seeking behaviors. The neighborhood unit would foster community at the local level through "the conscious practice of democracy in small units,"[103] thereby breaking down social barriers and providing a meaningful role for individuals in mass urban society.

Neighborhood units were to contain a mixed population of predetermined size, "not too large to destroy personal contact and not too

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100. *See* Clarence Perry, *The Neighborhood Unit, in* 7 PORT AUTHORITY OF NEW YORK, NEIGHBORHOOD AND COMMUNITY PLANNING, THE REGIONAL PLAN OF NEW YORK AND ITS ENVIRONS 88 (1929). *See generally* STEIN, *supra* note 64.

101. *See* J. DOUGLAS PORTEOUS, ENVIRONMENT & BEHAVIOR: PLANNING AND EVERYDAY URBAN LIFE 72-73 (1977).

102. *See infra* part II.C.

103. *See generally* LEWIS MUMFORD, THE CULTURE OF CITIES (1938).

small to fail to avoid variety and diversity."[104] A mixing of income groups and housing types helped to achieve social diversity, one that was nevertheless, not without racial and economic overtones. However, in the context of the time, the mere advancement of heterogeneity as a positive social goal was a marked improvement over either social Darwinian laissez-faire principles or the pervasive racial and ethnic segregationist attitudes of the day. The use of neighborhood units was also an efficient means for distributing scarce resources among a city's population, whether they were schools or other city services. Even natural beauty was treated as a precious resource, which was allocable through the practical design of the neighborhood unit. Ideally, the basic pattern could be laid out over and over again until the city became a mosaic of semi-self-sufficient neighborhood units, bound together at the city level by economic and political ties.

With neighborhood units as building blocks, "social functionalist" planners hoped to serve political, social and psychological ends, while visually ordering the spatially jumbled urban scene. Designed neighborhoods and Garden Apartments sought to provide a haven for the exodus of middle-class city dwellers seeking escape from urban chaos, insecurity, anonymity, rootlessness, and rising rents for lower quality spaces. The neighborhood unit "would provide a panacea for all problems of residential development and somehow fit all cases and needs."[105]

Radburn's timing was unfortunate. Following the Stock Market Crash of 1929, Stein's City Development Corporation lost its funds after only two superblocks had been completed. Despite its many apparent advantages, U.S. commercial developers never substantively adopted the Radburn idea. Post-World War II single-family house Levittowns were the hugely popular but distant successors of these planning experiments.[106]

Other projects that attempted to apply sociological data in urban design were more successful. By the end of the 1920s, the social functionalism of progressive architects began yielding results in both the urban and suburban context and was in the process of bringing middle- and low-income housing construction back into the fold of "high" architectural discourse. However, two factors combined to

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104. *Id.* at 73.

105. *See* PORTEOUS, *supra* note 101, at 73.

106. *See infra* part IV.B. This postwar suburban construction boom and the immense federal subsidies that made it possible were crucial elements accelerating concentration of racial minorities in the core city, and generally foreclosing them from entry into the suburbs.

obliterate much of its legacy: (1) the onset of the Great Depression in 1929, which drained investment and stopped almost all real estate and housing development; and (2) the opening of the "International Style" exhibition of European architectural modernist work at the Museum of Modern Art in 1932, spurred by Henry Hitchcock and Phillip Johnson.[107]

Hitchcock and Johnson valorized the International Style, placing it at the peak of the historical evolution of architecture and downgrading architecture that did not fit into the neat "evolutionary" story they told. The style they embraced was characterized by cubic shapes, an absence of traditional ornament, large windows in horizontal bands, and sometimes an asymmetric but geometric composition. Architecture that did not fit within this general description was not really "architecture" at all.

The social functionalism of American housing architects such as Clarence Stein, with its more sociological approach to housing problems, was unfortunately among the work slighted by Hitchcock and Johnson. Ironically, they made a sharp distinction between "architecture," addressed to the ideal of pure form, and "building."[108] To their way of thinking, "individual minimum structures within housing projects were not architecture because they were so simple and so little specialized that they [were] well within the realm of building."[109] However, a large-scale housing project "[offers] so many opportunities for arbitrary choice that it may become architecture." This denigration of U.S. housing architects was ironic because many of the European modernist architects, whose cause Hitchcock and Johnson claimed to be trumpeting, had worked very hard to legitimate the status of housing on all scales and sought to examine the design of daily life as an architectural problem.[110]

Hitchcock and Johnson seized selective aspects of the work of Louis Sullivan and Frank Lloyd Wright as precedents, salvaging both the Beaux-Arts and the Deco-Moderne style,[111] which had developed

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107. *See generally* HENRY-RUSSELL HITCHCOCK & PHILIP JOHNSON, THE INTERNATIONAL STYLE: ARCHITECTURE SINCE 1922 (1932).

108. *Id.* at 38.

109. *Id.* at 90; *see also* TOM WOLFE, FROM BAUHAUS TO OUR HOUSE 38 (1981).

110. *See* NEWMAN, *supra* note 7, at 291.

111. Art-Deco, a style of architectural ornamentation that reached its peak in the late 1920s, blended the geometric forms of Frank Lloyd Wright, Mayan and Pueblo temple designs, Cubism, Expressionism and Constructivism. It influenced William Van Allen's innovative design in 1928 of New York's Chrysler Building. The structure's most notable characteristic is a stainless steel spire of saw-toothed crescent-like shapes resembling an automobile grille at its peak. The auto-inspired imagery continues in a mudguard design on the building's plinth, with ringed radiator caps at the corner.

out of Frank Lloyd Wright's early decorative work. They also dismissed the Garden Apartments and the progressive agenda of the housing-oriented American social functionalists as "sometimes excellent illustrations of sociological theory, but . . . seldom examples of sound modern building and never works of architectural distinction."[112] In the end, Hitchcock and Johnson contributed to an attitude that discounted for a long period the legitimacy of urban moderate- and low-cost housing as a challenge worthy of "high" architectural discourse.

The onset of the Great Depression created an official atmosphere that favored the aesthetic moralism of Hitchcock and Johnson as opposed to the more sociological outlook of the social functionalists. The Depression economy placed severe limits on public expenditures, and the efficiency and economy of the International Style became appealing because the style resulted in less waste in building construction. Social functionalist architecture designed to respond to the special needs of the inhabitant and the environment gave way to the more uniform, standardized, and consequently inexpensive construction principles of the International Style. This design ideology, which also entailed economy of scale, fit in with the New Deal approach to increasing federal intervention in stalled housing markets. The uniform techniques and structures of the International Style allowed more public housing to be built with scarce resources, all the while remaining in apparent harmony with the housing reformers' preferences for lower site coverage and increased resident exposure to light and air.

C. Unrealized Ideal Cities: the Radiant City and Broadacre City

Beaux-Arts historicism was the reigning orthodoxy in the U.S. during the early twentieth century, while social functionalism and Deco-Moderne were alternate and subordinate strands. In Europe, by contrast, a new utopianism influenced architects, builders, and planners before and following World War I.[113] Looking in part to the socialistic principles of the English Arts and Crafts movement,[114] European modernists rejected the old structures and congestion of the nineteenth century city and attempted to address through modern design and planning the entrenched economic, social, psychological, spatial, and public health problems that had plagued late nineteenth century

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112. *See* HITCHCOCK & JOHNSON, *supra* note 107, at 90.

113. *See* FRAMPTON, *supra* note 10, at 109-29; WOLFE, *supra* note 109, at 16-17.

114. *See* RUSKIN, *supra* note 68.

and early twentieth century urban centers.[115] Their solutions introduced a twist on the Arcadian ideal that, simply put, envisioned replacing the old city's dense infrastructure with immense geometric towers in park-like settings.

Utopian speculations attempted to postulate the conditions necessary to provide inhabitants of these imaginary social orders with optimum levels of harmony, happiness, and self-realization in an environment of political, social, and ecological equilibrium. Up until the early twentieth century, utopias were generally literary, appearing in such works as Plato's The Republic and Sir Thomas More's Utopia. They tended to ignore the physical environment, concentrating instead on economic, philosophical, and political foundations of such imaginary societies. By contrast, the design utopias of the early twentieth century—for example, Wright's Broadacre City and Le Corbuseir's Radiant City—were based on the early modernist belief in the deterministic power of physical design to produce the desired social goals. At the core of these unrealized utopias was a related faith in technology's simultaneously creative and destructive power to transform society and the physical environment in the name of the ultimate social good.[116]

The utopian visions articulated by such twentieth century modernists as Le Corbusier and Wright grew out of a progressive, antitraditional, anticapitalist, but frustratingly partial, critique of industrial nineteenth century society. These visions were influenced in particular by Ebenezer Howard's Garden City model, which in turn had borrowed extensively from William Morris, John Ruskin, and the Arts and Crafts movement.[117] However, rather than rejecting technology as Morris had,[118] Wright and Le Corbusier embraced it for its apparent liberatory and egalitarian possibilities as well as its ability to rapidly transform society and the physical environment.

Le Corbusier's work reflects this thinking. A product of the generation that had witnessed the devastation of Europe during World War I, he sought to use architecture as a tool not only to physically rebuild the continent, but to redesign its social fabric as well. Mass production and technological power beguiled Le Corbusier who saw airplanes, automobiles, and ships as embodiments of modernity. His plan for Ville Radieuse (the Radiant City) of the 1920s was based on a

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115. *See* PLUNZ, *supra* note 12, at 190.

116. DAVID HARVEY, THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE 16-17 (1989).

117. *See* RUSKIN, *supra* note 68.

118. *Id.*; JOHN HESKETT, INDUSTRIAL DESIGN 19-20 (1980).

combination of Howard's Garden City model, the Beaux-Arts idea of total landscaping, and his own fiercely didactic architectural purism.[119] Le Corbusier envisioned immense geometric monoliths of steel and glass standing free in idyllic English gardens. He believed society would gain by purging itself of the insalubrious and congested multi-use streets of the old nineteenth century city. Everything old should be razed flat to the ground, and in its place could be erected sixty-story skyscrapers in vast geometric arrays across the cleansed landscape.

New manufacturing and construction techniques would make these monolithic slabs a reality by providing the necessary standardized building materials in mass quantities for quick assembly. The factory workers who made these materials would be housed in the Radiant City, which would expand as more workers were needed, creating still more demand for materials and worker housing. The Radiant City was to be built on a regional scale, consisting of a central city for 500,000 people surrounded by a greenbelt, that was in turn, surrounded by smaller satellite "garden cities" for families.[120] The combined population of this egional development was to be approximately three million.

The Radiant City aimed to establish an efficient and salubrious life for residents of a functionally designed metropolis that would operate smoothly like a machine. This overall goal could be broken down into seven smaller ones: (1) decongesting the core city; (2) increasing population density through vertical building; (3) improving traffic circulation by replacing narrow multi-use streets with wide thoroughfares and transforming the street into a traffic machine;[121] (4) increasing open space and reducing material usage by econcomies of scale achieved through vertical rather than horizontal building; (5) more sunlight, fresh air, and space in each apartment; (6) a diversity of vistas and perspectives for residents; and (7) utilization of mass-produced building units and components. The Radiant City would be built from standardized modules of reinforced concrete, with a site-to-structure density ratio of 85 percent open park to 15 percent structures, effectively reversing the site-to-structure ratio of the nineteenth century urban tenement. At the core of the Radiant City would be an immense transportation center, with roads, railroads, and an airport.

By the 1940s Le Corbusier had come to regard Radiant Cities as

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119. *See* FRAMPTON, *supra* note 10, at 100-04.

120. *Id.* at 155.

121. Le Corbusier frequently railed against the traditional urban street's multiplicity, mess and confinement.

mere components in planned regional development, just as the individual buildings were components of the Radiant City itself. Regions would be decentralized, with industrial parks and various types of housing dispersed along the connecting throughways. Le Corbusier foresaw, to a great extent, regional patterns of development exemplified by suburban factories and apartment complex housing that took place on American highway and connector networks in the post-industrial cities and office parks of the 1970s and 1980s.

Le Corbusier treated space in the Radiant City as if it were wholly undifferentiated. Everything was to be geometrically ordered. The city was seen as a type of machine, and the individual dwelling a machine for living.[122] This city-machine could be alternately viewed aesthetically as an enormous freestanding sculpture set in a vast park-like English garden.[123] However, insofar as the Radiant City was meant as an architectural polemic to be provocatively tossed into the "high" architectural discourse of the time, it paid little attention to the sociology of the development's proposed three million inhabitants. Le Corbusier naively seemed to assume that by simply plugging human "modules" into the properly designed physical environment, intractable social problems could be made to take care of themselves. Under this view, architectural design was a deterministic panacea for urban woes.

Such criticisms were not wholly absent from the architectural discourse of the 1930s. Nevertheless, Le Corbusier was somewhat insulated from criticism because his vision could not be immediately realized and because a substantial period passed before building technologies were able to catch up with Le Corbusier's ideas. This time lag allowed the architect and his followers to evade full analysis by contending that, while their concepts were sound, the technology required to implement them did not yet exist. Le Corbusier was always careful to add that such technology would be available before long, so that his projects would not be abandoned for their impracticality.

Whatever their viability, Le Corbusier's ideas strongly influenced "high" architectural discourse in favor of simplicity and clear, geometric statements of purpose embodied in concrete steel and glass. His architectural philosophy found adherents and advocates in Hitchcock and Johnson who exalted his work in their 1932 exhibit "The International Style" at New York's Museum of Modern Art.[124] Their efforts to promote the Style, coupled with their contempt for social

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122. *See* GARDNER, *supra* note 5, at 764.
123. *See* FRAMPTON, *supra* note 10, at 155.
124. *Id.* at 136, 179.

functionalism, were instrumental in the establishment of monolithic glass and steel skyscrapers as the institutional style of choice through the early 1960s.

However, planners and builders working on a lower-budget and more reduced physical scale, while attracted by the modernist orthodoxy, lacked Le Corbusier's transformative vision.[125] Although they seized on the look of the modernist glass and steel, they generally misinterpreted its underlying theory, thereby producing distortions of "high" architects' visions. These distortions were manifest in the cheap, monotonous, high-rise slab housing apartments and corporate offices they constructed. The translation of ideas from the "high" architectural discourse into the "low" popular vernacular of twentieth century American building has been rife with such ironies.[126]

By the 1960s, the high-rise slab building had become just another preconceived formal style that lacked a connection to the social patterns and needs of its residents and to the site on which it was located.[127] Nevertheless, such monoliths fit well into the idea of the "superblock"—the grid into which component buildings were placed. Likewise, it was suitable in the American superblock, often a large housing project consisting of groups of garden apartment buildings.[128] Additionally planners discovered that the superblock accommodated luxury apartments as well as it did corporate headquarters, and that, remarkably, the ill-defined proletarian army for whom Le Corbusier had initially designed the Radiant City in the 1920s could be housed in similar, but much shoddier, structures. By the 1960s, Le Corbusier's glass and concrete high-rise slabs were freely reproduced by builders and developers for virtually any function. However, contrary to the original dream that they would stand amid idyllic English gardens, cars, and asphalt parking lots often filled the spaces between the towers.

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125. While Le Corbusier's proposals were meant for the Paris of the 1920s, they were realized in somewhat altered form in New York City from the 1940s through the 1960s in housing developments like the Alfred E. Smith Houses (1948); Stuyvesant Town (1947); Polo Grounds (1967) — large-scale, low-cost public housing (except the forms are somber, not glittering glass planes), and numerous corporate headquarters.

126. *See* ROBERT VENTURI ET AL., LEARNING FROM LAS VEGAS 8 (1972).
   The Miami Beach Modern motel on a bleak stretch of highway in southern Delaware reminds jaded drivers of the welcome luxury of a tropical resort . . . . The real hotel in Miami alludes to the international stylishness of a Brazilian resort, which in turn, derives from the International Style of middle [Le Corbusier]. This evolution from the high source through the middle source to the low source took only 30 years.

See generally THOMAS HINE, POPULUXE (1986); WOLFE, *supra* note 109.

127. *See* VENTURI, *supra* note 126, at 103.

128. An example is Stuyvesant Town on the lower east side of Manhattan.

While Le Corbusier concocted schemes to rebuild and transform ravaged European cities, American architect Frank Lloyd Wright tried reimagining the relationship between the American city and the surrounding landscape. The two men were influenced by many of the same sources, but their visions were different. In 1929, Wright turned his attention toward the problems of city planning, seeking to resolve them in the context of "high" architectural discourse.[129] He proposed the Broadacre City, which embodied three important strands of architectural thought: (1) Howard's Garden City in theory; (2) an emphasis on horizontal dispersion over vertical density; and (3) an overriding Jeffersonian agrarianism.[130] While the Broadacre City was never constructed, Wright developed the idea from European sources to embody what he thought American ideology desired: the uninhibited auto road (free from billboards), a decentralized city, and a virtually endless horizontal extension across the land.[131]

Despite critics like Lewis Mumford,[132] who saw them as polarities, Broadacre City and the Radiant City had many ideological parallels. Both visions sought to diminish the traditional density of the nineteenth century city (with some justification) and destroy its multi-use streets and dense structural fabric. Wright theoretically threw out the nineteenth century city, replacing it with a decentralized, horizontal pattern of settlement, spread out, low-rise and low-density, in contrast to Le Corbusier's vertically dense reformulation.[133] In Wright's vision, driveways connected the roads to individual single-family houses, whereas in the Radiant City, they had served immense vertical monoliths.

In Broadacre City, Wright hoped to create a decentralized, semi-agrarian, democratic polity. The settlements would embody organic values—like access to nature and the use of natural materials in building—that had been derived circuitously from William Morris, Louis Sullivan, and the nineteenth century Arts and Crafts Movement. Ideologically, Wright held to the Jeffersonian belief that democracy could be achieved only through individual property ownership, and that citizens were democratically empowered only when they owned their homes. On a practical level, Broadacre City would be decentralized through new transportation technologies (such as, for instance,

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129. *See* HANDLIN, *supra* note 55, at 153-62, 229-30.

130. *See* Frank Lloyd Wright, *Broadacre City: A New Community Plan*, ARCHITECTURAL REC., Apr. 1935, at 243-54; *see also* FRAMPTON, *supra* note 10, at 186-91.

131. *See* FRAMPTON, *supra* note 10, at 187.

132. *See generally* LEWIS MUMFORD, THE ROOTS OF CONTEMPORARY AMERICAN ARCHITECTURE (1952).

133. *See* SMITHSON, *supra* note 25, at 33.

individual helicopters). On the economic plane, Wright's vision restricted tawdry commercial activity, which he characterized as "mobocracy." His stance in this regard illuminated a deep contradiction between his character and writings. Although he claimed to be a defender of Jeffersonian agrarianism and democracy, Wright had a deep streak of elitism. He regarded the mediocrity of the "people," as manifested by mass popular commercial culture, with disdain and hostility—a position somewhat at odds with his own notions of citizen empowerment through local democracy.[134] Wright viewed himself as a kind of Olympian messiah, seeking to redeem the sins of modern industrial society through a vision of therapeutic environmentalist design.[135]

Despite his messianic self-image, Wright's alternate vision of a horizontally dispersed, homogeneous nation of middle-class landowners was not, without more, a solution to entrenched urban social, economic, and political problems. Whenever applications of Broadacre City-type ideas were implemented on a smaller level as a panacea for urban problems, they simply accelerated middle-class white flight from the cities and hastened urban collapse.[136] However, to the extent that Broadacre City focused on finding solutions to the problem of providing large quantities of low-cost, high quality, single-family housing, it provided a valuable counterpoint to the use of slab-block housing projects for the poor. Nevertheless, until recently, it did not go far as such an alternative, and the beneficial impact of the Broadacre idea was felt most strongly by the middle-class landowner.

The ideas of Wright and Le Corbusier were widely disseminated and exerted a strong (but confusing) effect on the generation of architects and planners who designed and developed the mid-century American suburban tracts. The work of the two thinkers reflected strong anti-urban biases as well as a contradictory idealization of both the machine age and rural Arcadian imagery. In their idealized world, the street with its mess, complexity, and visual density was to be replaced with visual cleanliness and vertical density, with people and their buildings seen as relatively interchangeable modules in the cities, or spread out horizontally over the landscape in an endless suburban world that was, essentially, an infinite golf course.

Not surprisingly, these utopian visions of orderly homogeneity were never unattainable. While these visions sought to reimagine and

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134. *But see* Meyer Shapiro, *Architect's Utopia*, 4 PARTISAN REV. 4, Mar. 1938, 42-47. *See generally* FRANK LLOYD WRIGHT, WHEN DEMOCRACY BUILDS (1945).

135. *See generally* FRANK LLOYD WRIGHT, AN AUTOBIOGRAPHY (1943).

136. *See* SCULLY, *supra* note 30, at 170-71.

decongest the older traditional spaces of the city, they were adapted into a patchwork building process by a generation of businessmen and developers. These later builders diluted these utopian schemes with devices of their own creation, all mediated by what they could convince their customers to buy. Thus, in the translation from "high" architectural discourse to the "low" marketplace, much of the progressive social vision underlying these schemes was lost. Nevertheless, the marketing of "low" modernism in the suburbs (à la Broadacre City) by builders and developers led to vast improvements in the housing of the growing white middle- and lower-middle-classes in the 1940s and 1950s. Indeed, an increasing number of people enjoyed levels of housing availability and amenities that would have been unimaginable to nineteenth century reformers.

However, the limited implementations of the schemes of Wright and Le Corbusier often had unforeseen consequences. An example is the role they may have played in speeding the destruction of older inner city neighborhoods. Builders and planners of the 1940s and 1950s also seemed to absorb Wright's and Le Corbusier's contempt for the congested nineteenth century city and eagerly razed vast areas in the name of excising blight and pathology from urban life. Such destruction seemed grimly consonant with a dark side of the thinking of Wright and Le Corbusier. Both had failed to provide housing for the poor in their utopian visions, seemingly assuming that poverty and its problems would be eliminated as soon as the decrepit urban environment in which they lived had been destroyed.

II. Urban and Suburban Landscapes (1900–1950)

Early twentieth century technological developments influenced urban and suburban spatial distribution. The electric trolley, for example, encouraged the spread of the suburbs outward from the central city. New elevator and steel technologies spurred the development of the skyscraper. These innovations shaped the American landscape during the first half of the century.

A. Streetcar Suburbs

Prior to the introduction of the electric trolley, people had to live within walking distance of their places of work. Areas of the city that contained factories also housed factory workers, and financiers, bankers, and lawyers made their homes in urban financial centers. These areas of the city where people lived and worked were known as the "walking city," a dense combination of diverse professions and social classes.

Land speculation, crucial to the expanding economy of the nineteenth and twentieth centuries, began the transformation of the walking city. As urban boundaries extended, factories moved onto less expensive land at the urban fringe, and factory workers required transportation to get to their jobs. Transit improvements like the electric trolley car were developed in response to this spatial expansion.

Additionally, the increasing mobility encouraged members of the middle-class to move away from the intractable problems of the city. A banker, for example, no longer had to live within walking distance of the bank where he worked, but could rely on the trolley to take him a substantial distance each day. Many middle-class city dwellers, uncomfortable with the lower-class connotations associated with city apartment dwelling, relocated to outlying areas where ownership of a single-family cottage or row house was possible. The trolley car allowed them to maintain their jobs in the city while living relatively far from them.[137] These spatially distant residential areas have been called "Streetcar Suburbs."

As trolley service expanded outward from the older, walking city, a split developed between the areas where people worked and the neighborhoods in which they lived. A new suburban consciousness arose in newly developed areas that were ethnically (but not racially) diverse, but highly income stratified.[138] This consciousness, encouraged by builders, fueled itself on negative images of the older, core city and its inhabitants. The inner city came to be perceived as bad, dirty, and dangerous, holding teeming slums that were breeding grounds for cultural and moral degeneracy.[139] The suburb was considered a refuge, a bastion of health and morality, with good schools and safe, modern housing. It appeared to be simultaneously a pre-modern rural Arcadia and paradoxically, an embodiment of forward-looking modernity.[140]

Further bolstering these new middle-class attitudes was the deeply

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137. *See* SUSAN GILMAN YOUNG, EUROPEAN MODES OF LIVING, OR, THE QUESTION OF APARTMENT HOUSES 26-27 (1881).

> There are no objections to apartment houses in American cities, except prejudice, and this is stronger in the United States than elsewhere. To Americans, it is a question of rank. Anything that resembles what we term a tenement house is tabooed. There being no fixed caste in America, as in foreign states, we have established a certain style of living and expenditure, as a distinctive mark of social position.

Id.

138. *See supra* note 25.

139. *See* WARNER, *supra* note 67, at 162.

140. *Id.* at 156-57.

held American belief that one could dramatically improve one's lot through hard work, thereby escaping the lower-class squalor of the nineteenth century city. This expectation resulted in a flow of people outward to suburban Arcadia. The pressure to move socially upward and geographically outward away from the city recongested what had been the outermost ring of upper-middle-class suburban dwellers surrounding the city. This group responded by moving further outward, reforming its income-homogeneous ring at a point even farther removed from the city.[141] Massachusetts Institute of Technology professor Sam Bass Warner, described the process by which nineteenth and early twentieth century Boston expanded outward as a system of annular rings with the walking city at dead center.[142]

In contrast to rising anti-urban consciousness, many twentieth century commentators have used somewhat sentimentalized descriptions of the nineteenth century city to argue forcefully against federal, state, and municipal urban renewal policies. These nostalgic accounts depicted the walking city as a sympathetic environment that supported extended families, united social networks, and diverse employment opportunities, thereby creating a sense of "neighborhood."[143] Such depictions downplayed the squalid, unhealthy, dangerous conditions of the city and the crime, disease, and family dysfunction such environments spawned. Nevertheless, these accounts articulate an aternate, and not altogether implausible, picture of urban life before the Streetcar Suburbs began dismantling the walking city's heterogeneity.[144] One clear effect, however, of the rise of Streetcar Suburbs was to physically separate the middle-class from the poor, allowing ignorance, stereotypes, and malignant fantasies about lower-class pathologies to proliferate in the minds of suburban residents.[145]

B. Early Twentieth Century Skyscrapers

Until the widespread use of elevators and steel girder technology at the end of the nineteenth century, buildings were no higher than six or seven floors. Residents could not be expected to climb vertiginous

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141. Beyond the scope of this piece but worth mentioning is the rise during the later nineteenth century of institutional mortgage lenders who provided a way for the emerging middle class to meet housing costs by extending the time period in which the new homeowner could repay the lender. Such lending, coupled with newly built subways and later, automobile highways, allowed debt-financed suburbanization to continue its outward expansion.

142. *See* WARNER, *supra* note 67.

143. *See* PORTEOUS, *supra* note 101, at 247.

144. *See* BOORSTIN, *supra* note 34, at 165-238.

145. *See supra* part I.B.

stairways and the bases of stone buildings were simply not strong enough to support more than seven stories. Elevators solved the problem of resident access, and the steel industry revolutionized building methods. The introduction of steel frame construction removed the need to thicken supporting walls in proportion to a building's height. These developments paved the way for the modern skyscraper.

The early twentieth century concentration of skyscrapers in city centers encouraged and complemented the growth of the modern corporation. During the late nineteenth century, American corporations had grown immense, both in capital assets and scale of operations, and many had substantial sums of money to invest in large buildings.[146] The management of the corporation was then severed from the factory site and moved to the downtown financial center. This separation was both a cause and symptom of the rise of the downtown center in the early twentieth century. Close relationships developed between the business headquarters and the downtown banks, stock exchanges, and financial services, and were supported by a network of restaurants, theaters, and stores catering to the affluent tastes of the "captains of industry."

With the movement of business management into downtown urban centers, came the rise of the skyscraper, first in Chicago, then in New York and other cities. Reasons commonly given for its development—the structural economics of the steel frame or the need for higher densities in downtown urban areas—place too much emphasis on the driving force of new technologies.[147] Some additional factors

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146. *See* ALFRED D. CHANDLER, THE VISIBLE HAND: THE MANGERIAL REVOLUTION IN AMERICAN BUSINESS (1977); *see also* THURMAN W. ARNOLD, THE FOLKLORE OF CAPITALISM 185-263 (1937); ADOLPH A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932); BOORSTIN, *supra* note 34, at 167, 413-20; LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 166-78, 446-54 (1973); ELLIS W. HAWLEY, THE NEW DEAL AND THE PROBLEM OF MONOPOLY: A STUDY IN ECONOMIC AMBIVALENCE (1966); HOFSTADER, *supra* note 16; J. WILLARD HURST, LAW AND MARKETS IN UNITED STATES HISTORY (1982); J. WILLARD HURST, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES 1780 - 1970, at 13-57 (1970); John Dewey, *The Historical Background of Corporate Legal Personality*, 35 YALE L.J. 655 (1926); Gerald E. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276 (1984); Morton J. Horwitz, *Santa Clara Revisited: The Development of Corporate Theory*, 88 W. VA. L. REV. 173 (1985); Charles W. McCurdy, *The Knight Sugar Decision of 1895 and the Modernization of American Corporation Law, 1869-1903*, 53 BUS. HIS. REV. 304 (1979).

147. *See* WAYNE ANDREWS, ARCHITECTURE, AMBITION AND AMERICANS (1955); WAYNE ANDREWS, ARCHITECTURE IN CHICAGO AND MID-AMERICA: A PHOTOGRAPHIC HISTORY (1968); WALTER CURT BEHRENDT, MODERN BUILDING: ITS NATURE, PROBLEMS, AND FORMS (1937); JOHN BURCHARD & ALBERT BUSH-BROWN, THE ARCHITECTURE OF AMERICA: A SOCIAL AND CULTURAL HISTORY (1961); CARL

help to explain the introduction of the modern skyscraper in 1880s Chicago: (1) the Chicago fire of 1871, which created the possibility of a building boom to replace the razed stock; (2) Chicago's rapid population growth, which grew from 325,000 people in 1870 to 2,100,000 in 1910; (3) an escalation in land values driven by this population growth, making it more profitable to build vertically than horizontally; (4) the swift rise of large corporations like the meat packing and railroad companies and their widespread adoption of the corporate form in the period 1870-1890; and (5) changes in the tastes and preferences of Chicago builders and developers who felt that architectural embellishment was a waste of time and money and were thus willing to experiment with the new steel frame skyscrapers.[148]

However, these purely instrumental explanations give insufficient weight to the effects of the economic, cultural, and social considerations underlying the aesthetics and ideologies of the designers. For example, Louis Sullivan conceived of the building as a functioning human institution with certain logical and formal possibilities: a geometric cube with an entrance floor as a base, a honeycomb of identical office floors with individual windows built to the human scale (rather than as components of a formal grid),[149] topped by a service floor and cornice on top. The best of Sullivan's work sought to advance the aesthetic values of solidity and elegance, richness and discontinuity, allowing the building's exterior to reflect its inner frame. For ornament, Sullivan looked to medieval Irish decorative systems, Moslem ornament, and European Art Nouveau, the aesthetics of which all shared a common anticlassicizing intent that suited Sullivan's anti-Beaux-Arts stance.

Sullivan despised the French Beaux-Arts tradition,[150] which like the twentieth century International Style, deployed forms that embodied universal models of total order, were resistant to adaptation, and sought to confront, dominate and subjugate the local realities of other buildings and the multi-use street. Sullivan's work, however, had little immediate influence among his contemporaries between

W. CONDIT, CHICAGO SINCE 1910: BUILDING, PLANNING AND URBAN TECHNOLOGY, 1910-1929 (1973); CARL W. CONDIT, THE RISE OF THE SKYSCRAPER (1952); LOUIS J. HOROWITZ & BOYDEN SPARKES, THE TOWERS OF NEW YORK (1937); DAVID G. LOTH, THE CITY WITHIN A CITY: THE ROMANCE OF ROCKEFELLER CENTER (1966); HAROLD M. MEYER & RICHARD C. WADE, CHICAGO: GROWTH OF A METROPOLIS (1969).

148. *See* FRAMPTON, *supra* note 10, at 51-52.

149. *See* HANDLIN, *supra* note 55, at 151-53. *See generally* SCULLY, *supra* note 30.

150. *See* FRAMPTON, *supra* note 10, at 51.

1890 and 1930.[151] Although the early skyscrapers owed a great deal to his structural principles, this debt was largely ignored during his lifetime. His work became, however, a keystone of early twentieth century modernism, and his proclamation that "form follows function" became one of architectural modernism's central polemics.

Nevertheless, most American architects continued building skyscrapers in the revival fashions of the time, taking a standard Beaux-Arts building, cutting off the roof details at the second floor and then hoisting them up twenty or thirty stories, creating what later architectural critics have sarcastically called, "stretched cathedrals."[152]

The Beaux-Arts skyscrapers of the 1920s and 1930s owed little to the square-cut shapes and design principles of Sullivan or to early twentieth century European modernist movements like Walter Gropius's Bauhaus. However, a number of skyscrapers of the 1920s began adapting variations of some of Frank Lloyd Wright's decorative ideas (derived in part from Sullivan's work) into a Deco-Moderne style, the effects of which can be seen, for example, in New York's Chrysler Building.[153] However, the Depression killed off new construction of skyscrapers, dealing a death blow to the American Beaux-Arts movement. While the Deco-Moderne movement persisted into the 1930s, the advent of the International Style in the previously discussed 1932 Museum of Modern Art Show, effectively halted it as well, and its use in new buildings largely trailed off by the late 1930s.

C. Mechanical Streets, Expressways, and the Urban Landscape

Although the explosion of technological invention at the end of the nineteenth century brought changes in both urban and suburban construction,[154] it was by no means clear at the time exactly what those

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151. *Id.* at 56.

152. *See* SCULLY, *supra* note 30, at 146-47.

153. Wright drew decorative designs from natural forms such as trees or sheaves of wheat and geometrically abstracted them, turning them into repeatable patterns. He developed his preference for such "organic" forms from Louis Sullivan and before Sullivan, William Morris. Deco-Moderne, as exemplified by the Chrysler Building, also drew on abstracted natural forms such as the sunburst triangles on the crown, or the geometricized eagles. Much of the Deco-Moderne style also looked to foreign cultures, however, for decorative inspirations which were then transformed and abstracted. Wright, too, was influenced by styles as diverse as the Japanese and the Mayan. Thus, Wright's work should be considered a very distant relative of Deco-Moderne, not a direct progenitor.

154. *See* REYNER BANHAM, THE ARCHITECTURE OF THE WELL TEMPERED ENVIRONMENT (1969) (rise of central heating, cooling, and ventilation); KURT BILLIG, PRECAST CONCRETE (1955); JAMES BOGARDUS, CAST IRON BUILDINGS: THEIR CONSTRUCTION AND ADVANTAGES (1856), *reprinted in* THE ORIGINS OF CAST IRON ARCHITECTURE IN AMERICA (1970); WARREN C. SCOVILLE, REVOLUTION IN GLASS

changes would be. Electricity was expected to lead to clean, decentralized modern cities, but little initial attention was paid to the automobile's effect on the urban landscape. While the Bronx River Parkway was the first highway designed specifically for cars in 1906, it was not fully opened to auto traffic until 1924. By this time, several million people owned cars and over 30,000 people a year were killed on the highways. Auto accidents and traffic congestion became a major concern for municipalities. Only in the '30s and '40s did major expressways begin linking different regions, providing a partial solution to congestion, delay, and accidents on multi-use roads, as well as implicating state and federal policies concerning construction and maintenance of such roads.[155]

From 1910 to 1930, cars and smaller highways proliferated, allowing increased quantities of materials and goods to be transported greater distances, thereby stimulating the need for mass production. Advanced mass production and sophisticated advertising techniques combined to produce demand for consumer durables like toasters, washing machines, telephones, and vacuum cleaners. To provide power for these appliances the city landscape rapidly began accommodating generating stations, transmission wires, and poles.[156]

Asphalt roads likewise quickly became an urban necessity. At the beginning of the twentieth century, most roads, even in many cities, were wide dirt pathways, severely affected by weather. "Of the 2.1 million miles of highway in [the U.S.] in 1904, only 141 miles were surfaced with brick or asphalt."[157] Asphalt roads were originally for bicyclists needing a smooth surface on which to ride, but were quickly taken over by the automobile. By 1916 such roads had become commonplace, as had the use of lane markings to separate traffic into opposing directions.[158] The first traffic signals were called semaphores and were introduced in Philadelphia in 1910. By the 1920s, the familiar system of green, red, and yellow signals had been adopted in most major cities. In 1924, New York City had automatically timed lights at twenty-six intersections.

MAKING: ENTREPRENEURSHIP AND TECHNOLOGICAL CHANGE IN THE AMERICAN INDUSTRY 1880-1920 (1948).

155. *See* RELPH, *supra* note 37, at 78-79; *see also* JOHN B. RAE, THE ROAD AND THE CAR IN AMERICAN LIFE (1971).

156. *See* BOORSTIN, *supra* note 34, at 269-71.

157. *See* RELPH, *supra* note 37, at 81.

158. Prior to the introduction of the automobile, trolleys dominated city streets. Early car owners would follow trolley tracks in order to obtain clear passage. Because many trolley tracks ran in opposite directions down either side of the street, cars accordingly began to use the two sides of the street to establish traffic flow in two directions. Eventually, cities painted stripes down the road to formalize the direction of auto traffic.

By this time, autos were nevertheless causing major congestion problems in the cities. The explosion of automobile ownership brought about increased resident mobility, which in turn created severe parking problems that the traditional main street was ill-suited to handle. In 1922, New York and Philadelphia banned parking on major streets. Parking meters were introduced in Oklahoma City in 1935, and within a year, twenty-seven other American cities had adopted them. The now ubiquitous asphalt parking lot proliferated next to new stores and shopping plazas, and the garage, the single-family-house equivalent of the parking lot, became a common fixture as well. The traditional main street became antiquated; its formerly useful role as the place to locate necessities in close proximity became a liability now that automobiles not only clogged busy streets, but allowed access to places farther removed.[159]

As important as street lights and parking spaces were for handling auto traffic, systems of street signs also provided functional information to motorists. The street acquired a thick visual background, foreground and middle-ground of poles, surfaces, and direction signs. Against this dense fabric, commercial signs and buildings—often announcing facilities to sell, store, and service vehicles—added to the visual chaos and competed for visual primacy.[160] Speed blurred the landscape's details to a motorist; therefore, advertising signs needed to be large and bright to compensate.[161] Service stations frequently took corner lots for maximum visibility, vying for business through conspicuous electric sign designs concocted by their owners.[162]

Because distance became much less important to a driver, land uses spread out, but this outward sprawl did not necessarily translate into less density. A 1930s survey of a forty-seven-mile stretch of a New Jersey highway from Trenton to Newark counted 300 gas stations, 472 billboards, 440 commercial uses and 165 intersections.[163] Drive-in movies, restaurants, shopping plazas, and the first cloverleaf intersection at Woodbridge, New Jersey also began lining U.S. roadsides during this period.[164]

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159. *See* BOORSTIN, *supra* note 34, at 271-73.

160. *See* CITY SIGNS AND LIGHTS: A POLICY STUDY PREPARED FOR THE BOSTON REDEVELOPMENT AUTHORITY AND THE U.S. DEPARTMENT OF URBAN DEVELOPMENT (Steven Carr ed., 1973).

161. *See* VENTURI, *supra* note 126, at 8-9.

162. *See* K. Lönberg-Holm, *The Gasoline Filling and Service Station*, ARCHITECTURAL REC. 563-84 (1930).

163. *See* CHRISTOPHER TUNNARD & BORIS PUSHKAREV, MAN MADE AMERICA: CHAOS OR CONTROL? 162 (1963).

164. *See* RELPH, *supra* note 37, at 85.

Not only was the view from the highway cluttered, it was becoming increasingly repetitive. In 1931, Standard Oil began building service stations designed in a version of the then-ascendant International Style, featuring a sleek, utilitarian, and unornamented look that exuded modernity. Most other gas companies followed Standard Oil as corporate standardization began replacing idiosyncratic eclecticism on the highway landscape. Similar standardization also occurred in the food and hotel businesses such as White Castle and Howard Johnson's, and continues steadily into the present. It did not end the visual hodge podge of the early commercial strip but merely insured that the same visual disorder was replicated everywhere.

Simultaneously with these roadside adaptations to the growing use of the automobile, regulatory powers of municipal governments were also expanding. While municipalities previously had some control over public assets such as sewage, roads, and water supply, their regulatory authority extended as new methods were devised to construct and maintain a broad new range of city services. After 1910, for example, sidewalks which had once been built of wood were made of concrete. Electric streetlights replaced gas lights and brought with them generating plants and power lines. Extensive waste disposal, garbage pickup, and water treatment plants were built and regulated by municipalities. The impact of city management on the landscape increased as maintenance and coordination of a rapidly growing urban infrastructure fell under municipal jurisdiction.[165]

Following World War II, now-institutionalized municipal planning and engineering completed the transformation of the commercialized landscape. In the suburban developments of the 1950s, older multi-use streets were separated for purposes of efficiency into component functions: collectors, distributors, arterials, by-passes, inner ring roads, relief roads, and expressways.[166] Road construction wreaked a fundamental change on the form and appearance of American cities and towns. A standardized package of streetlights, sidewalk curbs, road markings, signs, and lights pervaded the landscape.[167] The new concrete highway was durable and relatively featureless, geared toward the machine speeds of cars and trucks.

The appearance of different types of roads was largely a function of the engineering requirements necessary to accommodate a variety of vehicles moving at different rates of speed. For each category of road,

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165. *See generally* 1 JOHN F. DILLON, MUNICIPAL CORPORATIONS 448-55 (5th ed. 1911).

166. *See* SCULLY, *supra* note 30, at 111.

167. *See generally* FRAMPTON, *supra* note 10.

generic engineering standards were developed that specified lane widths, curvatures, gradients, light designs, and crash barriers.

As engineering requirements for the new roads grew more complicated, the roads themselves began to reach into the core city. By mid-twentieth century, there were highways to circumvent the city, highways leading downtown, service roads feeding into expressways, highways to connect to other highways and expressways that encircled the metropolis. Older roads and towns located alongside them fell into oblivion as new centers sprang up in suburbs located on the new interstates.

During the 1970s, the encircling ring of expressways generated significant new commercial and industrial centers in suburban office parks and shopping malls. These centers, generally located off of or close to large interchanges, consisted of clusters of new offices and factories, motels, restaurants, shopping malls, and condominium apartments. Such developments were surrounded by landscaped strips and parking lots that were as large or larger in square footage than the buildings they accompanied.[168]

The routes chosen for expressway construction always had to be cleared, necessitating the removal of pre-existing neighborhoods, buildings, and residents. It behooved planners to choose paths that would generate little physical or political resistance. Thus, expressways snaked through parks, valleys, and dense urban areas with low property values[169] or were raised on pillars over older, low-income neighborhoods. Similar to the railroads before them, expressways divided cities, separating industrial areas from residential ones and marking boundaries between housing projects in poor neighborhoods and affluent communities. In the planned city of the late twentieth century, arterial roads separated business, industrial, and residential districts just as fences divided single-family zones from apartment buildings. The lines on the municipal planner's zoning map were reproduced pervasively on the landscape, contributing to the rise of the segregated city.

1. Mass Consumption

Thorstein Veblen coined the term "conspicuous consumption" in 1899 to describe the behavior of a new American upper-class eager to display its wealth. "In order to gain and to hold the esteem of men, it is not sufficient merely to possess wealth or power. The wealth must

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168. See VENTURI, supra note 126, at 20-34.
169. See CARO, supra note 40, at 850-54, 863, 868-69, 875, 877-78.

be put in evidence, for esteem is only awarded on evidence."[170] Such wealth was evidenced through ostentatious goods and housing, as well as the ability to spend significant amounts of leisure time to enjoy such expensive amenities.

Early twentieth century mass production and advertising techniques however, changed older patterns of luxury and status distribution as previously unaffordable goods came within the reach of the expanding middle-class.[171] The ability to modify one's status by purchasing luxury goods became a commodity available en masse and Veblen's "conspicuous consumption" became conspicuous *mass* consumption. The automobile, for instance, was soon available for such consumption. It was the paradigmatic status object for the machine age, expensive enough to confer a degree of status, yet inexpensive enough that many, though not all, could afford one. The movie industry commodified glamour, making it vicariously available to all. Homes became displays of middle-class affluence, in neighborhoods where "keeping up with the Joneses" was crucial to show that one's status had not slipped.

Architectural elites frowned on this burgeoning commercial consumerism.[172] Frank Lloyd Wright wrote contemptuously of "Canned Poetry, Canned Music, Canned Architecture, Canned Recreation, All canned by the Machine"[173] and claimed his designs would "conquer

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170. *See* Thorstein Veblen, Theory of the Leisure Class 38 (A.M. Kelley, ed., 1991) (1899); *see also* Kevin Phillips, The Politics of Rich and Poor: Wealth and the American Electorate in the Reagan Aftermath 164 (1990).

171. *See* Heskett, *supra* note 118, at 14-15.

172. *But see* Duncan Kennedy, *Radical Intellectuals in American Culture and Politics, or My Talk at the Gramsci Institute*, 1 Rethinking Marxism 101 (Fall 1988):

> Cultural *bazaari* peddle absolutely anything that will sell to the enormous mass of would be upwardly mobile first, second and third generation post-imperial immigrant subgro ups . . . . It is of the *bazaari* role, shared with inventive entrepreneurs with no high-toned background at all that the American intelligentsia should be most proud . . . . [T]he particular forms of the American cult of the new and up to date flow . . . from the conditions of post-imperial post-peasant heterogeneity . . . . The independence of the lower, middle, working and welfare classes, their emigre' freedom from any integrated, hierarchical cultural matrix made them open to the experimental strategies of new companies with new designs . . . . [T]he *bazaari* had to innovate because there was nothing "old" they could expect to appeal to beyond a fraction of the market . . . . What we got [was] . . . the explosion of profit-motivated vulgarity that is the institutional form for progress. Individualism, materialism and philistinism are Molierian categories with which to flay the vulgar parvenu not far enough removed from the windowless cottage of his ancestors . . . .

Id. at 118-20; Venturi, *supra* note 126, at 119.

173. *See* Frank Lloyd Wright, *In The Cause of Architecture*, Architectural Rec., May 1927, at 394-95.

sordid ugly commercialism."[174] Other architects expressed a similar distaste for the visual and cultural effects of pervasive commercial advertising. Raymond Unwin, a British architect, sought to implement Ebenezer Howard's Garden City prototype in a planned development in Letchworth, England, where he believed its rustic values would promote the "gentler and finer instincts of man."[175]

The landscape of the early commercial strip was a particularly vulgar affront to the puristic taste of architectural elites. As late as the Johnson administration in the mid-1960s, with its campaign to beautify America under Lady Bird, elite cultural tastes aimed to eradicate commercial billboards and other manifestations of the unquenchable thirst of the masses for material satisfaction.[176]

Such cultural criticism, however, meant little to businessmen promoting mass products (including housing) or mass consumers wanting to buy and use them. New technological cultures developed around automobiles, electricity, aircraft, asphalt, steel, and glass. They confronted entrenched landscape norms of earlier eras, overwhelming them: streets designed for pedestrians and horses were not easily adapted to congested automobile traffic; Gothic and Classical forms of ornament seemed inappropriate at best and ridiculous at worst for mass-produced goods. Traditional standards of taste, decorum, and fashion no longer seemed authoritative, as they once did.[177] During this period, cities expanded explosively, the workplace was segregated from the home, suburbs sprawled and commercial strip development overtook the American roadside at a rapid rate.

2. Scientific Management

In 1911 F.W. Taylor published *The Principles of Scientific Management*, a programmatic statement of the application of efficiency principles to the workplace. Taylor conducted time and motion studies of industrial employees carrying out their tasks. He divided the tasks into parts, timed each action, then devised sequences of these actions to increase worker output. By applying these methods, Taylor was able to double the productivity of a Bethlehem steel plant within three

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174. *See generally* FRANK LLOYD WRIGHT, THE LIVING CITY (1958).

175. *See* WALTER L. CREESE, THE LEGACY OF RAYMOND UNWIN: A HUMAN PATTERN FOR PLANNING 16 (1967).

176. See the Federal Beautification Act of 1965, 23 U.S.C. § 131, and related regulations at 23 C.F.R. §§ 750.100-750.713. *See, e.g.,* CAL. BUS. & PROF. CODE §§ 5200-5230 (1990); MASS. GEN. L. CH. 93D, §§ 1-7 (1985); N.Y. HIGH. LAWS § 88 (1979). *But see* Kennedy, *supra* note 172, at 101; VENTURI, *supra* note 126, at 68-69, 155.

177. *See* VICTOR PAPANEK, DESIGN FOR THE REAL WORLD 22-23 (1971).

years.[178]

In 1913, Henry Ford implemented Taylor's theories in his Detroit Model T assembly line. Recognizing potential consumer demand for an inexpensive but reliable automobile, Ford reorganized the manufacturing process, subdividing particular tasks in the manner suggested by Taylor's work. He separated planning operations from manufacturing, and began utilizing standardized parts and assembly procedures. As the automobile chassis moved down the assembly line, standardized components were brought to it. Over five million Model Ts were manufactured between 1908 and 1927, adding considerable urgency to the development of paved roads, mechanical streets, and commercial strips, and changing the urban landscape of the 1920s and 1930s. Taylor and his disciples soon attempted to accomplish for other companies what they had accomplished for Ford. Following World War I, time and motion studies were used to boost worker productivity in many industries. Jobs were broken down into their components, factory work was atomized into separate precisely timed series of tasks as Scientific Management and efficient administration became essential tools of modern business.

The new manufacturing methods increased the availability of mass-produced consumer goods and income, bringing down working hours and increasing leisure time. The working class in particular had more disposable income, more things to spend it on, and more time in which to spend it. During this period, Veblen's theory of conspicuous consumption became a theory of conspicuous mass consumption. The working classes became, at least in terms of their spending, the leisure class.[179] However, the implementation of assembly lines and scientific management also tended to isolate individual workers into simple and repetitive tasks, thereby reducing the social experience of co-operation and workmanship which had been a part of the older workshop ethos. This alienation was exacerbated by the worker's drastically diminished sense of involvement in the finished product, as well as by an increasingly regimented workplace. These factors combined with the increased income and leisure and with the separation of home and workplace, to reduce the worker's ties both within the factory and within a community. The rise of mass marketing and advertising encouraged people to identify with the values being promoted for commercial reasons, rather than with values arising from their immediate communities. The isolated worker thus vicariously

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178. *See* BOORSTIN, *supra* note 34, at 359-66; *see also* HESKETT, *supra* note 118, at 50-78.

179. *See* Kennedy, *supra* note 172, at 102.

satisfied his need for substantive communal involvement through buying, displaying, and maintaining mass-produced status objects like the Model T.

Mass consumption necessitated mass production,[180] which was best undertaken by large corporations capable of marshalling the capital and manpower necessary to serve a broad market.[181] The large corporate actors implementing Scientific Management techniques experienced explosive growth in both profits and productivity, driving many smaller enterprises out of business. This growth was further aided by the consolidation of a nation-wide transport system that integrated regional markets.

In a study of the character of the new corporations, Thorstein Veblen wrote that the quality of product and workmanship were no longer at the heart of economics, but were subsidiary to corporate profit-making objectives. Veblen found that raising the corporate bottom line was accomplished, on one hand, through ruthlessly efficient and impersonal management aimed solely at increasing productivity, and on the other, through " 'competitive salesmanship,' based on bargaining, effrontery, make-believe, packaging, advertising, images, and 'salesmanship in the place of workmanship.' "[182]

The targets of Veblen's two-pronged critique of corporate sales strategy manifested themselves in the transformed urban landscape of the mid-twentieth century. Geometric, sterile skyscrapers reflected the imperatives and tastes of the supposedly efficient and bloodless corporate bureaucratic elite, crowding the downtowns of American cities. The sprawling commercial strip developments, garishly hawking virtually anything, and stopping at nothing to catch the passing motorist's eye, were striking illustrations of Veblen's "competitive salesmanship."

D. Commercial Strips

The commercial strip of the present day, coupled with heavy product exposure in the print and electronic media, continues to be the domain of virtually identical products (hamburgers, gasoline, mufflers, tires, etc.) differentiated only by marketing.[183] An assortment of visual imagery, both on the roadside and in the media, entices motor-

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180. *See* BOORSTIN, *supra* note 34, at 167.

181. *See generally supra* note 126.

182. *See* THORSTEIN VEBLEN, ABSENTEE OWNERSHIP AND BUSINESS ENTERPRIZE IN RECENT TIMES: THE CASE OF AMERICA 78, 107 (1923).

183. *See generally* DANIEL J. BOORSTIN, THE IMAGE: A GUIDE TO PSEUDO-EVENTS IN AMERICA (1961); ERNEST DICHTER, HANDBOOK OF CONSUMER MOTIVATIONS: THE PSYCHOLOGY OF THE WORLD OF OBJECTS (1964); PIERRE MARTINEAU, MOTIVATION

ists into malls and shopping centers to consume heavily advertised and marketed goods and services.

The mid-century American commercial strip was a similar horizontal apotheosis of advertising. Changes in sign technology, increased planning and zoning controls, and the replacement of smaller independent businesses by corporate franchises altered its appearance in the post-war decades. During the 1950s, the commercial strip consisted mainly of independent businesses using idiosyncratic names and signs that flashed electric or neon boomerang or paraboloid shapes.[184] In a 1972 book, *Learning From Las Vegas*, architects Robert Venturi, Denise Scott-Brown, and Steven Izenour called the buildings that dotted these mid-century strips "decorated sheds" and boxes with elaborate facades slapped on the front.[185] Indeed, little consideration of a "high" architectural nature was given to the interrelationship of each structure to others on the strip or to the landscape.[186] Venturi, Scott-Brown, and Izenour ambivalently reveled in the vibrant and messy vitality exuded by the mid-century strip, seeing the razzle-dazzle of Las Vegas as its ultimate apotheosis.

However, during the 1960s and 1970s, the proliferation of franchised corporate outlets dramatically transformed the style of the commercial strip. By the mid-1960s there were over 1,200 corporations granting franchises and 350,000 franchised outlets accounting for 30 percent of U.S. retail sales.[187] Because a franchise's economic success was dependent on clear product identification for consumers, franchisees who leased rights to tap into corporate packaging and marketing systems stressed simple, recognizable logos and forms, and basic color schemes. The franchisee reaped the benefits of what was essentially a new corporate heraldry. Eccentrically shaped, flickering neon fell out of fashion to be replaced by rectangular backlit signs of colored plastic and metal.[188]

IN ADVERTISING; MOTIVES THAT MAKE PEOPLE BUY (1957); MARTIN MAYER, MADISON AVENUE, U.S.A. (1958).

184. *See* TOM WOLFE, THE KANDY-KOLORED TANGERINE FLAKE STREAMLINE BABY 8 (1965) ("But such signs! They soar in shapes before which the existing vocabulary of art history is helpless. I can only attempt to supply names—Boomerang Modern, Palette Curvilinear, Flash Gordon Ming-Alert Spiral, McDonald's Hamburger Parabola, Mint Casino Elliptical, Miami Beach Kidney."); *see also* HINE, *supra* note 126, at 107-22.

185. *See* VENTURI, *supra* note 126, at 88-89.

186. *Id.* at 52; *see also* HINE, *supra* note 126, at 157.

187. *See* BOORSTIN, *supra* note 34, at 429.

188. For an example of the way in which corporate identity was merged with an increasing attention to homogeneous design detail and quality, see the change in the look of prototypical McDonald's franchises from the white tiled box of the early 1960s to the mansard roofed brick and shingled rustic design of the 1970s and 1980s.

This trend toward visual neatness and orderliness continued in the '70s and '80s and was paralleled by an increasing consciousness of style in suburban housing markets. Many municipalities implemented restrictive land use regulations seeking to reduce roadside visual congestion and maintain property values.[189] By the late 1980s, many of the formerly chaotic commercial strips had been visually tamed into collections of well-mannered, tasteful, and repetitive standardized outlets of a relatively few large corporations engaged in low-key—visually at least—competition.

Late nineteenth and early twentieth century technological developments had an enormous impact on urban and suburban spatial distri-bution. Combining in various ways, these developments made possible mass production for mass markets, the expansion of suburban rings outward from the nineteenth century "walking city," and the separation of corporate management from production facilities in the newly skyscrapered downtown. Despite the explosive growth of urban areas, however, many urban planners clung to permutations of the anti-urban Arcadian ideal, developing suburbs premised on the single-family cottage in the countryside. Simultaneously, suburbs were made more efficient through strict segregation of land uses, which rapidly reproduced itself in pervasive segregations along economic, social, cultural, and racial lines.

III. Mass Urban Migrations

The massive northward migration of southern black workers in the twentieth century had a radical impact on the spatial distribution of American cities and suburbs.[190] The two responses of urban planners to this migration—the rise of zoning and the implementation of urban renewal programs—implicated deep-seated attitudes, idealizing semi-pastoral suburban life on the one hand, and loathing the dark, malig-

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189. *See* Taco Bell v. City of Mission, 678 P.2d 133 (Kan. 1984) (zoning variance for fast food franchise vigorously resisted by the city council in part on grounds that it would lower property values).

190. *See* Arnold R. Hirsch, *The Causes of Residential Segregation: A Historical Perspective, in* U.S. COMM. ON CIVIL RIGHTS, ISSUES IN HOUSING DISCRIMINATION: A CONSULTATION 57 (1985) ("The 20th century movement of blacks from the farms into American cities coincided with a white exodus out of the city into the suburbs. These parallel parades meant that residential segregation has been increasing for most of the modern era."). *See generally* JAMES BALDWIN, NOTES OF A NATIVE SON (1957); ST. CLAIR DRAKE & HORACE R. CAYTON, BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY (1962); FUSFELD & BATES, *supra* note 2; MALCOLM X, THE AUTOBIOGRAPHY OF MALCOLM X (1965); AUGUST MEIER & ELLIOT RUDWICK, FROM PLANTATION TO GHETTO (1970); GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944).

nant pathological life of the city on the other. In the mind of the American mainstream, the city, teeming with virulent minorities from which the middle-class wished to escape, needed to be "renewed."

During the period from the end of World War I through the 1970s, repeated cotton crop failures and the increasing mechanization of southern agriculture caused the steady displacement of southern black agricultural workers. The post World War I economic expansion created a huge demand for labor in the industrial north. With European immigration abruptly cut off by the war, many urban industries in the northeast and midwest sought out black workers from the rural south. Recruiting agents from northern factories and mills spread out across the southern states, offering free northward transportation and enticing their targets with visions of glowing job prospects in northern factories.[191]

As southern migrants headed to the northern cities seeking work, they found that their housing options were confined to certain "black" areas of the city, with boundaries defined by race. Within the ghettos that this color line delineated, black migrants often found themselves in substandard and overpriced housing. The color line severely restricted the ghetto's expansion, and massive overcrowding was the necessary result. Faced with a limited number of units, ghetto landlords divided and subdivided apartments to meet demand, causing a decrease in amenities. Because housing demand exceeded supply, landlords could charge large premiums to black tenants who were forced by racial discrimination to find housing in the ghetto.

Out of necessity, the ghettos expanded eventually. Racially based color lines had created a dual housing market with a segment for blacks and a segment for whites. At the boundary between black and white areas, realtors were often able to profit from racial scare tactics and thereby bring about the ghetto's block-by-block expansion. White home and apartment owners in the border areas were fearful that property values would drop drastically if the area "went black." Exploiting the fear of such a drop, unscrupulous realtors spread rumors of imminent black entry into the area, prompting owners to sell. No owner wanted to be the last to sell and get stuck at an unbearably low price; they would thus race to sell before their neighbors. This race produced a neighborhood housing glut and a sudden drop in value, related more to panic selling than to an advancing black presence. Realtors and speculators could then purchase these properties at artificially low prices, subdivide them, and rent them to blacks at a

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191. *See* FUSFELD & BATES, *supra* note 2, at 26.

premium. While this process was by no means steady or inevitable, it was one way in which ghettos slowly expanded.[192]

This was a time of growing racial animosities, the sources of which were varied. The post-Civil War Reconstruction Era had raised profound questions of racial equality that remained unresolved sixty years later, and racist demagogues spread concerns about miscegenation and intermarriage. Fears of diminishing property values gave rise to antagonism, while the rigid color line allowed for few encounters between the races, allowing unfounded racial stereotypes to proliferate. Antagonisms in the employment arena also arose, caused in part by companies trying to break strikes by using blacks as "scab" labor. Although this practice had ceased by the 1930s, resentments lingered.

Despite these urban problems, many southern blacks found life in the industrial north superior to the more rigid color lines in the agricultural south.[193] There they had generally been part of the sharecropping system, in which the sharecropper had to give most of the agricultural product of a small parcel of land to the owner in exchange for the continued use of the land. Sharecropper housing was generally without electricity or running water, and while sharecroppers might have lived on the same plot of land for many years, they were unable to become owners themselves or otherwise improve their situations. Compared with this bleak future, northern factories seemed to present a wide range of economic opportunities for blacks. Factory pay was higher, and living conditions in the ghettos of the north, astoundingly, had greater amenity levels than the southern sharecropper shacks. Moreover, there were more opportunities for training and promotion, and within the ghetto enclave, entrepreneurs could even begin their own businesses. Nevertheless, they would pay the price of residential segregation.

The depression of the 1930s, however, struck the northern industrial cities more severely than other areas of the country. The parts of the economy that had accounted for the largest growth in black employment were hit hardest.[194] Black workers, disproportionately represented in the unskilled labor force, were the last hired and the first fired, and frequently found themselves in a pool of surplus labor, fre-

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192. *See* Hirsch, *supra* note 190, at 64, 69; *see also* MARK I. GELFAND, A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933-1965, at 216-22 (1975).

193. *See* FUSFELD & BATES, *supra* note 2, at 32-33.

194. *Id.* at 37-38.

quently suffering from massive unemployment until World War II brought about a labor shortage.

At that time, blacks were again able not only to find employment opportunities in the north, but began to diversify beyond unskilled labor. During wartime, and in the face of labor shortages, racial discrimination in employment was seen as counter-productive. As white male workers were drafted, opportunities for entry into areas other than unskilled factory labor appeared, and many blacks entered trades from which they had previously been foreclosed.

World War II itself served to further diminish racial discrimination in employment. White soldiers were conscious that they were fighting against Hitler's virulent racism in Europe, and it seemed counterintuitive to battle for freedom and democracy abroad while supporting racial segregation at home. Moreover, the armed services had become more integrated, making it more difficult to return to an economy that largely excluded black labor.

Even as the war loosened racial job barriers, however, racial housing barriers became more rigid. The redirection of most of the country's resources into wartime production caused acute labor and materials shortages, and little new housing could be constructed. A housing shortage ensued, freezing residential patterns and reinforcing the ghetto's color-based boundaries. Resistance to the block-by-block expansion of the ghetto increased because there was no new housing in outlying areas into which panicking white sellers could move. This hardening of the color line once again produced overcrowding in the ghetto as blacks continued arriving from the south to take advantage of wartime employment opportunities in the industrial sector.[195]

While northward black migration had slowed somewhat during the 1930s, the continued economic decline of the south prevented such movements from ceasing altogether. The collapse of traditional southern agriculture during this period was generally caused by periodic crop failures and increasing mechanization. In the early part of the 1930s, for example, the boll weevil ravaged the cotton crops, forcing southern farmers to switch to less susceptible crops. Prior to the 1940s, mechanization had decreased the demand for agricultural labor, causing black tenant farmers to become wage hands. However, unskilled laborers generally were not able to work the complicated farm machines, which required a higher level of proficiency from relatively few operators. By the 1950s, mechanization had reduced the need for cotton belt farm laborers to a fraction of the number em-

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195. *Id.* at 43.

ployed in the 1940s.[196] Black tenant farmers and laborers, thus, were forced to seek work elsewhere, and their presence in the north grew accordingly. In the 1940s, wartime employment opportunities caused the population of blacks in northern and western cities to increase by 1.85 million; by the 1950s, that figure had jumped to over 2.7 million.[197] In terms of housing and other related social services, these cities were not prepared for the massive influx of people.

By contrast, the late-nineteenth and early-twentieth Century immigrant groups from Europe had come in smaller waves that were usually circumscribed by events in Europe. A famine would end, or a war would break out on the European continent, causing curtailment of immigration from the hostile nations. These relatively small immigrant groups were absorbed economically and culturally over a relatively long period of time. Furthermore, while many were subjected to ethnic abuse and discrimination, they were nonetheless seen as "white" and, thus, not foreclosed from intermarriage with white U.S. citizens or from upward mobility in U.S. society. In addition, many European immigrants had a trade or skill that they could use collectively to carve an economic niche for their countrymen.

The contrasting steadiness and enormity of the black northward migration over a fifty year period made it difficult for blacks to follow the assimilation patterns of European immigrant groups. Few had special skills with which to build occupational niches. Racial discrimination made it difficult to integrate through intermarriage. The racial color lines surrounding the ghettos froze black residents into geographic concentrations, creating an ever-widening gap between black and white cultures. Until the late 1960s, the continuous migration worked only to swell the population of the ghettos, outside of which few blacks were allowed to reside.[198]

Ghetto residents who had arrived earlier in the migration were adversely impacted by the new arrivals. The migration was well-publicized as a "problem" because of the increased demand it created for city services—garbage, police, fire protection, etc. Furthermore, because many of these southern agricultural migrants were uneducated and unskilled, negative racial stereotypes of all ghetto residents were reinforced in the minds of the general public.

By the time the migration trailed off in the 1970s, other factors had

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196. *Id.* at 64.

197. *Id.* at 65.

198. *See* WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 34 (1987).

combined to reduce the positive effects of its cessation.[199] Racial discrimination in housing diminished during this period, but much of the damage had already been done. White flight and the concentration of a minority underclass in the core city had alienated the races. Ironically, macroeconomic forces such as the shift from a manufacturing to a service economy, the bifurcation of the service sector into a high- and low-end, and the relocation of manufacturing facilities from the central cities to the suburbs, impacted the urban black population at precisely the moment when pressures from the influx of new migrants began easing.[200]

The shift to a service economy in the northern cities during the '70s and '80s was accompanied by a rise in the educational requirements necessary for employment. Industries that generally required only low levels of education relocated to the suburbs and other areas of the country, such as the Sunbelt. As these types of urban, manufacturing jobs diminished, it became increasingly difficult for non-skilled, in-moving groups to assimilate into the mainstream economy. Accordingly, the number of urban minority youth who were regularly employed significantly decreased during this period.[201] New entry-level jobs for the unskilled were now located in the distant suburbs, too far for urban youth to reach. Furthermore, black teenagers often had major difficulties when they ventured into areas that were regarded as "white" territory.[202]

Because blacks were disproportionately represented in the blue-collar, unskilled labor force, they were disproportionately impacted by repeated recessions. Manufacturing industries, traditionally major employers of black workers, were sensitive to periodic economic downturns, and workers typically bore the brunt of difficult times. In the 1970s and 1980s, in particular, these industries suffered heavy job losses. Income distribution became polarized between the wealthy

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199. *Id.* at 34-35.

200. *See infra* part V; *see also* Aliz M. Freedman, *The Poor Pay More for Food in New York, Survey Finds*, Wall St. J., Apr. 15, 1993, at B2.

201. *See* WILSON, *supra* note 198, at 42-43.

202. *See, e.g.*, PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 44-51 (1991) (recounting author's experience of a sales clerk refusing to "buzz" her in because of her race); *id.* at 58-61 (discussing 1986 Howard Beach episode in which three black men were beaten and chased after entering all-white neighborhood); Robert McFadden, *Police Seek New Witnesses to Howard Beach Attack*, N.Y. TIMES, Jan. 6, 1987, at B1; Samuel Freedman, *In Howard Beach, Pride and Fear in a Paradise*, N.Y. TIMES, Dec. 26, 1986, at B4. The incident at Howard Beach, New York is a good example of this. Another example is the Boston incident in which millionaire basketball star Dee Brown was thrown to the ground, handcuffed, and arrested after trying to drive through Newton, Massachusetts, a wealthy, predominantly white suburb. Brown had been looking at houses with his wife and was mistaken for a fleeing bank robber.

and the poor, partially as a result of rising unemployment and major economic restructuring of many industries. While it is neither inevitable nor logical that worsening poverty and unemployment would go hand in hand with higher incomes for those at the top of the economic spectrum, that is exactly what happened in the 1980s. Americans in the top fifth of the spectrum advanced far ahead of Americans in the lower four fifths.[203]

Similar polarizations appeared within the ghetto as well, further impacting its poorest residents. During the '40s, '50s, and '60s, because blacks could not live anywhere but in the ghetto, such areas tended to be economically integrated, that is containing a mix of lower-, middle-, and upper-class residents. During this period the ghetto's middle-class established organizations—church groups, schools, businesses, and social clubs—that exerted a stabilizing influence on ghetto neighborhoods. The presence of the middle-class also served to buffer some of the harsher effects of economic downturns. Because middle-class blacks often had jobs in white-collar or skilled trades, they usually did not experience layoffs and tended to remain employed through recessions. They thus brought income into the ghetto economy, which in turn, hired unemployed workers or, alternatively, contributed to community-based organizations offering aid to the distressed.

By the 1980s however, all of this had changed. Discrimination in housing had been officially limited through such institutional constraints as the Fair Housing Act of 1968,[204] the Fair Housing Amendments Act of 1988,[205] and the elimination of racially restrictive covenants.[206] Accordingly, many black families sought, with varying degrees of success, to move from the ghetto to neighborhoods that better reflected their economic class. As they filtered out of the inner city they took their establishments with them, leaving in the ghetto an economically homogeneous concentration of lower-class residents who lacked the resources or the stability to improve their circumstances.[207]

The exodus of middle-class families from the ghettos during the

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203. *See* Sylvia Nasar, *Even Among the Well-Off, the Richest Get Richer: Data Show the Top 1% Got 60% of the Gain in the 80's Boom*, N.Y. TIMES, Mar. 5, 1992, at A1, D24. *See generally* REICH, *supra* note 9.

204. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601-3631 (1968).

205. Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3604-3606 (1988); *see* Keith Aoki, *Recent Developments: Fair Housing Amendments Act of 1988*, 24 HARV. C.R.-C.L. L. REV. 249 (1989).

206. Shelly v. Kraemer, 334 U.S. 1 (1948).

207. *See* WILSON, *supra* note 198, at 49.

'70s and '80s removed the buffer that had softened the full impact of unemployment during economic downturns.[208] Children of the families left behind in ghetto neighborhoods, where joblessness was the norm, seldom had opportunities to interact with people who were regularly employed. This lack of contact, combined with inadequate education, made it nearly impossible for these children to develop the cognitive, linguistic, and other job-related skills necessary for employment in the post-manufacturing economy. Outsiders repulsed by a preceived lawlessness of these areas, poor schools, and generally intolerable conditions, avoided these neighborhoods, further increasing their social isolation.[209]

In this way, concentrations of poor, uneducated racial minorities became locked into their neighborhoods with little or no meaningful outside contact or countervailing influences. Many of the upwardly mobile black middle-class with their stabilizing influence had settled elsewhere and were unable to set an example for the ghetto from far away. Living conditions in the ghetto deteriorated rapidly when landlords ceased maintainance of their inner-city buildings. The landlords' frequent refusal to pay either to make their structures safe or to meet municipal property taxes resulted in the city seizing the buildings. Consequently, tenants in such buildings were thrown out on the street or forced to double up with friends or relatives. The enormous public costs that ensued from such landlord misbehaviors sparked controversies over the adequacy and allocation of increasingly scarce public services.[210]

Adding insult to injury, middle- and upper-class "baby boomers" came of age during the '70s and '80s, with many chosing to move back into the central city. These newcomers generally rehabilitated units previously occupied by poor inhabitants and were able to pay higher amounts for rent and maintenance. During this period urban revitalization and gentrification frequently caused displacement of lower-income residents who could not afford the high cost of rental housing in such refurbished neighborhoods.

A. Zoning and Land Use Controls

Zoning and the concept of segregated land uses[211] emerged roughly

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208. *Id.* at 56.

209. *Id.* at 57; *see also* Hirsch, *supra* note 190, at 74.

210. *See infra* part V. Additionally, there is the issue of environmental racism, i.e., the siting of incinerators, landfills and dumps in areas with concentrations of poor minority residents without an organized political voice. *See generally* CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (Robert D. Bullard ed., 1993).

211. *See* Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926); Vieux

contemporaneously with the northward migration of displaced southern agricultural workers shortly after the turn of the century.[212] Although zoning originally had practical purposes, even in its inception racial motives were not far from the zoning board's intent.[213] Los Angeles, in the early twentieth century, used zoning ordinances to establish distinctions between residential, commercial, and industrial areas. In 1916, New York City passed an ordinance for skyscrapers requiring that stories above a certain height be set back from the edge created by the lower stories. The ordinance sought to stabilize property values by relieving street congestion and allowing more light and air to reach street level.[214] Property values were high if a building had unobstructed access to sunlight and air. They could abruptly plunge, however, if the shadow caused by a newly erected skycraper obscured light.

From the early twentieth century onward, zoning ordinances like these, along with other land use controls, became increasingly pervasive, profoundly impacting the appearance and operation of U.S. cities and towns. Land use segregation produced clearly demarcated zones for high-rises, single family housing, retailing, specified street setbacks, light industrial operations, and particular building heights.[215] While aesthetic considerations would seem to be integral to the idea

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Carre Property Owners & Assocs. v. City of New Orleans, 167 So.2d 367, 369 (La. 1964); *see also* Penn. Cent. Transp. Co. v. City of New York, 438 U.S. 104, 131 (1978); People v. Stover, 191 N.E.2d 272, appeal dismissed, 375 U.S. 42 (1963); Associated Home Builders of Greater E. Bay, Inc. v. City of Walnut Creek, 484 P.2d 606, 615 (Sup. Ct. Cal. 1971); Newark Milk & Cream Co. of Newark v. Township of Parsippany-Troy Hills, 135 A.2d 682, 695 (N.J. Sup. Ct. 1957).

212. *See* Nectow v. City of Cambridge, 277 U.S. 183 (1928); Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926). *See generally* Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1067-73 (1980); Peter J. MacDonald, *Displacement in Gentrifying Neighborhoods: Regulating Condominium Conversion Through Municipal Land Use Controls*, 63 B.U. L. REV. 955 (1983); Harold A. McDougall, *The Judicial Struggle Against Exclusionary Zoning: The New Jersey Paradigm*, 14 HARV. C.R.-C.L. L. REV. 625 (1979). *But see* Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Hills v. Gatreaux, 425 U.S. 284 (1976); Village of Belle Terre v. Boraas, 416 U.S. 1 (1974); James v. Valtierra, 402 U.S. 137 (1971); Hunter v. Erickson, 393 U.S. 385 (1969); Berman v. Parker, 348 U.S. 26 (1954); Huntington Branch NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988), *aff'd*, 488 U.S. 15 (1988); Hills Dev. Co. v. Township of Bernards 551 A.2d 547 (N.J. Super. Ct. App. Div. 1988); Zoning Bd. of Appeals of Greenfield v. Housing Appeals Comm., 446 N.E.2d 748 (Mass. App. Ct. 1983); Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (Sup. Ct. N.J. 1983); Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 (Sup. Ct. N.J. 1975).

213. *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 351 (1886) (striking down a facially neutral land use statute, which was administered in a racially discriminatory fashion).

214. *See supra* part I.B.

215. *See* Hirsch, *supra* note 190, at 60.

of land use planning, courts and legislatures have generally side-stepped the issue of aesthetics preferring to couch their decisions in "neutral" functionalist language.[216] Nevertheless, aesthetic grounds for planning decisions, often implicating complex issues of culture, class, and economics, could not be evaded by retreat into neutral rhetoric and have made land use plans an intransigently controversial issue.[217]

The World War II housing boom momentarily set aside controversies over the appropriate aesthetic basis for zoning regulations, but nevertheless required planners to articulate some provisional aesthetic guidelines. Lawmakers at different levels empowered cities to direct

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216. *See* A. JAMES CASNER & W. BARTON LEACH, CASES AND TEXT ON PROPERTY 1138-39 (3d ed. 1984) ("Aesthetics is frequently the real basis behind a zoning ordinance, but courts frequently go to extreme lengths to uphold an ordinance on some other ground . . . ."); *see also* People v. Stover, 191 N.E.2d 272 (N.Y. 1963), *appeal dismissed*, 375 U.S. 42 (1963); Jesse J. Dukeminier, Jr., *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROBS. 218, 225-27 (1955); Note, *Zoning: Aesthetics: The Chameleon of Zoning*, 4 TULSA L.J. 48 (1967); Note, *Aesthetic Zoning: A Current Evaluation of the Law*, 18 U. FLA. L. REV. 430 (1965); Note, *Aesthetic Control of Land Use: A House Built Upon the Sand?*, 59 NW. U. L. REV. 372 (1964); Note, *Zoning for Aesthetics—A Problem of Definition*, 32 U. CIN. L. REV. 367 (1963).

217. *See generally* Jon Costonis, *Law and Aesthetics: A Critique and a Reformulation of the Dilemmas*, 80 MICH. L. REV. 355 (1982); James P. Karp, *The Evolving Meaning of Aesthetics in Land-Use Regulation*, 15 COLUM. J. ENVTL. L. 307 (1990); Frank Michelman, *Toward a Practical Standard for Aesthetic Regulation*, 15 PRAC. LAW. NO. 2 36, 37 (1969); Comment, *San Francisco Residential Rezoning: Architectural Controls in Central City Neighborhoods*, 13 U.S.F. L. REV. 945 (1979); Comment, *Aesthetic Factors in Zoning*, 11 DUQ. L. REV. 204 (1972).

In State v. Miller, 416 A.2d 821 (N.J. 1980), the court stated:

> Consideration of aesthetics in municipal land use . . . is no longer a matter of luxury or indulgence . . . . The development and preservation of natural resources and clean, salubrious neighborhoods contribute to psychological and emotional stability and well-being as well as stimulate a sense of civic pride . . . . Furthermore, it had been argued that not only does the police power include aesthetics but, in fact, that all planning and zoning is essentially aesthetic in nature, growing as it did, out of the "city beautiful" movement of the early 1900s."

Id. at 824; *see also* Sun Oil Co. v. City of Madison Heights, 199 N.W.2d 525, 529 (Mich. 1972); John Donnelly & Sons, Inc. v. Outdoor Advertising Bd., 339 N.E.2d 709 (Mass. 1975). The *Donnelly* court stated:

> The reluctance to uphold zoning regulations . . . designed to preserve and improve the visual character of the physical environment on aesthetic grounds alone may be based on the belief that aesthetic evaluations are a matter of individual taste and are thus too subjective to be applied in any but an arbitrary and capricious manner . . . . Accordingly, courts have engaged in a reasoning process, often amounting to nothing more than legal fiction, in order to avoid recognizing aesthetics as an appropriate basis for exercise of the police power.

Id. at 716; United Advertising Corp. v. Borough of Metuchen, 198 A.2d 447, 449 (N.J. 1964).

the character of change in their jurisdictions.[218] Their enabling legislation provided generally that cities and towns (1) had a responsibility to prepare large-scale urban plans establishing guidelines for future development and intended land uses, (2) would be given broad eminent domain powers to expropriate and redevelop property afflicted by slum conditions and "urban blight," and (3) would be responsible for ensuring that redevelopment proposals conformed to official guidelines covering everything from neighborhood layout to street setbacks and window size.

The overarching legislative guidelines and the perceived urgency for urban redevelopment in the postwar period caused government urban planners to adopt limited versions of older ideas and procedures including land use zoning, Bauhaus-style layouts for public housing, and neighborhood units. Most of these borrowed ideas were standardized into tight formulaic guidelines that could be implemented cheaply and quickly, although with less sensitivity to individual problems than had characterized the original ideas. The guidelines were published in manuals that were, in essence, recipe books giving possible configurations for design problems like street layout, bridges, parking lots, and lighting.[219] The manuals presented a restricted menu of models on which to draw for the design of urban developments. The requirement of bureaucratic review and approval acted as yet a further limitation on the design process.

Given such institutional constraints on the preparation of official plans, it was not surprising that bureaucratic architects who drifted into redevelopment and planning were "something less than the best qualified in the profession."[220] In addition, relatively unqualified government bureaucrats made the final decisions about whether to proceed with each redevelopment plan. Such combinations of unsuited planners managed to impose sterile and arid orderliness that was, in many ways, as problematic as the "urban blight" they meant to replace.[221]

Thus, by the middle of the twentieth century, town planning, which

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218. *See generally* GERALD E. FRUG, LOCAL GOVERNMENT LAW (1989); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980). But see Dillon's Rule, formulated by John Dillon in 1872, which specifies the degree which local government power is restricted only to actions authorized by enabling legislation enacted by the state legislature. JOHN F. DILLON, 1 MUNICIPAL CORPORATIONS 448-55 (5th ed. 1911).

219. *See generally* AMERICAN SOC'Y OF CIVIL ENG'RS ET AL., RESIDENTIAL STREETS (2d ed. 1990).

220. *See* PORTEOUS, *supra* note 101, at 227.

221. See *infra* note 290 on New York City's plan to place decals of shutters, curtains and flowers on the windows of burned out South Bronx tenements, so that passing motorists on the Cross-Bronx Expressway would not be disturbed by the sight of urban decay.

had in the late nineteenth century been intended to counteract sterility and uniformity, actually became more formulaic than what it had initially sought to remedy. Some commentators have suggested reversing this tendency by scrapping local zoning controls and invoking notions of deregulation and privatization. These commentators lament the politicization of the local zoning process, focusing their hopes instead on a private self-regulating housing market and preferring to view such markets as premised on the rational behavior of participants, which is defeated by government intervention.[222]

The descent of urban planning into standardization and uniformity was by no means an inevitable consequence of zoning. At its core, zoning is full of ambiguous potential for change. Zoning regulations exemplify the circularity of the notion of property, to which philosopher Morris Cohen referred when he asked whether an item was valuable because it was protected, or protected because it was valuable.[223] Because the value of a project or an existing building is absolutely dependent on its permitted uses, zoning prescribes limits on the actions and choices of developers and residents. For example, in an area that has been zoned residential, a landlord or developer is foreclosed from receiving higher commercial rents. This state of affairs may be complicated at the periphery of a residential area if a developer seeks a variance to allow, for instance, a fast-food restaurant and the residents object.

Zoning has been used in many communities as an exclusionary device to block social and racial integration.[224] In California in the late nineteenth century, zoning was initially used for the racially discriminatory purpose of restricting the location of Chinese laundries.[225] Towns have frequently used facially neutral zoning ordinances mandating lot sizes or prohibiting the construction of multiple-family dwellings to prevent low- and moderate-income families from moving into their communities.

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222. *See* Orlando E. Delogu, *Local Land Use Controls: An Idea Whose Time Has Passed*, 36 ME. L. REV. 261 (1984); *see also* MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT (1980); RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 16.8 (2d ed. 1977). *But see* Peter Navarro, *Lessons From the San Diego Sprawl*, WALL ST. J., May 5, 1993, at A13.

223. *See generally* Morris R. Cohen, *Property and Sovereignty*, 13 CORNELL L. B. (1927); Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 470 (1928).

224. *See* Rachel Fox, *The Selling Out of Mount Laurel: Regional Contribution Agreements in New Jersey's Fair Housing Act*, 16 FORDHAM URB. L.J. 535, 538 (1988); *see also* Stephen Sussna, *Residential Densities: A Patchwork Placebo*, 1 FORDHAM URB. L.J. 127 (1972); Comment, *Exclusionary Zoning: An Overview*, 47 TUL. L. REV. 1056 (1973).

225. *See* Yick Wo v. Hopkins, 118 U.S. 356 (1886).

Zoning of this kind acts as a subsidy through which the suburban middle- and upper-classes benefit at the expense of the urban poor. By limiting the density of residential units per acre, exclusionary zoning forecloses apartment developers from bidding up a parcel of land. Such developers are able to pay much more for the parcel than could a single family because the developers represent the combined bidding power of multiple families who would be living in the complex. By keeping the bidding process for such parcels between single families, exclusionary zoning maintains an artificially low per lot land price for single-family homebuyers, and simultaneously keeps groups of low-income people from entering the market. In this way it becomes a subsidy to upper-income suburbanites, sheltering them from market competition represented by high density developers.

The effect of such zoning on the tax system further benefits the wealthy at the expense of the poor. Renters, the usual occupants of high density buildings, do not pay property taxes. Thus the assessed property tax for a parcel on which a high occupancy building is located is generally less than if several individuals owned pieces of that parcel and paid separate property taxes on them. The numerous inhabitants of high density buildings also utilize city services in larger quantities than would individual homeowners. Thus, multiple-family apartment buildings consume more city services while contributing less tax revenue, in essence tax dollars of property owners would go to apartment dwellers in the form of city services. Prohibiting such apartment buildings allows single-family residents to avoid paying for the extra city services that apartment dwellers do not cover. This works to keep single-family taxes down.

Exclusionary zoning also acts as a regressive "tax" on urban low-income families. It forces greater housing densities and increased service burdens per tax dollar onto low-income areas, which are the areas least able to afford such burdens. High density housing does not generate sufficient revenues to meet increased city service needs, further reducing the quality and provision of services.[226]

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[227] the Supreme Court tested the constitutionality of exclusionary zoning that had the effect of hampering construction of low- and moderate-income housing. Finding that there was insuffi-

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226. *See* Fox, *supra* note 224, at 535; *see also* McDougall, *supra* note 212.

227. 429 U.S. 252, 270-71 n.21 (1977) (Racially discriminatory motivation does not necessitate invalidation of the municipality's decision; it does, however, shift the burden to the municipality to show that the same decision would have been made without the discriminatory motivation.).

cient proof of intent to discriminate in the city's refusal to rezone, the Court declined to overturn the exclusionary ordinance. In addition, the Supreme Court held that a showing of disproportionate impact on a particular racial minority was insufficient to prove a violation of the Fourteenth Amendment's guarantee of equal protection.[228]

In spite of repeated narrow judicial decisions holding exclusionary ordinances valid, zoning regulations may also have great inclusionary potential. Used as a tool to advance racial integration, inclusionary zoning ordinances might be used to prevent affluent buyers from bidding up the price of units in particular urban neighborhoods, an activity that often displaces and impoverishes long-term residents of low- or moderate-incomes. This goal could be achieved in several ways.

The most obvious is regulation of condominium conversions. Such regulation could set an upper limit on the number of units a developer could convert or simply make conversions of affordable housing stock illegal. To be meaningful, such regulations would need to be coupled with rent ceilings and antiwarehousing laws preventing landlords from significantly raising rents of long-time tenants or from simply pulling vacant units off the market.

An alternate method would be grass-roots implementation of eviction-free zones by local housing activists and legal aid lawyers that would target areas in which to vigorously and selectively enforce the implied warranty of habitability. Such eviction-free zones would make the eviction process expensive and difficult for the landlord, thereby slowing gentrification and blocking displacement. Moreover, eviction free zones have a distinct advantage over sluggish legislative

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228. *See id.*; James v. Valtierra, 402 U.S. 137 (1971) (upholding a facially neutral requirement of community voter approval before low rent housing could be developed by state agency). *But see* Hills v. Gatreaux, 425 U.S. 284 (1976) (Fifth Amendment violated by federal agency that applied public housing site selection process so as to avoid placing black families in white neighborhoods); Southern Burlington County NAACP v. Township of Mt. Laurel (Mt. Laurel I), 336 A.2d 713 (N.J. 1975) (New Jersey Supreme Court upheld attack on municipal system of land use regulation that prevented the construction of low and moderate income housing). The *Mt. Laurel I* court justified its decision:

As a developing municipality, Mount Laurel must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all people who may desire to live there, of course including those of low and moderate income. It must permit multi-family housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and, in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like, to meet the full panoply of these needs.

Id. at 731-32; *see also* Hills Dev. Co. v. Bernards Township in Somerset County (Mt. Laurel III), 510 A.2d 621 (N.J. 1986); Southern Burlington County NAACP v. Township of Mt. Laurel (Mt. Laurel II), 456 A.2d 390 (N.J. 1983).

and administrative mechanisms through which effective condominium conversion and rent control initiatives must pass, because usually by the time such legislation/regulations are passed, the neighborhood in question has already been gentrified. The warranty of habitability as a defense to a landlord eviction action would be applied directly in the target neighborhood by community groups and teams of legal services lawyers.

Establishment of an eviction-free zone might begin with a declaration by a local community group or legal services clinic that they intend to oppose all evictions in a particular neighborhood, or even a particular building. This declaration may include other activities like picketing, formation of tenant unions, or rent strikes. The legal premise on which the eviction-free zone is based is the nonwaivable implied warranty of habitability, which requires landlords to maintain their residential units in a habitable condition meeting the applicable standards of local housing codes. A landlord's failure to do so provides tenants with a defense against attempted eviction.

Holding landlords to the strictest letter of the local housing code can significantly increase the legal costs and time necessary to evict a tenant. These factors eventually figure into the cost of condominium conversion and in many situations may significantly retard or even halt the gentrification process. Enforcing the implied warranty of habitability would also discourage landlords from "milking" their buildings, that is, ceasing to pay for maintenance expenses and property taxes but continuing to collect rents from tenants.[229]

Other municipal regulations that might beneficially affect the physical and economic structure of a city's housing market are rent control,[230] enforcement of the housing code to prevent deterioration of the existing housing stock, antidisplacement zoning, and antispecula-

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229. *See* MacDonald, *supra* note 212, at 955; Duncan Kennedy, *Distributive and Paternalist Motives in Contract and Tort Law with Special Reference to Compulsory Terms and Unequal Bargaining Power*, 41 MD. L. REV. 563 (1982); Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987) [hereinafter *Milking*]. *See generally* Kolodney, *supra* note 2; JOHN PALEN & BRUCE LONDON, GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZTION (1984); NEIL SMITH & PETER WILLIAMS, GENTRIFICATION OF THE CITY (1986).

230. *See* McUsic, *supra* note 2, at 1835; *see also* Bruce Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 YALE L.J. 1093 (1971); John H. Gilderbloom, *Rent Controls: Impact on Quality and Quantity of the Housing Stock, in* RENT CONTROL: A SOURCE BOOK 137 (John H. Gilderbloom ed., 1981); Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350 (1986). *But see* Bruce Ackerman, *More on Slum Housing and Redistribution Policy: A Reply to Professor Komesar*, 82 YALE L.J. 1194 (1973); Richard Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741

tion taxes.[231] These tools have the potential to halt abandonment of older units in the available housing stock by slowing premature building deterioration. The obvious aesthetic and spatial benefits of preventing areas of the city from being gutted and eventually demolished redound to residents not only of the potentially affected areas, but of the city as a whole. Similarly, the reduction of economic polarization and segregation works to improve the quality of life for all urban residents.[232]

B.   Urban Renewal

The effects of zoning were pervasive but subtle, discernible primarily in the layouts of streets and the distribution of homes and businesses. By contrast, the effects of urban renewal were immediate and dramatic as entire areas were razed and rebuilt.

Urban renewal gained its impetus from a chain of events beginning in the middle of the nineteenth century. Since before the Civil War, the urban slum had plagued American cities, and until World War I, it was considered a quandary for the private sector to manage. As discussed earlier, during the World War I, housing shortages faced by defense workers brought federal government intervention in the housing markets. While its wartime housing efforts were not directed at the slum problem, the notion of government intervention in distressed housing markets gained adherents. In particular, a generation of architects and planners who came of age during the World War I housing effort saw the virtue of government involvement in urban planning.

The Great Depression was akin to wartime on many levels. An abrupt cessation of building created acute housing shortages, particularly in urban areas. In addition, much of the available urban housing stock had been built in the late nineteenth century and tended to be filthy and dangerous. When federal monies finally became available from the New Deal, some urban planners suggested that they be used in cities like Brooklyn, Cleveland, and Atlanta, to clear out the worst of the tenements and relocate the former residents to federally funded housing projects built on the same sites. The simple economy of slab block construction as introduced by Phillp Johnson and others proved attractive in implementing such plans. A housing project constructed

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(1988); Neil K. Komesar, *Return to Slumsville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175 (1973).

231. *See* Marcuse, *supra* note 2, at 931; *see also* Marcuse, *supra* note 1, at 195.

232. *See* Southern Burlington County NAACP v. Township of Mount Laurel (Mt. Laurel II), 456 A.2d 390, 415 n.5 (N.J. 1983).

using the slab block method could be built quickly from fairly inexpensive materials, and all of the project's residents would have access to sunlight and ventilation. In the crisis mentality of the Depression these features were key bureaucratic selling points. The New Deal's Wagner-Steagall Housing Act,[233] enacted in 1937, authorized what had come to be called "Slum Clearance" and the construction of over 160,000 new housing units based on the slab model.

Initially, public housing of the 1930s was meant to be for a mixture of economic classes that had been displaced by the Depression. However, by the end of World War II, most such projects fell into the disreputable domain of housing solely for the poor, sited in distressed urban areas where the majority of the inhabitants were black. To much of the middle and working class, the single-family home remained the goal for which they strove.

During the 1950s, the real or imaginary horrors of urban existence once again captured the attention of the public. Medical analogies proliferated, lingering as a vestige of an earlier generation's dread of urban disease and crime. Slums were seen as pathological malignancies that had to be removed by the scalpel of urban planning. Eventually, a relatively unified response to urban problems arose out of several factors: concerns about poor housing in the inner cities; fears about the economic costs of urban blight, such as loss of rich residents to the suburbs, loss of businesses and industries, and increasing social costs; pressures for office expansion; and major financial incentives from the federal government. The interaction of these factors were responsible for the genesis of the movement toward large-scale urban renewal projects. Coined in the late 1940s to replace the more accurate expression Slum Clearance,[234] urban renewal was considered by its advocates as describing a type of radical surgery that would purge the city of unsafe, unsanitary, overcrowded buildings and replace them with a mixture of high-rise and walk-up apartments arranged geometrically in open blocks. Such projects would then generally operate under the administration of a municipal housing authority.

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233. 50 Stat. 888 (codified as 42 U.S.C. §§ 1401-1404 (1937)).

234. *See* Hirsch, *supra* note 190, at 72-73; *see also Study and Investigation of Housing, Hearings Before Joint Committee on Housing*, 80th Cong., 1st Sess. (1948); U.S. CONGRESS JOINT COMMITTEE ON HOUSING, HOUSING IN AMERICA, H.R. Con. Res. 104, 80th Cong. (1948); *General Housing Legislation, Hearings Before Subcom.of Comm. on Banking and Currency*, 81st Cong. (1950); Sam B. Warner, Jr., *Federal Programs, in* HOUSING: SYMBOL, STRUCTURE, SITE 35 (Lisa Taylor ed., 1990). *See generally* Federal Housing Act of 1949, 42 U.S.C. §§ 1441-1490h, *amended by* Housing Act of 1954, 42 U.S.C. § 1451 (promising "a decent home and a suitable living environment for every American family in a well-planned, integrated, residential neighborhood.").

Urban renewal was widely supported in the nominally optimistic postwar era. Planners were considered to be working in the name of social and scientific progress, and even entrenched social problems might be solved through the intervention of enlightened modern design. In 1954, Justice Douglas deferred to the expertise of urban planners in a case involving the condemnation of a store in Washington, D.C.:

> [E]xperts concluded that if the community were to be healthy, if it were not to revert again to a blighted or slum area, as though possessed of a congenital disease, the area must be planned as a whole. It was not enough, they believed, to remove existing buildings that were unsanitary or unsightly. It was important to redesign the whole area so as to eliminate the conditions that cause slums—the overcrowding of dwellings, the lack of parks, the lack of adequate streets and alleys, the absence of recreational areas, the lack of light and air, the presence of outmoded street patterns. It was believed that the piecemeal approach, the removal of individual structures that were offensive, would only be a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes but also new schools, churches, parks, streets, and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented.[235]

Given the Supreme Court's blessing, urban renewal razed entire neighborhoods of nineteenth century tenements and row houses, which had been occupied by poor ethnic and minority communities. These structures were deemed unfit for habitation and were eliminated in the name of promoting public health, safety, and convenience. They were replaced by large geometric apartment blocks surrounded by asphalt and concrete—bleak embodiments of Le Corbusier's "tower in the park." These blocks were often bordered by major expressways that physically barred the new residents from entering the areas adjoining their new neighborhoods.

This inner city refurbishment was a manifestation of the planners' objective to once again make the central city attractive to those who could reconstruct its eroded tax base and infrastructure. The rapidly developing highway network, the expanding ring of suburban bedroom communities, and the flight of industry to the suburbs and other regions had brought about a decentralization of the metropolis and an

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235. *See* Berman v. Parker, 348 U.S. 26, 34 (1954).

erosion of its tax base.[236] Revenue was needed to pay for expensive city services as well as to halt the city's imminent decline.

Accordingly, while officials and planners may have had certain altruistic motives in advancing urban renewal schemes, economic considerations were foremost in their minds. In their efforts to placate powerful interest groups, redevelopment planners allowed the predatory motives of developers and contractors to manipulate urban renewal plans to serve their own ends.[237]

Sometimes, for example, powerful developers would persuade the government to demolish an area of the city and would then buy the land from the government at a low price. Another common strategy was for a developer to influence a municipality to preserve as "historic" the city land adjoining the developer's properties, greatly increasing the value of the developer's properties. Any low- or moderate-income housing located thereon would be promptly converted to luxury housing and expensive commercial leases. All such schemes resulted in both the displacement of poorer residents and a further decline in the city's affordable housing stock, all in the name of urban renewal.

Accordingly, the poor, who tended to be disproportionately racial and ethnic minorities, suffered in the brave new urban world built over their former homes.[238] From 1949 to 1961, urban renewal displaced 85,000 families in 200 American cities, while federally funded renewal and highway programs displaced about 100,000 families and 15,000 businesses per year.[239]

People who were displaced in this way quickly lost their ability to secure satisfactory replacement housing. Despite developers' promises to relocate them, many did not receive relocation services and were forced to bear the substantial costs of moving and living in more expensive apartment units. Such expenses could exhaust the savings of older residents. Resident purchasing power was also harmed by their forced withdrawal from neighborhood credit networks and business arrangements that had evolved over the years and

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236. *See* JOHN MOLLENKOPF, THE CONTESTED CITY 22-28 (1983); *see also* Hirsch, *supra* note 190, at 72; PLUNZ, *supra* note 12, at 260.

237. *See generally* SCOTT A. GREER, URBAN RENEWAL AND AMERICAN CITIES: THE DILEMMA OF DEMOCRATIC INTERVENTION (1968).

238. *See* HERBERT GANS, THE URBAN VILLAGERS (1962); U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, LOOKING BEYOND THE WALLS: A GUIDE TO RELOCATION 4 (1982); *see also* Uniform Relocation Assistance And Real Property Acquisition Policies For State and Federally Assisted Programs Act, 42 U.S.C. §§ 4601-4655 (1971); CARO, *supra* note 40.

239. *See* PORTEOUS, *supra* note 101, at 287.

which were often related to practices in the resident's country of origin. Such arrangements were often informal and thus not easily transferrable to new locations. In addition, re-establishing credit and a course of dealing in new surroundings could be an expensive hardship.[240]

In disregard of such potential consequences, urban planners of this period placed much of their faith in the supposed deterministic power of the geometric modern environment. They appeared to assume, as had Le Corbusier in the 1920s, that the numerous problems of the slums stemmed from poor design and that a clean, new, modern environment would inevitably lead to a healthy new social order. Reminiscent of William Morris and other nineteenth century reformers who equated good morals with good design, the urban planners adopted the pleasing syllogism that poor housing quality demoralized its inhabitants and, therefore, better structures would introduce former slum dwellers to a better moral quality of life. Threaded through these rationales was a paternalistic hubris and confidence in the planners' own abilities to assist slum dwellers up from their dark, squalid nineteenth century life-styles into the bright, modern planned world of the mid-twentieth century.

Criticism of urban renewal projects escalated in the 1960s,[241] when urban historian Jane Jacobs accused these schemes of destroying virtually all that was vital in urban life.[242] Jacobs articulated an alternate vision of slum life in which the old neighborhoods supported a spontaneous, interactive, street-oriented communal lifestyle among the residents of these areas. Jacobs described how doors of row houses and brownstones opened directly onto the street, allowing interactions with passers-by and with the mixed use street and its stores and businesses. In this way, social relations developed in semipublic open spaces, and the entry of strangers was readily noticed. Jacobs claimed urban renewal uprooted and shattered such organic communities, scattering former neighbors into whatever substandard housing was available elsewhere, and helping to create a culture of disaffection and an environment of violence and vandalism.

The catastrophic failure of several large scale public housing

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240. *See* Marcuse, *supra* note 1, at 195, 204-08.

241. *See generally* MARTIN ANDERSON, THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962 (1964); J. CLARENCE DAVIS, NEIGHBORHOOD GROUP AND URBAN RENEWAL (1966); LANGLEY C. KEYES, THE REHABILITATION PLANNING GAME: A STUDY IN THE DIVERSITY OF THE NEIGHBORHOOD (1969); PETER ROSSI & ROBERT DENTLER, THE POLITICS OF URBAN RENEWAL: THE CHICAGO FINDINGS (1961).

242. *See* JACOBS, *supra* note 72, at 4.

projects gave critics such as Jacobs credibility and caused many observers to begin developing dim views of the validity of government intervention in housing markets. The Pruitt-Igoe housing project in St. Louis was one such failure, and it became a lightning rod for commentary on the fate of modern architecture and urban planning.

In the early 1950s, the inner city of St. Louis had contained extremely dilapidated slum housing, which in 1954, was demolished and replaced by the Pruitt-Igoe projects.[243] Twelve thousand people were relocated into forty-three eleven-story high-rise structures covering fifty-seven acres. Initially racially integrated, the project's inhabitants rapidly became exclusively black. Eventually, the residents' fear of crime and the rapid deterioration of the physical plant brought about by poor maintenance resulted in almost complete resident abandonment of large areas of the Pruitt-Igoe projects, despite the availability of subsidized low rents. President Nixon's HUD Secretary, George Romney, presided at the project's demolition in 1972.

Pruitt-Igoe's failure was perhaps not so much a failure of the modernist architectural paradigm, but rather a situation of unstable equilibrium in which project managers virtually ignored early warning signs of problems.[244] The misery of massive forced relocation combined with poor design and inadequate maintenance[245] set off a downward vicious circle. Cheap materials, inadequate maintenance, and poor design contributed to building deterioration, provoking resident dissatisfaction. Elevators, for example, were frequently out of service and became easy targets for vandalism. Residents of upper floors, who had to use the elevators to reach their apartments, quickly abandoned them. When units became deserted, remaining residents scavenged them for working fixtures to replace those that had broken in their own apartments.

The project administrators, who were perhaps feeling overconfident about their new "machine for living," had not addressed such problems early enough. By the time they noticed that something was wrong, it was too late in the downward vicious circle to correct the damage.

Such disasters were products of a combination of hubris and inadvertance. The planners of projects like Pruitt-Igoe failed to under-

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243. *See generally* LEE RAINWATER, BEHIND GHETTO WALLS: BLACK FAMILIES IN A FEDERAL SLUM (1970).

244. *See infra* part V.A.

245. *See* OSCAR NEWMAN, DEFENSIBLE SPACE: CRIME PREVENTION THROUGH URBAN DESIGN (1972). *But see* Peter Marcuse, *The Contradictions of Housing, in* HOUSING: SYMBOL, STRUCTURE, SITE 22, 23 (Lisa Taylor ed., 1990).

stand and accommodate the drastically different culture and context of the 1950s slum neighborhood and its residents. An apartment super-block that minimized the amount of semi-private interior spaces in which social interactions between residents could occur, may have worked for white middle-class individuals without children, but was inadequate for extended families of relocatees from the slums. Slum dwellers, many of whom were connected with large families, were accustomed to a social and spatial environment that encouraged constant use of the streets, sidewalks, and corners as semiprivate meeting grounds or territories for interacting with one another. While architects initially praised Pruitt-Igoe for its absence of wasted space between dwelling units, it was precisely in such spaces that neighboring relations had developed in "normal" slums. This aspect of the culture of the development's inhabitants had been invisible to and went completely unaddressed by the planners.[246]

The sudden loss of the community to which they were accustomed posed other problems for Pruitt-Igoe's residents. While parents liked the in-home conveniences, the inability to watch their children when the latter were outside the apartment was unsettling. Furthermore, the new setting lacked what Oscar Newman has called "defensible spaces": stairwells, elevators, and corridors that could be controlled or informally surveyed from within private spaces.[247] Overall, the rapid transition from the strong, informal neighboring system of the slum to a quasi-institutional setting that spatially discouraged informal interactions between neighbors was traumatic. While dissatisfied with the slum's overcrowded conditions, physical danger from cold weather, poor wiring, bad plumbing, and fire, residents had become accustomed to and depended on its dense network of social relations.[248]

In sum, the residents of Pruitt-Igoe felt justifiably alienated and dislocated by the poorly considered design decisions that had been imposed on them. Indeed, the planners had built structures that had nothing to do with the actual social context of the people who lived within them. Instead of allowing functions that occurred within the building to determine the nature of its structure, as prescribed by early modernist architectural theory, they simply crammed a predetermined geometric package full of fungible apartment units, pouring the largely involuntary residents in to complete the mix.

Somewhere in translation from early twentieth century Europe to

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246. See PORTEOUS, supra note 101, at 297.
247. See NEWMAN, supra note 245, at 167.
248. See RAINWATER, supra note 243, at 68-73.

mid-twentieth century United States, geometric form had been reified into a stock building prototype, which looked the same regardless of whether it housed a prison, hospital, apartments, corporate offices, or a school.[249] To the growing number of critics of the modernist style its geometric forms and reductionist approach were see as villains, responsible for dehumanizing and abstracting away human problems. However, it was the deviation from modernist functionalism, not modernist functionalism itself, that resulted in some of the worst embarrassments for which modern architecture has been held responsible. Housing projects built during the 1950s were riddled with problems: they were often energy gluttons, their flat roofs leaked, elevators broke down frequently, and interior isolated spaces were open invitations to muggings and violence. However, these horrors were due more to hack misapplications and distortions of the tenents of modernist architecture than to any *a priori* flaw at its theoretical core. After embarrasments like Pruitt-Igoe, the term urban renewal gradually slipped from the urban planner's vocabulary to be replaced by phrases like "urban revitalization" and "urban design."

In the rush to disclaim responsibility for widely-publicized fiascoes like Pruitt-Igoe as well as the growing tendency to villify modern architecture in general, many important social issues raised by the critics of urban renewal were left unaddressed. Given the relative powerlessness of inner city populations and their lack of a meaningful political input in urban planning decisions, the cultural and psychological problems of forced relocation were largely ignored and sidestepped by planners and other public officials. The public soon lost faith in the ability of urban planners to control the social consequences of publically funded housing projects. Unfortunately, many valid insights about the important and vital interaction between structures and inhabitants that lie at the core of the modernist architectual paradigm disappeared as well.

C. Conclusion

The northward migration of black agricultural workers throughout much of the twentieth century radically impacted urban and suburban spatial distribution. Racial discrimination in housing markets has been endemic in twentieth century America, and, when combined with the exodus of middle-class blacks from the ghetto, has produced a spatial and economic concentration of poor minorities in the core city mired in an entrenched vicious circle with dire social and eco-

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249. *See* Warner, *supra* note 234, at 34.

nomic consequences for the society as a whole. During the 1940's and 1950's, in major American cities, urban renewal disadvantageously displaced hundreds of thousands of poor residents. The contemporaneous rise of zoning and other land use controls worked to keep such displaced minorities from entering suburban housing markets, to the further detriment of distressed urban cities. These zoning and land use controls have generated spatial, economic, legal, and political barriers insulating the Arcadian, generally white, suburbs and the perceived pathological central city.

IV. The Segregated City (1945-75)

The thoroughness with which urban and suburban life has been segregated along economic, social, functional, geographic, cultural, and racial lines has been partly a result of pervasive urban planning. The trend toward segregation in postwar American life took many forms: the decline of the extended family created age segregations as the nuclear family rose to prominence; highways and the relative ease of automobile transportation widened the gap between workplace and home; this same workplace/home split facilitated gender segregation between men and women; income levels segregated themselves through development of suburbs, which were geographically set off from poorer urban areas. During this period, income and geography became rough proxies for race. Urban planners grappled with, but generally suppressed this uneasy relationship between race and income as they redrew boundaries of cities and towns, planning for expected demographic growth along lines that repeatedly reflected widening gaps in income and expectation.

The spread of "bedroom" suburbs following World War II encouraged rigid segregation of uses. Extensive utilitarian considerations went into constructing these postwar suburban communities so that they functioned relatively smoothly in terms of delivery of services. Simultaneously, developers aggressively invoked deep-seated pastoral yearnings in potential buyers by emphasizing the beauty of the single-family suburban home, and successfully marketed the suburbs to the expanding white middle-class. During this period, homebuyers fled the central cities in droves with disastrous consequences for remaining urban residents.

Widespread suburbanization was closely related to fundamental changes occurring in the U.S. economy. During the mid-twentieth century, two trends worked simultaneously to segregate and decentralize both population and employment from the core city out to the

suburbs and beyond.[250] The first trend was the deindustrialization of the American economy and the second was the increasing internationalization of the newly emerging postindustrial economy.

By the middle-twentieth century, smokestack industries of the U.S. rust belt, which had provided steady employment to many unskilled and semi-skilled workers, began being overtaken by rising foreign competition, such as automobiles from Japan or steel from Korea—economies that had the opportunity to rebuild almost completely following World War II and that had lower labor costs. Deindustrialization tended to refocus U.S. business on creating more technically sophisticated products and services in areas such as electronics and communications. These areas required a more highly educated and skilled workforce than had the older smokestack industries. During the postwar era the paradigmatic American workplace also shifted from the assembly-line shop floor to the office. Additionally, these newer high-tech businesses seldom required the same infrastructure or physical plant as had smokestack industries, and they were able to relocate away from older manufacturing areas, which had been largely determined by ease of access to raw materials and shipping channels such as rivers or railroads. Many of these companies gravitated to office parks and new facilities in suburban areas, where the skilled workforce they required had been steadily moving to. Growth in these new high-tech areas away from the cities reinforced patterns of suburban housing development.

The second trend involved the growing scale of these new midcentury enterprises. Because of the gigantic outlays that these new ventures made in research and development, there was also a concomitant increase in expenditures to both create and expand markets for these high-tech products. Markets for these new products and services became international. Regional, or even national marketing strategies became only a component of global investment schemes.[251] Moreover, these global strategies tended to reinforce and accelerate the trend toward American deindustrialization, as more unskilled/semi-skilled jobs were shipped overseas where labor and overhead was cheaper to facilitate a multinational bottom-line. America's cities lost core manufacturing jobs, even as its largest corporations prospered and grew.

As the national economy underwent deindustrialization, leaders of

250. *See* MONTGOMERY & MANDELKER, *supra* note 2, at 161-62; *see also* Marcuse, *supra* note 1, at 22.

251. *See generally* MOLLENKOPF, *supra* note 235; MAURICE YEATES & BARRY GARDNER, THE NORTH AMERICAN CITY (1980).

these new techno-bureaucracies searched for appropriate architectural forms to embody their values and serve as corporate headquarters and workplaces. Buildings of the Gilded Age of the 1890s, which mirrored the imperial aspirations of a Morgan, Getty, or Rockefeller were not in keeping with the techno-bureaucratic ideology of efficiency. While gigantism seemed appropriately reflective of a midcentury multinational corporation, the question remained: what "style" of gigantism would project the image of unassailable, forward-looking efficiency?[252] The question was answered by the adoption of a geometric "modernism" that emerged in the postwar era from a combination of diverse European sources, many of which had been strongly influenced by the work of nineteenth century U.S. architect, Louis Sullivan.

A. Modernist Monoliths

In the late nineteenth century Louis Sullivan suggested that architects should be sensitive to the organic and humane relationship between a building's structure, inhabitants, and surrounding area. This suggestion, however, became inverted and turned into a style that, by the mid-twentieth century, was a paradigmatic emblem of techno-bureaucratic corporate authority and efficiency. This inversion of meaning was not without ironies: (1) despite architectural modernism's strong socialist utopian roots, it became the orthodox style of corporate capitalism; and (2) this style paradoxically ended up being equally applicable to the design of the headquarters of multinational corporations at the high end and of public housing projects at the low end.

Sullivan's proclamation in the 1880s that "form follows function" served initially to mediate conflicting tensions in architectural consciousness.[253] If form became function, then the tension between instrumental utility and autonomous aesthetic form was apparently resolved because aesthetic decisions were not being made by the capricious and subjective whims of a designer, but were dictated objectively by function. In the nineteenth century, the newly professionalized field of architecture was particularly in need of such a mediator. Because architecture was involved in producing both the useful and the aesthetic—a concept that privileged architecture's use-

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252. *See* MOLLENKOPF, *supra* note 236, at 20; *see also* RICHARD EDWARDS, CONTESTED TERRAIN: THE TRANSFORMATION OF THE WORKPLACE IN THE TWENTIETH CENTURY 200-216 (1979); ALLEN TRACHTENBERG, THE INCORPORATION OF AMERICA 38-69 (1982); WILLIAM H. WHYTE, THE ORGANIZATION MAN (1956).

253. *See supra* part I.C.

ful aspect apparently solved the problem of determining how a building should look—function would dictate its appearance.[254] Sullivan's maxim was not without ambiguity. For example, if form followed function, then any given set of architectural forms could be defended on the ground that it embodied function. How was one to know what the "right" functions or the "right" forms adduced from those functions were to be?

This apparent reconciliation between art and utility granted immense deterministic power to visionary architects and master planners wielding design as the sword of social change.[255] Before form and function were seen as apparently reconciled, architects saw themselves as applying a style to decorate a building. This ornamental process involved a strong subjective and arbitrary element that ran against the objectivist and rationalist cast of much nineteenth century thought, which had looked for solace in scientistic measures of the physical world. The introduction of the cluster of ideas contained in Sullivan's maxim, "form follows function," suppressed the subjectivity of architectural decisionmaking from such decisionmakers themselves. Architects were then able to cloak themselves and their profession in the authoritative discourse of functionalism.

Sullivan's late nineteenth century work influenced the generation of modernist European architects that arose before and during World War I. Optimistic socialist ideology underlay much of the work of these Europeans, as they confronted the war's devastation and sought to use architecture as a positive force to rebuild Europe in the image of the modern age. One such early modern movement blending art and visionary politics was Russian Constructivism—exemplified by the work of Vladimir Tatlin, Alexander Rodochenko, or Kasmir Malevich. Initially, Constructivism flourished in early post-revolutionary Russia, only to be suppressed with the rise of Stalin.[256] Other modernist movements proliferated across Europe, publishing manifestos proclaiming visions of an imminent new social order. Many of these movements considered design to be paramount in the creation of these new orders, and many artists/architects/theorists were active in organizing "schools" to promote their ideas. The Bauhaus, founded in 1919 Weimar, Germany under Gropius's direction, was such a modernist school. The Bauhaus blended Sullivan's organicism with William Morris's idea that art and craft were unitary. To these ideas, Gropius added a strong geometric fixation. This fixation was linked

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254. *See* VENTURI, *supra* note 126, at 101-03.

255. *See supra* part I.D.

256. *See* GARDNER, *supra* note 5, at 735-36, 752.

to Gropius's belief that there existed underlying natural design laws that geometric form embodied and toward which architecture should evolve.

Among the many early twentieth century European modernist approaches, there was considerable communication and cross-fertilization of ideas. For instance, Le Corbusier and Gropius had both worked in their early years under the Dutch architect Peter Behrens and were aware of each other's developing ideas. Le Corbusier and Gropius both thought that the major project of modernist architecture was to discover and articulate an objective hierarchy of geometric forms and colors, representing a transcendent reality beyond the physical world.

Both men also tended to equate these "pure" geometric forms with the aesthetic of the machine. Humans were seen as organic mechanisms that had evolved through the process of natural selection and who functioned according to natural, objective, and scientific laws of "economy." Functionally pure geometric forms of dwellings were to be developed through discovery and articulation of those same essential laws of nature through which humans had evolved. A house was to be an efficiently functioning mechanism that provided for its inhabitant's utilitarian needs—an efficient machine for living.

In certain less metaphysical ways, however, the social consciousness of the early Bauhaus designers mirrored the concerns of U.S. social functionalists like Clarence Stein and Henry Wright, who were also considering the complex social problems of designing appropriate housing for workers in the new industrial age. Both the Bauhaus and the U.S. social functionalists were dissatisfied with the general disdain that traditional academic architecture of the nineteenth century had for viewing the relationship between social welfare and housing for the middle- and lower-classes as a problem for architects. The early Bauhaus and the social functionalists were both eager to try new approaches.

The destruction of many European urban areas during World War I provided Gropius and other visionaries, such as Le Corbusier, a blank slate on which they attempted to project their images of a brighter future. Gropius envisioned worker housing in superblocks, which maximized worker convenience, comfort and health as well as economizing on scarce materials and resources. In the 1920s, however, many of Gropius's ideas for monumental social transformation were simply not realizable, due to severe economic constraints in post-World War I Europe. By the time Gropius and the Bauhaus had emigrated to the U.S. in the late 1930s, those very same economic

constraints that had created the Great Depression, and which had, ironically, been used as cost and feasibility arguments *against* European implementation of Bauhaus schemes, became potent arguments *for* using Bauhaus-influenced approaches to build public housing projects because of the economies of scale that could be generated.

The Bauhaus's emphasis on monumentality encouraged the wholesale razing of older and poorer urban areas and implementation of large urban renewal projects. Private developers embraced urban renewal because the demolition of older city neighborhoods was done at government expense, and the bulldozed areas could subsequently be bought from authorities at far below what such properties would have cost had they still been occupied. Where urban renewal led to the building of public housing projects, private contractors could generate further profits through economies of scale allowed by slab-block construction. Through this lucrative combination of economics, ideology, and aesthetics, the fabric of urban America was rapidly transformed.

By the late 1930s, when Gropius was imported to the Harvard Design School, he brought most of the weaknesses and few of the strengths of the European Bauhaus to the United States, among which was a strong antihistorical bias.[257] For the Bauhaus, its antihistorical bias was a plus, in that the Bauhaus agenda called for abandoning the obsolete baggage of the past and ahistoricism aided this project. However, this antihistorical bias was also a minus for the Bauhaus because it allowed Bauhaus-inspired design approaches to be used as departure points for any variety of political agenda from communist collectivism to corporate capitalism.

Bauhaus ahistoricism also made it easier for Bauhaus emigres in America to selectively rewrite architectural history to serve their own ends. In post-World War II Bauhaus revisionism, the International Style, which was the name Henry Hitchcock and Phillip Johnson gave to the group of early twentieth century European architects that included Gropius, Adolph Loos, and Le Corbusier, was the only architectural movement accorded a claim to a respectable history. In these histories, any architectural trends lacking the Bauhaus geometric fixation, i.e., Art Deco, 1920s social functionalist housing, and the Beaux-Arts, were ignored.[258] Most mainstream nineteenth century architecture was ridiculed, the Beaux-Arts condemned, and the traditional

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257. *See* WOLFE, *supra* note 109, at 13-14, 42.

258. *See* SIEGFRIED GIEDION, SPACE, TIME AND ARCHITECTURE (1941); NIKOLAUS PEVSNER, THE MODERN MOVEMENT IN DESIGN: FROM WILLIAM MORRIS TO WALTER GROPIUS (1937).

walking city scorned. Because of the effusive contempt the new emigres piled on other styles, the Bauhaus's arrival in America sounded the death knell for many older building types and architectural styles.[259] Le Corbusier's model for the Radiant City, which articulated the International Style's aesthetics on a massive scale, was valorized by the Bauhaus—its vast, clean thruways running uninterruptedly past sparkling antiseptic glass towers were viewed as paradigms of modernity, progress, and functionality.

How did the Bauhaus emigres benefit from this flurry of historical revisionism? In the most obvious way, by advancing arguments for the inevitability of their own approach and style, they insured for themselves and their students plenty of work, commissions, teaching positions, and prestige. Secondly, the interests affiliated with the field of architecture—government planners and bureaucrats, realtors, developers, speculators, and landowners—each in their own way, came to see the possibilities for profits arising from the International Style's agenda of demolition and reconstruction.

However, despite the economic advantages to many interests arising from widespread adoption of the International Style, many Bauhaus-inspired ideas, such as the superblock and high-rise, were in tension with deeply-held and pervasive American preferences for the single-family. The image of the single-family home had roots extending back into American history from the colonial period. Related to this preference was an aversion to urban densities and multi-family dwellings. From the mid-nineteenth century on, a single-family cottage located on a parcel of land represented a distinct move up the social and economic ladder. It also represented a linkage to a vision of nature, the Arcadian, which, while eclipsed by urbanization, never ceased influencing American thinking about housing.

After World War II, when Bauhaus-influenced architects working

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259. The original Pennslyvania Station ("Penn Station") was built in the 1890s in the Beaux-Arts style. It was demolished (along with the original Madison Square Garden) in the 1950s to make way for a more modern look. The style of the original Penn Station was similar to the midtown Madison Square Garden Post Office.

While Grand Central Station ("Grand Central"), another Beaux-Arts building from the same era, escaped physical destruction, Grand Central was visually transformed by the construction of the Pan American ("Pan Am") Building right behind it in the late 1950s. The glass monolith of the Pan Am Building diminished the visual impact of Grand Central by sheer scale, transforming Grand Central into a visual anachronism, deprived of original context.

In large part, the scorn heaped on the architects and buildings of the Beaux-Arts style by International Style architects enabled their work to be destroyed or seriously diminished. This process of successive architectural styles that attacked their preceding style also laid the foundation for the historical preservation movement, which in turn was related to the development of architectural postmodernism.

in the International Style began receiving major commissions, they sought the monumentality denied them in the 1930s and 1940s, and embraced the "tower in the park" approach.[260] The Bauhaus's emphasis on monumentality was also connected with their earlier mentioned disdain for historicity in architecture. The slate of the past needed to be wiped clean before the urban landscape could be remolded in the geometric monumental mode.

Ironically, the International Style was equally adaptable to both corporate headquarters and public housing projects. While public housing projects may have been clad in cheaper block concrete and corporate headquarters sheathed in expensive glass, the basic monolithic form was the same. Corporate America embraced the International Style after World War II and the American urban landscape began filling with Bauhaus objects: free-standing, shiny, weightless, symmetrical glass slabs that dominated and visually subjugated surrounding areas.[261] These monoliths embodied the idea of the building as a package in a number of ways.[262] First, the use of slab block construction reduced the need for external structural support. Thus, the "skin" of the building could be made of glass, or some other nonstructural material, becoming a type of wrapper. Second, because of the increasing complexity of building infrastructure, such as heating and air-conditioning, electricity, phone, plumbing, water, and elevators, the completed building was also an elaborate package of interrelated dynamic systems. Third, a monolith could be seen as a company's symbol, a sort of gigantic package emblazoned with the corporate logo.

By making a building's pictorial "wrapping" into a paramount design principle, these midcentury monoliths contradicted earlier Bauhaus rhetoric from Europe about the necessity of form following function, turning the entire building into an monumental ornament. The package consisted of a predetermined shell, and the functions of the building's dwellers were subordinated to the architect's formal aesthetic imperative. The buildings consequently reversed the original Louis Sullivan "form follows function" maxim, to "function follows form."

In part, Bauhaus architects were victims of their own success: they sought to radically reshape the world, and indeed did reshape the world. However, in order to accomplish this, they sacrificed many of

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260. *See* HINE, *supra* note 126, at 140-41; *see also* REICH, *supra* note 9, at 47.

261. *See* HINE, *supra* note 126, at 141; FRAMPTON, *supra* note 10, at 124. *See generally* WALTER GROPIUS, THE NEW ARCHITECTURE AND THE BAUHAUS (1965).

262. *See* FRAMPTON, *supra* note 10, at 129; HINE, *supra* note 126, at 141.

their initial utopian-socialist aspirations that were crucial to making their design approach coherent. As discussed earlier, the socialist ideology and programmatic perceptions that had been an integral part of the Bauhaus's European impetus were drained or discarded in America.[263]

This backing away from leftist positions may have been related to the way in which Gropius and the Bauhaus had been unceremoniously ejected from Germany by Hitler for advocating "decadent" socialist architecture. Against the 1950s backdrop of American anticommunist witchhunts, Gropius and the American Bauhaus did not want a repeat experience of ideological persecution. Whatever socialist ideology underlay the International Style was quickly elided and thoroughly effaced from the Bauhaus party line.[264]

B. Levittown and the Corporate Suburb

The Bauhaus changed urban America's face by introducing monumental geometric forms for both corporate headquarters and housing projects. However, the deep-seated American preference for the single-family home[265] was never really altered by the Bauhaus's vision of collective vertical living in densely packed superblocks, and thus, suburbs sprawled outward from cities in the postwar era. Developers of these postwar suburban tracts exploited the persistent American preference for single-family living, but the scale on which these new suburbs were built was unprecedented.[266] Approximately 75 percent of North American housing stock has been built since World War II. A considerable portion of this construction occurred in "privately" built suburban tracts.[267] However, the relationship between public and private entities is particularly tangled in the housing area. Public action,

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263. *See* FRAMPTON, *supra* note 10, at 124. *See generally* WALTER GROPIUS, THE NEW ARCHITECTURE AND THE BAUHAUS (1965).

264. *See* FRAMPTON, *supra* note 10, at 129.

265. Evoked by Justice Douglas in Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) ("A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs . . . . It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."). *But see* Berman v. Parker, 348 U.S. 26 (1954).

266. *See* Kenneth T. Jackson, *The Suburb and House in* HOUSING: SYMBOL, STRUCTURE, SITE 73 (Lisa Taylor ed., 1990); *see also* Hirsch, *supra* note 190, at 31. *See generally* Fox, *Selling Out Mount Laurel*, *supra* note 224, at 538 n.21 (1988); Kenneth T. Jackson, *Race, Ethnicity and Real Estate Appraisal: The Home Owners Loan Corporation and the Federal Housing Administration*, 6 J. URB. HIST. 41-52 (Aug. 1980); McDOUGALL, *supra* note 212, at 625.

267. *See* Hirsch, *supra* note 190, at 64; ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940-1960, at 31-35 (1983).

such as, provision of tax incentives, zoning changes, government loans, highway construction, water, sewer, and electric lines interact with and affect the decisions of private developers. In the postwar era, the Levittowns of Long Island, Pennsylvania, and New Jersey were both a paradigm and prototype for the corporate suburb brought about by the complex relationships between private action and public policy.

William Levitt, who owned a small contracting firm that built expensive pre-war suburban housing, took advantage of the explosive demand for inexpensive homes precipitated by returning servicemen. In 1947, utilizing assembly-line construction, poured concrete foundations, prefabricated sections, and a single Cape Cod style, Levitt built 2,000 units for his Long Island Levittown.

By late 1948, Levitt had bought more land and built 6,000 more units. There was no formal "master plan." Rather, units were grouped in ad hoc fashion around village greens containing shops, schools, and playgrounds. This configuration was based very loosely on Clarence Stein's prewar neighborhood unit concept. In the Pennsylvania Levittown, 17,000 homes housed almost 70,000 people. Most local shops were replaced by a single large plaza at the development's edge. In the original Long Island Levittown, residents shopped at the stores in a Levitt-owned plaza, and did not frequent independently owned establishments. The Pennsylvania Levittown expanded its stylistic menu to offer three types of prefabricated houses: the Cape Cod, the Rancher, and the Colonial.

Levittown was built according to FHA guidelines advocating use of curvilinear streets, neighborhood units, and a variety of home facades.[268] Compliance with these guidelines was an important marketing decision on Levitt's part, because compliance allowed returning servicemen to take out low-cost federally guaranteed home mortgages, thereby ensuring more sales and illustrating how government policies were pivotal in stimulating private development.

Proceeding on variations of the Levittown model, U.S. homeownership doubled in the postwar period, going from 40 percent to over 60 percent of the U.S. population. Government-guaranteed low-interest mortgages, government highway construction, acres of cheap agricultural land for sale and numerous tax incentives for homebuyers and developers were some of the public/private interactions that helped bring about this increase. Other internal changes in the housing construction industry brought about a radical decrease in the construc-

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268. *See* Stone, *supra* note 2, at 123-24; *see also* Marcuse, *supra* note 1, at 22-23.

tion time necessary to build a single family suburban home from twelve to six weeks. Sheetrock, which is a thin sandwich of gypsum pressed between sheets of paper, helped to modularize and make interior finishing of new houses cheaper and quicker, as did the advent of aluminum studs, which could be cut quickly by hand and that were lighter and easier to use than wooden joists. Taking advantage of new materials and building techniques, by the early 1950s, large-scale tract developments were underway across the country, seeking to meet the seemingly inexhaustible demand for new single-family suburban housing.

However, to attain these new levels of production at a low cost, homes had to be repetitively designed and built on cheap, outlying land. This need was easily met, however, because as automation and centralization made farming more efficient, farmers at the urban periphery were usually eager to sell to suburban developers. In fact, farmers often sought out developers to buy their land finding that farm income was not keeping up with their tax assessments.[269]

The presence of municipal, state, and federal subsidies supporting new suburban development were significant because they freed developers from responsibility for numerous problems. For example, the massive federal interstate highway program freed developers from the expense of planning and designing viable transportation links between urban workplaces and the suburban home. Moreover, state and community funded construction of new sewer and water lines, schools, and residential roads freed developers from many associated construction and planning problems. During this period, communities would bid against each other to bring new development to their communities, eagerly anticipating future tax revenues. Federal loan guarantees freed developers from the fiscal uncertainties and risks associated with extending mortgage financing. All of these substantial public supports to the private housing industry made possible the post-war suburban housing explosion.[270]

These rapidly expanding post-war developments did not follow concentric patterns radiating from a city center, as had the Streetcar Suburbs of the early twentieth century that had grown along established transit or highway paths. The new developments generally appeared along highways in widely separated patches, the gaps between which were gradually filled in by later development. As long as the distance from the city was not so great as to make commuting oner-

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269. *See* Marcuse, *supra* note 1, at 44.

270. *See* HINE, *supra* note 126, at 42-43.

ous, any cheap, flat, and formerly agricultural land was adequate for a subdivision, regardless of where it was located.

In the immediate postwar housing boom, a simple, inexpensively constructed single-family home constructed more or less like a rectangle with a peaked roof was enough to satisfy most first-time homebuyers. After all, this simple box house was located on its own lot and was as close to the image of the pastoral cottage in the woods as many of these buyers thought they were likely to get. However, as the 1950s went on, the housing market began to become more complex and developers began feeling the need to introduce more variation in their product. Developers focused on the homeowner's desire *not* to own a house that was identical to every other house on their street and every other house in their town. Developers recognized that homeowners sought some differentiation that proclaimed their own taste, choices, and identity. To achieve this, developers began marketing variations on the basic Levittown box and housing consumers proved eager to pay a premium for these mass-produced, but "unique" styles.

In 1955, developers began breaking up the suburban box for economic reasons. This meant that additional levels and wings were added to the basic rectangle, putting more house onto less land.[271] As suburban land became more expensive, communities began zoning minimum building setbacks on these suburban tracts. To comply with these new zoning regulations, developers became concerned with getting more floor space onto a smaller lot, and the higher priced split-level was born. This fed into the break-up and expansion of the Levittown box and was also an example how aesthetic considerations interact with economic considerations. This interaction produced both changes in consumer preference and land use, which then caused further changes in investment decisions and multiplied the choices open to consumers.

During the 1950s, one of the sub-currents of American culture involved what might loosely be termed the "California fantasy." This fantasy involved media-generated images of California as casual and informal, Hollywood glamour amidst a mild climate. Housing developers around the country used designs that evoked elements of the California fantasy to market new homes. Developers used elements such as horizontal styling, redwood paneling, patios with glass doors, and large picture windows to evoke a California association. Some of these design elements were distant relatives of Frank Lloyd Wright's

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271. *See id.* at 52-53.

early twentieth century Prairie houses as reinterpreted by 1940s architects such as Richard Neutra or Gregory Ain, who served a wealthy and sophisticated California clientele in the late 1940s. Wright's Prairie houses stressed the horizontal and were built of materials, such as stone and brick, which were adapted for harsh midwest winters. Neutra and Ain adapted Wright's materials to the gentler California climate using redwood and an abundance of glass, with an emphasis on the horizontal. Although their buildings were beyond the reach of most new suburbanites, developers saw the marketing possibilities of using cheaper versions of Neutra and Ain's designs to sell the idea of casual and informal California-style living to the mass suburban tract house market. In a modest ranch-style house of the mid-1950s, the emphasis would be on the horizontal layout with abundant windows and a carport, with all three of these design points having been first made in expensive homes built much earlier in the century in much different contexts.[272]

Throughout the postwar period, suburban houses became larger and more stylish, beginning with the basic Levittown box without a garage and continuing into the 1960s with California-style ranch or split-level styles with attached garages. Suburban developers of the 1960s began heavily marketing "style," "variety," and "distinctive community," using names suggesting the rural, pastoral, romantic or nostalgic. During the 1970s, purely decorative timbering was widely adopted. Georgian/colonial doors and windows insinuated themselves into suburban builders' design vocabularies. By the 1980s, full-scale, architecturally accurate revivals of Victorian, Neo-classical and other historical styles were built, using historically detailed trim and decorative brickwork. Awareness of architectural history and style became an extremely relevant aspect in valuing and marketing residences in these newly rehistoricized suburbs.

There are many possible explanations why fake timbering and colonial styles reappeared in the 1970s, followed by Victorian and Neo-classical revivals in the 1980s. One explanation is that as housing markets began craving more stylistic differentiation than could be achieved within the modernism idiom, tastes of buyers and architects turned back to historical forms of traditional architecture. Fake timbering allowed use of modern building techniques while still imparting a rustic, "back to nature" ambiance, in keeping with the pastoral, but phony names for these subdivisions.

A reappraisal of Victorian and Neo-classical styles might also be

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272. *Id.* at 49.

tied with the 'back to the city' preservationist movement as well as to gentrification, as many of the urban neighborhoods that were gentrified during this period dated from the Victorian era. As gentrifiers reclaimed formerly decrepit areas of the city and sought to restore Victorian era buildings to their former glories, a reappreciation of the entire historical style might spread through much of a particular class/generation ("yuppies"), creating a taste and demand in suburban construction for decoration and ornament that looked authentically "old" or Victorian.

Luxury apartments had not generally been a feature of the early postwar suburbs. Up until the mid-1970s, suburban apartment complexes were generally considered a second-rate form of rental housing, and were often sited in less desirable, low-income areas of the city or surrounding areas. However, in the 1970s and 1980s, responding in part to the widespread changes wrought by deindustrialization, many companies relocated some of their operations to suburban areas. This was accompanied by a huge surge in luxury and condominium construction in more expensive areas of both the suburbs and the city. New suburban luxury apartments and condominiums were intended to meet the housing needs of professionals who worked in many of the businesses that had relocated into suburban office parks. Luxury construction in the cities was related to the growth of the high-end service sector, which during this period expanded operations in central downtown areas of the city.[273] Luxury apartments and condominium construction were heavily marketed to members of the high-end service sector, and construction, rentals, and sales of high-end urban and surburban residences boomed during the 1970s and 1980s.

The U.S. service economy of the 1970s and 1980s consisted of a high-end (lawyers, bankers, doctors, and other service professionals) and a low-end (fast-food employees, security guards, and others working at a minimum wage). As the high-end service sector relocated or expanded its headquarters into older downtown areas in the 1970s and 1980s, the number of highly educated and paid employees mushroomed, even as workers in the manufacturing sector were being laid off as their jobs fled to the suburbs, other areas of the country or overseas, or often to all three places.

The housing picture for low- and middle-income households during this period was much more bleak, in both urban and suburban markets. Suburban areas erected zoning barriers to construction of low- and middle-income housing, and cities welcomed gentrifiers and lux-

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273. *See generally* MOLLENKOPF, *supra* note 236.

ury developers. This open encouragement of the high-end housing market by many levels of government, worked to deplete and shrink available low- and middle-income housing.

Even federal tax laws, which in a roundabout way had worked to increase the supply of affordable housing in the 1970s, were changed in 1986 to discourage investment in affordable housing. Up until the Tax Reform Act of 1986, limited real estate partnerships were allowed to sell partnership interests to investors who could deduct off their individual tax returns the losses suffered by the partnerships. As a tax shelter, this proved very attractive to many doctors, lawyers, and other investors with a lot of tax gain and insufficient losses to write off against those gains. Prior to 1986, there was a market in tax shelters, so that an investor could buy an interest in a real estate partnership that was developing, for example, an apartment complex in Phoenix, Arizona, and the partnership could develop the complex as affordable housing that might yield losses that would pass through to the partners and be deductible against each partner's individual income.

Congress closed off this "loophole" in 1986 by enacting the passive activity loss limitations on limited partnership income. Thus, many limited partnerships that had invested in building new affordable housing to generate losses, ceased to do so after 1986, and the supply of affordable housing shrank further.

While government policies at all levels had major impacts and interactions with the private sector along the housing spectrum from low-income housing projects through lower-middle Levittown developments to upper-income luxury suburban developments during the postwar area, there was seldom an overarching vision coordinating the many conflicting demands and purposes arising in the development process. The absence of a Garden City-type regional vision has produced haphazard patterns of growth and unnecessary congestion and strain on increasingly limited public resources. Briefly stated, the dilemma for postwar American suburban planning was whether to submit to a central authority's decisions regarding allocation of resources and growth patterns or to allow distorted private market supply and demand forces to dictate development. For the most part, the U.S. followed the latter course, and the sprawling suburbs, with their conflicting patchworks of municipal zoning regulations, and the economic and racial polarization of city/suburb and rich/poor are the legacy of this decision.

Postwar planners had many reasons for pursuing extensive zoning and land use controls. Many planners sought to control the rate of

growth of their community in order to ensure more equitable distribution of available resources and avoid the negative effects of swift population growth and the inequities such growth often entailed. Some planners, however, sought to use zoning in a premeditated fashion to exclude certain racial groups from a community, which to courts was impermissible; other times planning boards worked from a set of mixed motives which were often difficult to separate, i.e., a zoning scheme might deal with prohibitions on multi-family housing, or might simply zone such housing to a certain neighborhood of a town, often with the stated purpose of controlling growth so as to keep community life liveable.

In many situations zoning served to perpetuate and reinforce existing patterns of racial and economic segregation. One way this was accomplished was by stipulation of minimum lot sizes. Of course, in communities in which minimum lot size ordinances were set, the price to purchase the lot of the appropriate size (with or without a house on it) was well beyond the means of lower-income people. In many ways, wealth/income was used as a proxy for race because discrimination on the basis of ability to pay was permissible whereas discrimination on the basis of race was not. Insofar as economic status tracked race, zoning regulations premised on ability to pay in reality also functioned to screen racial minorities from certain communities, with no overt statutory/regulatory evidence of overt racial animus.

Postwar white flight was important because it helped fuel the explosive growth of the suburbs. It also highlighted the weaknesses in urban planning that ended at simple municipal boundaries, because the forces acting on urban areas tended to be regionwide and needed to be addressed on a regional basis.[274] In many ways, the Supreme Court's decision in *Milliken v. Bradley*,[275] illustrated the post-war political and legal fragmentation of city and suburb. In *Milliken*, a lower district court was seeking to remedy the racial concentration of Detroit by interdistrict busing between outlying suburbs. The Court found this interdistrict busing impermissible and ruled that a school desegregation remedy must respect existing municipally determined school district boundaries.[276] Thus, after *Milliken*, while federal courts, soci-

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274. *See* JON C. TEAFORD, CITY AND SUBURB: THE POLITICAL FRAGMENTATION OF METROPOLITAN AREAS, 1850-1970, at 5-31 (1979). *See generally* THOMAS B. EDSALL & MARY D. EDSALL, CHAIN REACTION: THE IMPACT OF RACE, RIGHTS AND TAXES ON AMERICAN CULTURE (1991); JOEL GARREAU, EDGE CITY: LIFE ON THE NEW FRONTIER (1991).

275. 418 U.S. 717 (1974).

276. *Id.* at 717. *But see* Hills Dev. Company v. Township of Bernards, 510 A.2d 621 (N.J. 1986); Southern Burlington County NAACP v. Township of Mt. Laurel, 456 A.2d

ologists, economists, and politicians might be able to chart the regionwide origins and effects of white flight, in many ways, their hands were tied by municipal boundaries in seeking regional remedies.

White flight was also problematic to urban planners because it generally meant a significant erosion of the city's tax base. As the municipal tax base eroded, city services suffered, and infrastructure decayed, further increasing flight of businesses. White flight pitted city against suburb in a zero-sum game, and whatever the suburbs gained, the city lost and vice-versa. By the mid-twentieth century white flight had left an indelible mark on the way that the postwar suburbs had prospered and the inner cities had decayed.

Suburban developments underwent many changes in the postwar era. Against the backdrop of substantial government support on many levels, there was a steady outward flow of people from urban areas to the suburbs. Immediately following WW II, the shape suburban developments took was determined by the availability of cheap outlying land and access to transportation. As federal, state, and local government laid millions of miles of new highways, the suburbs spread along them, and U.S. homeownership increased by 50 percent during this period. More Americans were able to realize the deeply-held fantasy of the single-family home on a grassy lot. However, this home might be surrounded by hundreds of identical houses on identical plots. However, in the late 1940s, following years of depression, war, and acute housing shortages, this seemed like it was enough.

The rise of these suburbs was in counterpoint to the dominance of the modernist "International Style" that became the favored style of the techno-bureaucracy during this period. However, the suburbs, embodying an updated pastoral cottage in the woods, did not completely escape the effects of aesthetic modernism, which, when combined with American hucksterism and the highway produced a brief, but intense, moment of visual chaos in the garish strip developments that flourished along many of the same highways on which new suburbs had grown. However, macroeconomic forces and local zoning ordinances soon combined to restrain and tone down the strip style to a much less confrontational visual level.

The simple Levittown house was not a modernist design and its simplicity soon began changing as tastes in residential housing markets began demanding more and more ornament and decoration. Suburban houses were not meant to be confrontational structures, like glass and steel slab-skyscrapers, but were meant to be lived in, and as

390 (N.J. 1983); Southern Burlington County NAACP v. Township of Mt. Laurel, 336 A.2d 713 (N.J. 1975).

gation became distinguishing characteristics of midcentury urban and suburban spaces.

V. Post-Modernism and the Post-Industrial City (1970-1990)

Methodologies involving a post-modernist approach became influential across a wide variety of fields, including architecture, during the 1970s.[278] As with earlier methodologies, such as modernism, architecture developed both "high" and "low" variations. Post-modernism, in its high architectural form, involved a reconsideration of buildings as sign systems, which could be recombined to produce new meanings from older forms, as well as a rejection of many core tenents and aspects of the architectural modernism. In its low form, as practiced by developers and builders, post-modernism meant a certain visual playfulness.

The advent of architectural post-modernism coincided, but was not directly related to, the economic reorganization and deindustrialization of the U.S. economy. However, post-modernism and the post-industrial city interacted in ways that reinforced the effects of both phenomena on urban and suburban spaces. If early twentieth century aesthetic modernism had held itself out as a heroic attempt to recreate the world anew, late twentieth century post-modernism was an antiheroic retreat that humbly sought to merely work with the materials at hand, seeking accommodation rather than revolutionary confrontation. However, in post-industrial America, the materials at hand were problematic and involved core cities that had been devastated, economically and socially, coexisting uneasily with prospering suburban areas seeking to shed moral, social, and economic responsibility for urban decline. In this environment, post-modernist architecture proved a potent vehicle with which to begin the visual retaking of the core cities as well as the visual smoothing out of suburban rough edges, an architectural style particularly well-suited to mask the growing economic inequities of the 1980s.

During the early post World War II period, urban planning rose to prominence as a generation of planners and architects sought to achieve social balance and functional equilibrium through their creations. The planners' influence may be seen in residential developments, in urban renewal projects, in revitalized city centers, and in the layout and form of modern highways. Their confidence in their ability to create a new urban order lasted into the 1960s, when it waned in

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278. *See generally* JEAN-FRANCOIS LYOTARD, THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE (1979).

the face of criticism and self-doubt which arose from the widening gap between the wonderful social changes promised by the urban planners and the sordid urban realities that consumed millions of public dollars, with little apparent effect.[279] During the 1970s, planners sought to be less authoritarian and more sensitive to community input and pre-existing urban conditions. This change accompanied shifts in architectural taste and theory, which generally turned away from a belief in law-like rules of design promoted by architectural modernism and began re-examining the ambiguous roles of history and context.

In architectural thought, the move from a modernist perspective to a post-modernist perspective occurred between 1965 and 1975.[280] Thomas Kuhn has suggested that widely-held theories, or paradigms, are a generational phenomenon, and that shifts in these world-views are mirrored by the rise to power of a new generation of thinkers. In the late 1960s, flaws, or anomalies in the architectural modernist paradigm became increasingly evident, and the new generation of architects promoting post-modernism represented the emergence of a new paradigm that offered an account of some of the troublesome aspects of architectural modernism, i.e., ahistoricism, confrontationalism, gigantism, etc.

This post-modern perspective rejected the absolutism of architectural modernism, and felt released from the modernist pressure to constantly reduce architectual form to geometric essentials. Architectural post-modernism used historical nuance and context as raw materials for structural statements that, unlike modernist architecture, were supposedly sensitive to complexity and contradiction in existing sites. It was also a response to the self-emptying ahistorical posture of much architectural modernism from the late 1940s through the early 1960s. Modernism was absolutist. Post-modernism was eclectic. A post-modernist architect would think nothing about combining disparate elements such as Palladian windows, Greek columns, and Egyptian brickwork unconstrained, and indeed unaccountable to any strict chronological or historical order.

Once the architectural modernist fortress was breached in the late 1960s, what had been a small crack widened into a chasm.[281] Pent-

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279. *See generally* JACOBS, *supra* note 72.

280. *See generally* PETER L. BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE (1966); Geertz, *supra* note 4; THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970).

281. *See generally* VENTURI, *supra* note 10; VENTURI, *supra* note 126. Venturi tried to go back to an architectural tradition which had been in place from the Romans up through the nineteenth century Beaux-Arts, namely, the idea that there was a positive

up, repressed cultural energy was released and a frantic search for new theoretical and cultural equilibrium ensued. This shift in elite architectural theory brought about an aesthetic and economic revaluation of elements of architectural styles of the past,[282] that were disseminated and embraced by leading architectural schools, the media and large corporate organizations. On a micro level, elements such as plaster moldings and walls, wood banisters, and tin ceilings became sought-after and valuable elements of an older building rather than obstacles to modernization. For example, cast iron facades in the Soho area of New York became much desired, even though thirty years ago, Soho was only a trucking warehouse district. Exposed original brick became a much desired decorative touch.

On a macro level, areas like Fanueil Hall in Boston became high-priced properties because of the residue of historic ambiance that they retained. Historicity became very marketable in the late 1970s and 1980s. These revalued historical elements include brownstone building facades with original windows and cut glass doors, former mill factories throughout New England, nineteenth and early twentieth

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normative content which could be transmitted through the ornament and decoration of a building. This can be seen in the decision of the founding fathers to adopt the architectural style of ancient Greece to embody and communicate the idea of a democracy. It can be seen in the adoption by the nineteenth century Beaux-Arts (and Hitler's Germany) of the imperial Roman style of building. It can be seen in soaring Gothic Cathedrals, stretching heavenward and the layout of St.Peter's Basilica in Rome, with its outreaching stone arms surrounding the central plaza. This tradition saw the process of architecture as working with a communicative language, each component of which from the design of a column to the layout of the entire structure sought to say something (albeit in a type of code) to a viewer.

Architectural modernism sought to deny this tradition by claiming that form was not a language, but only followed function. Buildings weren't supposed to say anything but only be mute embodiments of timeless geometry, decoration was anathema. Venturi sought to recover the notion that decoration and ornament could and did embody a great deal of information about the building and the society, and that this information and capacity for using decoration as a communicative medium should not be dismissed lightly.

Venturi was into "reading" buildings. Venturi pointed out, the communicative tradition had not really been lost, only relegated to low, or pop culture. He looked at Las Vegas and roadside gas stations and Tastee-Freez stands and at their core saw a "shack with a sign," that is a shelter with a sign (sometimes flashy, sometimes not) which communicated, spoke, implored, advertised what went on inside the "shack." High modernists would scoff at these manifestations of pop culture Venturi cited, seeing them as garish and impure, and most of all not serious. Focusing on the end not the structure began to open avenues of architectural design which modernism had foreclosed (or scorned) for much of the twentieth century. To Venturi, the "shack" contained an activity (a box was as good as any other container), but the sign, the sign was everything, it was the connection between the activity in the box and the world, and it was this signification function which architectural modernism had worked to suppress.

282. *See* Smith, *supra* note 2, at 543.

century schools, wooden Victorian houses—these were once regarded as anachronistic impediments to development, but have come to be viewed as architectural "gems" to be preserved and sold at sky-high prices for condominiums, boutiques, and offices.

The ambiance of "past architectural quality" was marketed as a "hot" item to affluent young professionals of the 1970s and 1980s, who, on one hand, were sympathetic to cultural critiques of the suburbs as homogeneous cultural wastelands, and on the other hand, wanted to buy residences demonstrative of and consistent with their education, taste, and affluence.[283] Accordingly, post-modern "ambiance" exerted a profound effect on the consciousness of buyers, builders, architects, planners, and developers. The unacknowledged backdrop of aesthetic and cultural values, against which planning, investment, and buying decisions were made, profoundly altered.[284]

In order for a style such as post-modernism to become as pervasive as it has, the style could not remain the marginal preserve of elites, but had to be promoted, marketed, and adopted by large corporate interests as well. The marketing of packaged, but ironic, historicism to a new generation was similar in many ways to the earlier marketing of Levittown as the post-war suburban dream.[285] The suburbs had been sold to earlier generations as an escape "fantasy" from the congested urban landscape of the early twentieth century.

On the upside, post-modern architecture changed the way cities and suburbs look and work mostly by deflating modernist architecture's penchant schemes for grandiose projects and statements, thereby promoting planning on a smaller, more human scale. The post-modernist mode also brought back an appreciation of site historicity and vernacular culture. On the downside, however, it also contributed to the gentrification of urban areas due to the widely-promoted and disseminated revaluation of historical ambiance that post-modernism encouraged. Post-modernist architecture also provided the corporate techno-bureaucracy with a suitably toned down visual style for malls, chain restaurants, office parks, and urban headquarters that helped these developments to blend in visually to existing conditions and by so doing, helped camouflage the pervasiveness of these institutions with a cheery and nonthreatening facade.

During this same time period, the growing involvement of the United States in Vietnam had repercussions throughout 1960s United

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283. *See* SMITHSON, *supra* note 25, at 12.
284. *See supra* note 217.
285. *See supra* part III.C.

States society, causing domestic social unrest, exacerbating, and in many cases creating generational, racial, and class divisions. Architecture and urban planning were also affected in a number of ways by the social turmoil engendered over the Vietnam war. First, by the 1960s, the International Style had become thoroughly identified with corporate power and institutional authority. The International Style had successfully swept the field of corporate and government commissions in the 1950s and 1960s, and in so doing, had become the "official" style of the military-industrial complex. Thus, growing opposition to the Vietnam War also involved a critique of the style of architecture in which the "establishment" chose to authoritatively cloak itself.

Second, to architecture students of the 1960s, the way that the U.S. appeared to be steamrolling through Indochina seemed analogous to the way that the International Style-inspired bureaucratic planners were steamrolling through poor minority neighborhoods in American cities. Attitudes that allowed razing of urban neighborhoods, displacement of long-time residents, and destruction of their communities seemed reflective of underlying arrogant, imperialistic, and ethnocentric values. This alienation from mainstream values generated a countercommittment in many members of this generation to take the integrity of local communities much more into account in the planning process. This opening of the planning process, however, made what had been seen as a realm of neutral expertise look more like an open arena of political conflict.

Third, the Vietnam war was administered in a top-down centralized bureaucratic organization (as were domestic Urban Renewal programs) with little or no grass-roots input. The chain of command had to be obeyed. By contrast, much of the opposition to the Vietnam War had a grass-roots, bottom up, decentralized structure. Architecture students of the time began wondering what the results would be if urban planning took on a greater grass-roots coloration, allowing greater resident input into neighborhood change. When combined with the growing historical preservationist movement, this drive toward decentralization of urban planning resulted in the eventual dismantling of many of the Great Society's urban renewal programs. Unfortunately, the dismantling of these programs coincided with the rise of a new American conservatism, which meant that, while the old large-scale programs were gone, there was no firm government commitment to fund or support smaller, decentralized plans for urban areas. Predatory market forces like gentrification were hailed in the late

1970s as "privatized urban renewal," but the question "urban renewal for whom?" was not asked until much later.

This generation of architects and architecture students had developed an antipathy to the authoritarian cast of the International Style and an appetite for challenges to established orthodoxies. Venturi, in the late 1960s and early 1970s, spoke to an audience that wanted to hear a direct, anarchist appeal against the system, its "neutral" social engineering, and its claims to a universal, ahistorical position. However, while Venturi was by no means an anarchist, he spoke to this generation and helped post-modernist architecture to gel. There was also a reactionary seed at the heart of Venturi's prescriptions for a new architecture. Prior to Venturi, architects and planners tried to eliminate strip style development because it was "ugly" and replace it with "beautification" programs. Venturi's point that an ugly strip development was actually beautiful was a form of immunizing an audience to some of the wasteful incitements to overconsume in late capitalist society. To Venturi, however, the Las Vegas strip was a new visual order, which should be appreciated on its own terms. Thus, while Venturi expanded the aesthetic vocabulary of post-modern architecture, he also foreclosed it from addressing many of the socio-economic conditions that produce racism, poverty, and economic inequality because all of the visual manifestations of those conditions were not necessarily ugly, but merely potential elements of an expanded post-modern architectural vocabulary.

The major shift in aesthetic taste in the early 1970s precipitated changes in spatial distributions of the populace. Post-modernism also became an important factor in the gentrifying urban housing market of the 1970s and 1980s. The "baby boomers" of the period moved back into the central city buildings and neighborhoods their grandparents had left behind in search of an "Arcadian" suburban paradise. This generational and geographic return to the city had both macro and micro economic explanations. Macro explanations involved factors like the growing national deficit, continuing American deindustrialization, rise of the bifurcated service sector that brought about fundamental structural changes in the U.S. economy. Micro changes in neighborhoods involved the neighborhood-by-neighborhood, block-by-block and building-by-building revaluation in historical ambiance as translated by the real estate condominium market and the selective rejuvenation of these areas. Landlords in adjacent areas would begin using tactics to ouster long-time low-income tenants in anticipation of expanding gentrification. Speculators would enter local markets and begin driving prices up. Because things like culture, ideology, and

taste could not be broken down neatly into hard numbers and cranked through a graph, they were often discounted in favor of more objective "hard" data when analyzing abandonment, gentrification, and displacement. Post-modernist architecture helped make older urban neighborhoods and buildings attractive, and therefore valuable to developers, realtors, and members of the baby boom generation who wanted to go "back to the city."

The revaluation of historical quality in older inner city buildings drew together post-modernist architects eager to exercise their adeptness at using the vocabulary of history and wealthy clients who were buying these renovated spaces. They did not focus on the larger picture of who their yuppie clients were displacing or what effects this displacement was having on the diminishing low-income housing stock. The post-modern designers and architects who renovated brownstones and other buildings for wealthy new residents were merely keeping with the tradition that for high architects, the poor were invisible.

A. Abandonment[286] & Disinvestment

The "filtering model" of housing markets, which was first advanced in the early 1960s by a group of economists to explain how the movement of households from one unit to another may produce aggregate benefits to all households, paralleled the rise of postmodernist architecture. While postmodernist architecture began changing the way American urban and suburban spaces looked, the filtering model provided an explanation why suburban expansion increased aggregate housing quality. Filtering theory found a receptive audience among policymakers who were growing increasingly disenchanted with what they considered the failure of government intervention in low-income housing markets. As an explanatory model, filtering theory showed how private housing markets would, without overt government intervention, remedy low-income housing shortages. It also provided a framework for understanding household mobility and created expectations that the construction of new luxury housing would result in the general improvement of housing quality for the entire housing

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286. *See* Marcuse, *supra* note 1, at 195-96. Marcuse states:

> Abandonment . . . drives lower-income households to adjacent areas, where pressures on housing and rents are increased. Gentrification attracts higher-income households from other areas in the city, reducing demand elsewhere, and increasing tendencies to abandonment. [A] vicious circle is created in which the poor are constantly under pressure of displacement and the wealthy continuously seek to wall themselves within gentrified neighborhoods.

spectrum.[287]

The filtering model posited, on the supply side, a ladder of housing from highest to lowest quality and, on the demand side, a ladder of income groups also ranked from highest to lowest.[288] Whenever new units appeared on the market that were of higher quality than those originally at the top, the housing ladder extended upward by an additional rung. The household who occupied the former highest quality unit then moved into the new highest quality unit. The household on the next rung down, moved up into the now vacated unit. As if on a conveyor-belt, households moved up the housing ladder and out of old neighborhoods into newer, higher quality ones.

Alternatively, this process could be described as a way that high-end housing units eventually "trickled down" to lower-income households. The market price of units declined as obsolescence and deterioration made them less desirable for their inhabitants as well as for other households in the same income group. They then became available, or trickled down, to lower-income households.

The filtering model thus depicted a process of simultaneous creation and destruction of housing units. As new units were created on the high-end of the ladder, older units at the bottom depreciated until they were abandoned. Generally, under this model, the top of the market received the most new units. Developers seeking to generate maximum profit built on the high-end anticipating that the wealthy had more to spend on homes than did the middle-class and the poor.

This move toward an emphasis on new high-end building began in the mid-1970s, but accelerated in the 1980s, augmented by the general supply-side philosophy of President Reagan's administration. Additionally, the Reagan administration withdrew from support of new public housing construction, and as more pressure was put on the private market to provide low-income housing, the idea that new luxury housing eventually provided improved low-income housing proved attractive.

The geographic equivalent of the housing quality and income level ladders was a series of concentric rings, spreading outward from the city center, with the oldest, most deteriorated housing located at "ground zero" and progressively higher quality and higher income

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287. *See* MONTGOMERY & MANDELKER, *supra* note 2, at 161; *see also* Matthew Edel, *Filtering in a Private Housing Market, in* READINGS IN URBAN ECONOMICS 214 (Matthew Edel & Jerome Rothenberg eds., 1972).

288. Households are placed on the ladder based on two assumptions: (1) that people will only spend up to a certain portion of their income to get the highest quality of housing they can afford; and (2) that higher income households will always outbid lower income households even given a equal preference for housing.

levels located further out from the center of the rings. In a decade in which governmental resources for affordable housing were perceived as shrinking, there was little political or other capital to put into new housing programs as well as a general lack of faith in the efficacy of government intervention in the so-called private marketplace. Filtering theory showed how a privatized housing market worked to improve housing conditions for the poor as well as the wealthy.

Filtering was considered good for everyone concerned: the profit motive coaxed developers to build new luxury housing, which the wealthy got to inhabit, and everyone on the income ladder got to move up into higher quality housing. Under this conservative, supply-side scenario, the government did not have to intervene. The "invisible hand" of the free market would maintain the equilibrium, while households moved inexorably up the housing ladder.[289] Incorrect assumptions, however, oversimplified the traditional filtering model. The most blatant of these misconceptions were: (i) housing markets functioned perfectly; (ii) there were no transaction costs for inter-neighborhood moves; (iii) racial prejudice was not a substantial factor distorting housing markets; (iv) imperfect information did not create market distortions; and (v) relative income distribution remained constant over time. Housing policies premised on the filtering model began losing credibility by the late 1980s, when the model failed to correlate with or predict the behavior of U.S. housing markets. Under the filtering model, the record numbers of new luxury housing starts was difficult to square with the swelling homeless population and drastic shortages of affordable housing. The filtering model posited the exact opposite, that is, that new luxury housing starts would reduce homelessness and increase affordable housing supply. These inadequacies had emerged by the late 1980s, and policies premised on the simplistic assumptions of the filtering model began seeming implausible at best and malevolent at worst, insofar as these policies negatively impacted on the inner cities and allowed those at the high-end to deny complicity in urban decline.

Critics attacked the filtering model on two levels. First, it had failed to account for the dynamic complexity of national and regional macroeconomic changes. Second, it was oblivious to the microeffects

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289. Even though entrenched poverty cycles are more a product of being enmeshed in a particular social context than a volitional choice to belong to or remain a member of the urban underclass the traditional story also has a "blame the victim" dimension (i.e., "the poor are poor because they want to be"). *See generally* WILSON, *supra* note 198. Wilson suggests that the "filtering up and out" of middle-class ghetto households has resulted in a concentration, rather than an absorption of an urban underclass.

on the neighborhood, such as arson-for-profit, milking, and abandonment or warehousing of viable units.

On the macroeconomic level, the filtering model failed to acknowledge the impact of deindustrialization and reprofessionalization in major northeastern cities of the U.S. after 1960.[290] At this time several interconnected factors combined to produce both a dramatic restructuring of the manufacturing sector and a bifurcated service economy, split into high- and low-end jobs. An additional factor was the loss of America's competitive manufacturing edge over foreign countries and the resultant decrease in the productivity of American industries. Consequently, urban industrial jobs with low educational requisites for entry became more scarce, as these jobs went overseas or to other nonurban areas of the U.S., such as the Sunbelt. Northeastern and midwestern cities experienced plant closures, layoffs, and massive unemployment during the 1970s and 1980s.[291] Simultaneous with this manufacturing downturn was the parallel rise in other industries of low-end service sector jobs that paid significantly lower wages.[292] The high-end service sector was also growing in the 1980s as information-based service industries relocated or expanded in downtown areas. This expansion produced a surge of high-paying, professional and managerial jobs particularly in the financial centers of the northeast.[293] These high-end jobs attracted significant numbers of professionals into the urban housing market, stimulating condominium conversions and gentrification of neighborhoods, displacing long-time residents and reducing supplies of available urban low-income housing stock. The filtering model, with its theory of the orderly, upward movement of income groups, did not acknowledge either of these prongs of service sector growth. It merely predicted that deindustrialization alone would lower housing prices and demand. This prophecy, however, did not match the behavior of housing markets during the 1970s and 1980s. It failed to explain why a mixed pattern of gentrification and abandonment occurred, i.e., the simultaneous presence of skyrocketing rents and abandoned, burned

290. *See generally* MOLLENKOPF, *supra* note 236; Peter Levine & Linden Ontjes, Gentrification and Abandonment: The Effect of Deindustrialization, Service Sector Growth, and Market Failure on the Housing Stock: The Filtering Theory Revisited (1988) (unpublished paper on file with Professor Duncan Kennedy, Harvard Law School).

291. *See generally* BARRY BLUESTONE & BENNETT HARRISON, THE DEINDUSTRIALIZATION OF AMERICA (1982); BARRY BLUESTONE & BENNETT HARRISON, THE GREAT U-TURN (1988).

292. An example is the fast-food industry where average pay was less than $200 per week in the late 1980s.

293. *See* Kolodney, *supra* note 2, at 507, 510.

out neighborhoods, all within the same postindustrial city. Such phenomena were better explained by the gravitation of large high-end service sector corporations to the central city. The resulting influx of lucrative employment balanced certain effects of deindustrialization and its accompanying low paying jobs, as well-compensated individuals bid up rents in gentrifying areas beyond what low- and middle-income households could afford.

Institutionalist economics addresses some of the shortcomings of microeconomic models and has, in different contexts, tried to address the dynamic linkages between macro and microeconomics and social forces. Insofar as housing problems exemplify the dynamic intersection of micro- (i.e., the economics of a particular block) and macroforces (i.e., the impact of a growing national debt on available capital supply for mortgage lending), Institutionalism can be used to explain these problems. Originally an early twentieth century economic approach, Institutionalism was initially associated with the Progressive movement, and was opposed to the then mainstream orthodoxy of neoclassical economics. Early twentieth century Institutionalist economists, such as John R. Commons, Richard T. Ely, Edwin R.A. Seligman, Thorstein Veblen, and others were opposed to the way neoclassic economics used deductive theory.[294] Instead, the Institutionalists were committed to use of empirical and statistical data. They also tended to be much more tolerant of the idea of government intervention than were the nineteenth century laissez-faire oriented neoclassicists. Institutional economists developed arguments for regulation or public ownership of monopolies and were also critical of economic coercion resulting from increasing concentration of wealth and drastic inequities in wealth distribution. Institutionalists proposed a progressive reform agenda based on advocacy of government intervention to improve workers' hours and working conditions, and to prohibit widespread practices such as child labor. They also argued for allowing more extensive labor union activity, such as secondary boycotts and other early twentieth century Progressive causes.[295]

Gunnar Myrdal and others, from the 1940s through the 1970s, used Institutionalist approaches when analyzing the problems of the

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294. *See* HERBERT HOVENCAMP, ENTERPRISE AND AMERICAN LAW, 1836-1937, at 298-301 (1991).

295. *See generally* JOHN R. COMMONS, LEGAL FOUNDATIONS OF CAPITALISM (1924); RICHARD T. ELY, PROPERTY AND CONTRACT IN THEIR RELATIONS TO THE DISTRIBUTION OF WEALTH (1914); RICHARD T. ELY, STUDIES IN THE EVOLUTION OF INDUSTRIAL SOCIETY (1903); Robert L. Hale, *Rate Making and the Revision of the Property Concept,* 22 COL. L. REV. 209 (1922); Robert L. Hale, *Coercion and Distribution in a Supposedly Noncoercive State,* 38 POL. SCI. REV. 470 (1923).

American ghetto as well as problems of cyclical chronic underdevelopment in the third world.[296] A key part of Myrdal's Institutionalist analysis was the idea of the "vicious circle." Myrdal's vicious circle referred to "an inextricable interrelationship of cause-and-effect that operates so as to imprison an economy in its own shortcomings. The notion is that a given effect, as evidenced by whatever it is that happens to exist, acts as the cause leading to a substantially similar effect . . . ."[297] While many Institutionalists used the vicious circle to explain how third world economies get locked into self-perpetuating poverty and underdevelopment cycles, Daniel Fusfeld and Timothy Bates used a similar analysis to analyze how and why poverty cycles become entrenched in the ghettos of American cities.[298]

As applied to housing markets, an Institutionalist perspective posits that existing governmental and private institutions are structured so as to allocate the results of housing production differentially to the lower-, middle-, and upper-classes. An example of this differential allocation of resources is the way that financial institutions redline certain areas, either making available or not making available mortgage funds to certain classes or racially defined areas. Redlining is rationalized because certain areas have low-income populations that allegedly contribute to prematurely deteriorated housing in that area. The continued lack of capital, however, keeps incomes and housing maintenance low, leading to poor investment productivity, thereby reinforcing the rationale for redlining that particular area and perpetuating a downward vicious circle.

Thus, the vicious circle concept illustrates how, once a downward cycle reinforces its own initial conditions, it amplifies them each time the cycle repeats.[299] Thus, in an entrenched vicious circle, an enor-

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296. *See generally* HOWARD LIEBENSTEIN, A THEORY OF ECONOMIC-DEMOGRAPHIC DEVELOPMENT (1954); MYRDAL, *supra* note 190; GUNNAR MYRDAL, AN APPROACH TO THE ASIAN DRAMA (1970); JOSEPH SCHUMPTER, A HISTORY OF ECONOMIC ANALYSIS (1954).

297. *See* RAJA JESUDOS CHELLIAH, FISCAL POLICY IN UNDERDEVELOPED COUNTRIES 26 (1960); WALTER KRAUSE, ECONOMIC DEVELOPMENT: THE UNDERDEVELOPED WORLD AND THE AMERICAN INTEREST 20 (1961).

298. *See generally* FUSFELD & BATES, *supra* note 2.

299. *See* FUSFELD & BATES, *supra* note 2, at 152. The authors state:
A social system in which a pattern of circular causation functions will generally reach an equilibrium in which causative factors balance each other. It may be a moving equilibrium if growth processes operate. If outside forces for growth or decay impinge on the equilibrium and if they set up secondary effects moving in the same direction, a self-sustaining process of change can be established, particularly if the social system can move beyond the threshold from which the old equilibrium can no longer be reestablished.

mous intervention of money or resources may be unable to break the self-reinforcing downward cycle if the intervention comes too late. Conversely, a relatively small intervention at the beginning of a vicious circle may be able to stop the downward trend and arrest undesirable trends before they become chronic and resistant to efforts to stop the cycle.

Unstable equilibrium is related to the idea of a downward vicious cycle and is the result of neighborhood effects, such as arson-for-profit, milking, vandalism, and disinvestment in a particular area. It may also refer to the way in which decisions of one landlord or homeowner to disinvest influence the decisions of her neighbors, upsetting an existing equilibrium in a particular neighborhood. These micro changes can aggregate, and the effects of cumulative changes over an area can work to perpetuate and amplify negative trends already at work.[300]

Upward or downward urban cycles may have been initiated by shifts at the international or national level, such as a growing international debt,[301] food or energy shortages,[302] or demographic changes in age-group distribution.[303] These macroeconomic shifts affect, and are affected by, micro-changes and responses in a state, region, or neighborhood. A dynamic is set in motion, feeding on itself in circular fashion. In a particular urban housing market undergoing a downward cycle, remaining housing stock would be either taken off the market and warehoused, demolished, or allowed to deteriorate at accelerated rates. Trends toward premature deterioration are further reinforced by current institutional arrangements that encourage, as rational landlord behavior, activities, such as abandonment, arson-for-profit, and milking.

Macroeconomic changes, such as deindustrialization, meant that the bifurcated service economy emerged and the manufacturing sector was eclipsed, with concomitant loss of blue-collar jobs and the exodus of industries from the older cities of the northeast. Demographic changes, brought about as the "baby boom" generation aged, continued having strong impacts on allocation of increasingly scarce resources, such as education, housing, roads, medical care, and other social services. A growing U.S. deficit meant that there was considerably less capital available to finance long-term mortgage lending and new construction, making what money was available extraordinary

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300. *See* MYRDAL, *supra* note 296, at 1846-47.

301. *See* Alonso, *supra* note 2, at 32-50. *See generally* Stone, *supra* note 2.

302. *See generally* Stone, *supra* note 2.

303. *Id.*

sensitive to fluctuations in money supply, and driving housing and interest costs up.[304]

As an illustration of how a macroeconomic trend like deindustrialization creates effects that interact with neighborhoods on a microlevel, take for example, a hypothetical working class neighborhood in a northeastern city in which there has been a small exodus of long-time residents who lost their jobs due to the changes wrought by recession, layoffs, and deindustrialization—these departing families either filtered up the regional housing ladder or, more likely, left to find jobs in other regions. These departures have destabilized the neighborhood, not only because of the population decrease, but also because of the long-term vacancies such decrease causes.

In such a transitional neighborhood, property values are not only dependent on the level of upkeep, structure, and occupancy of a particular building, but are also related to levels of upkeep, structure, and occupancy of other buildings in the neighborhood.[305] Valuation is related to whether a particular neighborhood (or block, or street) is considered to be desirable. This estimation of neighborhood desirability is not necessarily a property of a single dwelling, but of a particular building surrounded by other buildings in specific states of maintenance or disrepair. Vacant homes and apartments invite vandalism and illegal occupancy for purposes such as drug dealing. If even one home in the neighborhood slips into the eyesore/menace category, remaining residents begin disvaluing the area and consider moving out if possible.

As feelings of community unravel, inmovers of a slightly lower economic class may move into the formerly stable, but now transitional, neighborhood and attempt to maintain their new homes with less money than had the previous occupants. As a result, the neighborhood begins deteriorating downward to the level of the area that the new residents had left behind, in spite of the premium they had paid to filter up the housing chain.

Original neighborhood residents are then confronted with a dilemma. They must decide quickly whether to continue maintaining

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304. *Id.* at 125-29.

305. In the absence of a neighborhood communication network like a landlord/tenant/homeowner association, there is an acute collective action problem: each owner would like to keep up maintenance to keep values up, but if each owner thinks that other owners are disinvesting or contemplating disinvesting, no one will invest because such investment will be lost. Fear of disinvestment becomes a self-fulfilling prophecy. There is an irony, because if there were a costless way to negotiate and enforce an agreement that all owners would adequately maintain their homes, everyone would benefit, but in the absence of such an agreement, they all lose.

their homes at prior level, effectively throwing their dollars down the drain, or to stop maintenance and sell out while they could still get a reasonable price. These original residents know that property values will decline quickly as more lower-income households move in and other long-time residents sell out. This fear of being left "holding the (economic) bag" in a transitional neighborhood causes remaining homeowners to rush to sell. The simultaneous appearance on the market of multiple homes in a particular neighborhood creates a supply glut that works as a self-fulfilling prophecy, drastically driving down neighborhood property values.[306] Everyone, from the new residents to the original residents seeking to move, loses, thereby creating what is known as a "rolling slum," which moves from neighborhood to neighborhood.[307]

Another example of the interaction between macro- and microforces focusing on the relation between gentrification and abandonment is the way that the baby boom generation's demographics have affected city neighborhoods. Since the 1950s, the average number of people per city household has fallen steadily due to an increasing U.S. divorce rate, more couples postponing the decision to have children, increases in the elderly population, and many people simply electing to live alone. This decrease in household size means that there has been an increase in the total amount of households that are seeking housing, even though each household is smaller.[308] In urban areas, this means an increased number of higher-income households, who can outbid lower-income households for available housing units. As this occurs, the number of available urban housing units dwindles, and the poor are displaced and the gentrification of city neighborhoods proceeds.

Landlords in formerly working class neighborhoods, anticipating economic windfalls from imminent gentrification, began engaging in behaviors, such as milking, warehousing of units, or tenant harassment, in order to be able to sell or rent their buildings in the most desirable state (empty) to speculators or inmoving new residents. As

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306. *See* FUSFELD & BATES, *supra* note 2, at 136:

> If one or two property owners take their capital out [of an area] by refusing to replace depreciation, surrounding owners are forced to replace depreciation, surrounding owners are forced to do likewise in self-protection. One deteriorated building draws down the value of surrounding property. One house broken up into small apartments and crowded with numerous families makes it difficult to sell or rent to single families next door. These 'neighborhood effects' cause the drain of capital [out of the urban ghetto] to cumulate and accelerate once it begins and are almost impossible to stop.

307. *See* GOETZE, *supra* note 2, at 11-26.

308. *See* Edel, *supra* note 287, at 207.

poorer tenants get evicted or otherwise displaced from their long-time residences, they are forced to double up in a shrinking supply of urban low-income housing or are cast out onto the street.

Thus, large scale, long term structural changes in the national economy and demographics interact with neighborhood dynamics, such as landlord milking or warehousing of viable units, to produce gentrification and displacement.

Despite the complexity and interconnectedness of macro- and microeconomic factors in U.S. housing markets, the filtering model was the basis for many Reagan administration housing policies—or rather, for their absence. Under the filtering model, it is better to invest scarce government resources at the top of the economic housing ladder so that everyone eventually moves up, rather than at the bottom where the benefits will only go to the poor households receiving the subsidy. The Kemp-Roth tax cuts, the mortgage interest deduction, and the reduction of income tax rates for the highest brackets are federal tax policies meant to give the wealthy more money, which would trickle down and help improve low-income housing conditions.

On the supply side, use of the filtering model encouraged adoption of governmental policies that seek to remove government obstacles to operation of the private marketplace. For example, the Internal Revenue Code's Accelerated Cost Recovery System provides large tax breaks for high-end housing developers, and New York State provides luxury housing developers incentives through the 421(a)[309] program, which gives luxury developers state and municipal tax breaks of up to 90 percent of the expenses of major rehabilitations.

At the local level, there are many policies premised on the belief that benefits to the wealthy eventually trickle down to the poor, such as the rationale that municipal auctions of foreclosed properties supposedly work to increase affordable housing supply (under the filtering model) because such auctions put foreclosed buildings in the hands of developers who then supposedly renovate and return formerly city-owned buildings to the private market. This theory, however, ignores the windfall gains made by such purchasers as well as the prevalence of warehousing, the likelihood of imminent condominium conversion, or simply demolition for new commercial or high-end residential uses of such properties. It is unclear to what extent, if at all, such resale of foreclosed properties actually increase a city's affordable housing supply.

Despite growing criticisms, these supply side policies premised on

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309. N.Y. REAL PROP. TAX LAW, § 421-a (McKinney 1988) (amended 1993).

the filtering model have generally been popular with officials and other policy-makers because they have political advantages. They require neither large administrative costs nor large subsidies because incentives are used to insure housing production. Therefore, these policies have a low visible cost to a tax-conscious and suspicious public. These policies also allow officials to wave the banner of the "free market," while giving tangible economic benefits to a powerful constituency—real estate developers and builders—that appreciates such boons and tends to remember that such politicians have been "friends" at election time.

Policies premised on the filtering model have not benefited poor residents of the core cities. Instead, these policies have encouraged owner, landlord, and speculator behaviors that have in many cases resulted in displacement of long-time urban residents and reduction and premature deterioration of available urban low-income housing.

Racial prejudice further distorts the filtering process and illustrates the inadequacy of the model as a paradigm for understanding housing markets. Unscrupulous realtors exploited racial animus through blockbusting, the practice of accelerating the pace of neighborhood change by insinuating to residents that the area's racial composition was changing quickly and that they ought to leave while they could get a good price for their homes.[310] Banks exacerbated racial tensions by redlining areas that were projected to undergo racial changes as bad credit risks for mortgage and home improvement loans.[311] Federal programs encouraged middle-class white flight to the suburbs through FHA and VA incentives like lower interest rates on suburban

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310. *See* Heights Community Congress v. Hilltop Realty 774 F.2d 135 (6th Cir. 1985). *But see* Editorial, *Stop Stalling Home Equity Plan*, CHICAGO TRIBUNE, Feb. 9, 1988, at 14; *Soul-Searching in a Pioneering Town*, NEWSWEEK, Mar. 7, 1988, at 32-34; *Plans To Insure Home Values Brings Chicago Racial Rift*, N.Y. TIMES, Feb. 2, 1988, at A18.

311. Redlining creates a self-fulfilling prophecy. The decision to avoid lending because of potential racial changes and consequent panic sales, merely exacerbates undermaintenance. Homeowners who can not obtain loans are unlikely to be able to maintain their homes properly. Housing stock then deteriorated until abandonment or foreclosure. *See* Kim E. Baptiste, *Attacking the Urban Redlining Problem*, 56 B.U. L. REV. 989 (1976); *see also Fed Finds a Racial Gulf in Mortgages: Areas Blacks Denied Loans at Triple the Rates of Whites*, BOSTON GLOBE, Oct. 22, 1991, at 1 (major Boston area banks rejected black mortgage applications more than three times as often as they did for whites with similar incomes); *Mainstream Banks Have Ties to Above-Market Deals*, BOSTON GLOBE, May 9, 1991, at 65 (collusive practices of banks, mortgage companies and building contractors have led to a record number of foreclosures on above-market rate loans in redlined areas of Boston); Paulette Thomas, *Behind the Figures: Federal Data Detail Pervasive Racial Gap in Mortgage Lending*, WALL ST. J., Mar. 31, 1992, at A1, H10.

home mortgages,[312] tax breaks for suburban homeowners rather than renters, and massive highway subsidies that decreased the cost of commuting to the city from surrounding suburbs.

In addition to failing to account for these numerous housing market imperfections and distortions, the filtering model incorrectly assumed abandonment was both inevitable and a good in itself. It ignored the neighborhood effects of prematurely abandoned housing stock as well as the cumulative effects of undermaintenance and institutional disinvestment. As residents fled declining neighborhoods the urban tax base eroded, accelerating decline. The city, in turn, was then forced to cut back on essential services, such as police, fire, garbage collection, and street maintenance, creating further incentives for wealthier residents to either leave or privatize their consumption of such services. Either way, the city received less and less revenue with which to maintain itself and serve its residents. The results of this vicious circle were widespread landlord disinvestment resulting in torched and abandoned buildings, bringing about rapid deterioration of still viable housing, abandonment, and a drastic drop in the availability of affordable housing stock for low- and middle-income people. They were forced to either double up or live in substandard, prematurely deteriorated housing for which they paid disproportionately large amounts of their already small incomes. The alternative was to be displaced onto the street with the swelling ranks of the homeless.[313]

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312. *See* Peter Marcuse, *The Contradictions of Housing, in* HOUSING: SYMBOL, STRUCTURE, SITE, 23 (Lisa Taylor ed., 1990). Marcuse states:

> Fiscal and monetary policy is thus the single most decisive public action affecting housing in the United States, yet its primary concerns have little to do with shelter. Interest rates—not need, not planning, not social priorities—have, year in and year out, been the prime determinant of how much new housing is supplied in the United States. Thus the huge fluctuations in the volume of production: in 1982, when interest rates were 15 percent, only 1,072,000 units were started; in 1972, when interest rates were 5 percent, 2,378,000 unites were built.

313. *See* Stone, *supra* note 2, at 99-106; *see also* Peter Marcuse, *Neutralizing Homelessness*, SOCIALIST REV., Jan.-Mar. 1988, at 69; JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 1990, at 20-25 (1990):

> With real income growth slowing and housing costs rising, a reported 6.1 million poverty level households spend more than half their reported income on housing. Even paying such a large share for housing does not, however, guarantee decent living conditions: more than a third of these households live in structurally inadequate units . . . . Poverty-level families face a quality/cost trade-off—without housing assistance, these households can either devote larger shares of their meager incomes to secure adequate housing, or they can pay less but live in units of marginal quality. Even this choice is vanishing, however, as low-cost units rapidly disappear from the inventory . . . . High payment burdens have superseded structural inadequacy as the primary housing problem of the poor . . . . Poverty-level households clearly have the ability to make choices in the marketplace, but increasingly the choices available to those fully outside

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If all of this had occurred in the 1950s or 1960s, urban renewal would have been the response to the destruction. An abandoned and gutted neighborhood would have been razed as "urban blight." Banks whose redlining had contributed to the downward spiral would have moved in, collecting huge profits by financing housing for wealthier residents and developing new commercial projects. However, as urban renewal was discredited in the 1970s and 1980s, gentrification and neighborhood "revitalization" replaced "urban renewal" as the major displacement mechanism. Nominally, a product of the more attractive private sector, gentrification seemed to be the most effective means of removing the poor from distressed but potentially lucrative areas that major public and private institutional interests wished to see "revitalized."

Abandonment of residential rental stock followed a pattern generally similar to that of urban homes that were owned by residents. However, several phenomena were unique to the rental context. One such phenomenon was landlord milking. In declining areas of the city, landlords had incentives to pull money out of their buildings at the expense of their tenants' quality of life and safety. Such an option was particularly attractive, for example, if the landlord owned a heavily mortgaged nonrecourse property, the taxes on which had not been recently adjusted to reflect current market value. Under these or similar circumstances, urban landlords sometimes tried avoiding what they saw as imminent losses by reducing maintenance expenditures

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the housing assistance "safety net" are limited to units that are either too costly relative to their income, inadequate to their needs, or both . . . . As low-cost rental units are lost to abandonment or upgraded to attract higher income occupants, the share of households paying 50 percent or more of their income grows. These high housing costs not only undermine the well-being of the 5.2 million poor families that go without assistance, they also dilute the value of the income assistance efforts designed to help poor families move out of poverty.

See also CENTER FOR LAW AND SOCIAL POLICY, ANALYSIS OF 1988 BENEFITS LEVELS IN THE PROGRAM OF AID TO DEPENDENT CHILDREN (1988); CENTER FOR LAW AND SOCIAL POLICY, POVERTY PICTURE: BASIC POVERTY, POVERTY TRENDS, FAMILY POVERTY AND FAMILY DEMOGRAPHICS (1988); CRITICAL PERSPECTIVES IN HOUSING (Rachel Bratt et al., eds., 1986); CUSHING DOLBEARE, LOW-INCOME HOUSING NEEDS (1987); SANDRA J. NEWMAN & ANN B. SCHNARE, SUBSIDIZING SHELTER: THE RELATIONSHIP BETWEEN WELFARE AND HOUSING ASSISTANCE (1988); DAVID C. SCHWARTZ ET AL., A NEW HOUSING POLICY FOR AMERICA 17-60 (1988); ISAAC SHAPIRO & ROBERT GREENSTEIN, HOLES IN THE SAFETY NETS: POVERTY PROGRAMS AND POLICIES IN THE STATES (1988); Pamela Reynolds (4-Part series on displacement in the Greater Boston area), *The Displaced: They are Virtually Everywhere*, BOSTON GLOBE, June 1, 1986, at 107; *The Displaced: Forced into Subsidized Housing, South End Family Uprooted Twice by Urban Renewal and Gentrification*, BOSTON GLOBE, June 2, 1986, at 21; *The Displaced: Doubling Up in Cambridge*, BOSTON GLOBE, June 3, 1986, at 25; *The Displaced: The Last Resort—The Suburbs*, BOSTON GLOBE, June 4, 1986, at 39.

below the level needed to keep their properties viable, in effect, treating them as wasting assets. In other words, they collected rents without putting any money back into the property. Often the amounts collected would be calculated according to how sensitive the landlord thought rents would be to declining building amenity levels. Additionally, the landlord would sometimes stop paying municipal property taxes, the eventual result being that the city took the building for non-payment of back taxes. In this way landlords traded short-term gain for long-term loss, shifting their losses to the banks, the tenants, other neighborhood residents, and the city. Eventually the subject buildings deteriorated until they had to be abandoned prematurely.

Neighborhood effects of milking were pernicious. The visible deterioration of a building always confronted adjacent landlords and homeowners with the same dilemma the rolling slum presented. Institutional incentives for this behavior included the lucrative payoffs of eventual gentrification and insurance money from arson-for-profit.[314]

Property owners adjacent to an area where disinvestment, milking, and arson-for-profit are going on are caught in a dilemma similar to the one homeowners in a transitional neighborhood are caught in. While they might have the money to continue maintenance, if a majority of other owners are milking and eventually torching their rental properties, it is clear the neighborhood is going down, and any further investment is foolish and economically irrational.

Municipal property tax policies may have also provided incentives for a rational landlord to begin milking viable properties for which rental income exceeded expenses like mortgage payments and maintenance.[315] If disinvestment is not an alternative because a landlord does not want to squeeze a building's remaining value out quickly, but rather wants to retain the building in order to convert it from low amenity/high density use, such as low-income apartments, to a much more lucrative high amenity/low density use, such as condominiums, warehousing becomes a viable alternative. When a tenant moves out, the landlord will keep the unit off the market, warehousing it. As more and more tenants leave a building, the building becomes less attractive to remaining residents. This encourages these remaining residents to leave as well. While the landlord may lose some rental

314. *See* James Brady, *The Social Economy of Arson: Vandals, Gangsters, Bankers, and Officials in the Making of an Urban Problem*, 6 RES. L., DEVIANCE & SOC. CONTROL 199, 212-26 (1984).

315. For example, where property tax assessments are not kept reasonably current or where delinquent payments are allowed to accumulate.

income from warehousing viable units, these short-term losses may be turned into quick gains if warehousing paves the way for a quick conversion of the building into condominiums.

In the 1970s and 1980s, these often unacknowledged distortions of the filtering process devastated large segments of inner city housing. Responsibility for the destruction has been widespread, and no one actor or institution carries all the blame.[316] The net result has been a continuing concentration of poor city dwellers in a rapidly dwindling, deteriorating supply of over-priced shelter. These people, if housed at all, are doubled and tripled up in tiny spaces in neighborhoods that have been gutted and destroyed by the combined effects of abandonment, milking, arson-for-profit, and disinvestment.[317]

The solution is elusive. Many feel the government should not intervene in so-called "private" housing markets. However, inaction results in massive social, economic, and individual human costs. While general interventions may have little effect on the inexorable downward spiral,[318] more finely tailored solutions may be able to slow it down.[319]

Some solutions are strategic, beginning with the objective of stabilizing transitional neighborhoods; stabilization causes changes to take place gradually and slows displacement and the destruction of viable housing units. One such stabilization strategy is to stringently enforce state and municipal housing codes and the warranty of habitability. Strict enforcement of such a warranty would ensure that landlords maintained their properties in the face of neighborhood effects, easing the neighbor's dilemma about whether to pay to maintain their homes in a deteriorating neighborhood or leave altogether.

Despite these benefits, however, enforcement also presents risks. It might actually cause neighborhood destabilization by encouraging expensive rehabilitation of formerly inexpensive units. Low-income res-

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316. *See* Marcuse, *supra* note 1, at 195.

> Much of the displacement caused by gentrification appears impersonal. "Market trends" cause increased prices and an individual landlord responding to those trends does what all other landlords do when he increases rents—rehabilitates for a higher-income clientele and watches as tenants leave and others better able to afford the new rent arrive. The tenant is forced to leave, just as if the landlord had visited that tenant and said, "leave or else" with a club in his hand. The force, however, comes from the market, not from the landlord's club.

Id. at 215.

317. *See Milking, supra* note 229, at 485, 515.

318. *See id.*; *see also* McUsic, *supra* note 2, at 1835.

319. *See* Marcuse, *supra* note 2, at 935; *see also* McUsic, *supra* note 2, at 1835; Kolodney, *supra* note 2, at 507.

idents would be displaced as landlords pass on these higher costs as rents or simply sell out to new developers. Stabilization efforts in gentrifying neighborhoods must be able to distinguish upward and downward spirals and implement appropriate and carefully controlled strategies. These strategies must also recognize the need to provide and maintain low-income housing independent of market forces, which by themselves do not produce such housing.

Because the results of enforcement efforts vary greatly depending on the context, implementation of floating anti-displacement zones or eviction-free zones, which could range from outright "discouragement zones"—zones in which gentrification is most likely to lead to displacement—to "encouragement zones"—zones where new development would be strongly supported through tax policy and other incentives—is yet another strategy. Moreover, mandatory holding period conditions could be imposed on residential housing in such discouragement zones. While these holding periods would not foreclose sale, they would slow gentrification and displacement and impose penalties on sellers and buyers if stipulated holding conditions were not met.

Another solution that could be used separately or along with other anti-displacement strategies is to create nonprofit Community Development Corporations ("CDCs") that would purchase buildings from landlords unwilling or unable to make the capital investments necessary to meet code requirements. Because CDC's are community controlled they can refuse to raise rents or sell their properties to speculators when rapid changes in community character seem imminent.[320]

In addition, municipal tax policy might also be used to prevent landlord milking before it starts. Such tax policies could take two forms: first, abatements/exemptions for maintenance expenses for landlords who continue adequate upkeep on low- and moderate-income units; and secondly, swifter tax foreclosure procedures. The first strategy would be tied to some sort of means testing as well as to condominium conversion ordinances, but such abatement policies might be vulnerable to attacks by powerful interests, such as landlords and developers seeking larger returns on their properties than low to moderate rentals provide.

The second branch of retooled municipal tax policies would: (1)

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320. *See* Christopher Kenneally, *From Ruins to Affordable Housing*, BOSTON GLOBE, Mar. 30, 1991, at 37 (discussing how Massachusetts CDCs have produced 9,745 units of publicly assisted, low-income housing, which constitutes 35 percent of privately developed affordable housing produced during the past 20 years).

ensure that property valuations remain current, so that in a case of arson a landlord who is disinvesting will not be able to depend on an outdated high assessment for insurance purposes; and (2) speed up lengthy tax foreclosures of properties in tax default, thereby increasing city tax revenues and stopping neighborhood deterioration at an earlier stage. When landlords become delinquent in paying their taxes, municipalities could quickly foreclose on the properties. The stock of housing that would be acquired this way could be rehabilitated and kept as a reserve of low-income housing.[321] Funds for such rehabilitation could be raised through linkage exactions or inclusionary zoning ordinances.[322]

Linkage exactions require developers who build in downtown areas to contribute to an affordable housing fund. The amount the developer must pay is based on how many square feet of commercial space is built. Linkage is premised on the idea that new office/commercial construction will always put pressure on existing housing stock, and therefore, commercial developers are obligated to share in alleviating the burdens on existing housing supply. However, linkage has been controversial and linkage ordinances have been susceptible to attacks in Boston and San Francisco on the grounds that there is no direct connection between employees of a specific commercial development and any damage to a specific neighborhood's housing supply for which the linkage exaction is charged.[323] Inclusionary zoning ordinances would mandate that a certain proportion of new residential

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321. *See* Charles Haar, *The Case for Linkage in the Crowded City*, BOSTON GLOBE, Aug. 23, 1986, at 1.

322. *See* Susan R. Diamond, *The San Francisco Housing Program: Social Policy Underwritten By Private Enterprise*, 7 HARV. ENVTL. L. REV. 449 (1983); *Boston Developer's Lawsuit Challenges Linkage Requirement*, BOSTON GLOBE, June 20, 1985, at 24; *Linkage Revision Provokes Friction*, BOSTON GLOBE, July 28, 1985, at A13 (Mayor Ray Flynn stating that linkage ensures that "developers take some responsibility for some of the housing pressures that accompany new development"); *Proposed Rule: Build Houses Before Offices*, BOSTON GLOBE, Feb. 2, 1983, at 1.

323. *See* Russ Bldg. Partnership v. City & County of San Francisco, 234 Cal. Rptr. 1 (Cal. Ct. App. 1987) (upholding a San Francisco Transit Impact Fee which required developers to pay $5 per square foot as a precondition to getting a certificate of occupancy); Bonan v. City of Boston, 496 N.E.2d 640 (Sup. Jud. Ct. Mass. 1986) (challenge to Boston's linkage plan dismissed on standing grounds). *But see* Lucas v. South Carolina Coastal Comm'n, 112 S. Ct. 2886 (1993); Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987) (local government could only condition development on land dedication if the dedication "substantially advanced legitimate state interests"); Hodel v. Irving, 481 U.S. 825 (1987) (a taking may occur even when the amounts at stake are de minimis); First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 704 (1987) (temporary regulation prohibiting use of property may constitute a taking); Pennell v. City of San Jose, 721 P.2d 1111 (Cal. 1986) (pass-through rent control ordinance not a taking as long as landlord allowed fair return on rental property).

buildings or neighborhoods be set aside for low- to moderate-income housing to secure the proper municipal building permits. However, the legal validity of both inclusionary zoning and linkage exactions depends on the city's ability to demonstrate a strong connection between the harm the city is trying to remedy and the exaction or requirement the city is asking the developer to meet.

Stabilization efforts must implement specific, carefully controlled strategies to counteract gentrification and displacement. It is essential that these efforts be accompanied by a recognition of the need to provide and maintain low-income housing independent of market forces.

B. Gentrification & Displacement

Similar to the downward spiral of abandonment, gentrification[324] and displacement[325] are also the result of multi-causal factors. There is a difficulty, if not impossibility, in discussing gentrification in value-free terms, because the process inevitably involves a clash of values between in-movers and displaced residents.[326] While gentrification may indeed increase property values and bring higher maintenance and investment levels in a neighborhood, gentrification necessarily involves displacement of low-income tenants. The costs of this displacement are not evident in the gentrified and renewed neighborhood, but are

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324. *See* Business Ass'n of Univ. City v. Landrieu, 660 F.2d 867 (3d Cir. 1981). The court stated:

> Gentrification is a term used in land development to describe a trend which previously underdeveloped areas become revitalized as persons of relative affluence invest in homes and begin to upgrade the neighborhood economically. This process often causes the eviction of the less affluent residents who can no longer afford the increasingly expensive housing in their neighborhood.

Id. at 874 n.8.

325. *See* GEORGE GRIER & EUNICE GRIER, URBAN DISPLACEMENT: A RECONNAISSANCE 8 (1978). The authors state:

> Displacement occurs when any household is forced to move from its residence by conditions that effect the dwelling or its immediate surroundings, and that: 1) are beyond the household's reasonable ability to control or prevent; 2) occur despite the household's having met all previously imposed conditions of occupancy; and 3) make continued occupancy by that household impossible, hazardous or unaffordable.

Id.

326. *See* SENATE COMM. ON BANKING, HOUSING AND URB. AFFAIRS, S. Rep. No. 871, 95th Cong., 2d Sess. 49, *reprinted in* 1978 U.S.C.C.A.N. 4773, 4822 ("The committee is deeply concerned that the adverse impact of rehabilitation activities is greatest on those who can least afford it."); Richard T. LeGates, *Gentrification Caused Displacement*, 14 URB. LAW. 31, 34 (1982). *See generally* Philip L. Clay, *The Rediscovery of City Neighborhoods: Reinvestment by Long-Time Residents and Newcomers, in* BACK TO THE CITY: ISSUES IN NEIGHBORHOOD RENOVATION 20 (Shirley B. Laska & Daphne Spain eds., 1980).

passed on to city social service agencies and to the displaced poor themselves.

Many of the same factors related to bringing about urban abandonment and disinvestment are also responsible for gentrification. Indeed, in many cases, abandonment and disinvestment are sometimes part of the same cycle as gentrification and serve to "prepare" a neighborhood for the upward spiral of gentrification. It is ironic that the net result of both the downward spiral of abandonment and the upward spiral of gentrification result in displacement of the poor and reduction of urban low-income housing stock.

Most neighborhoods that undergo gentrification have certain general characteristics. These neighborhoods usually have a number of older buildings that, while they may be run down, are structurally sound and have architectural detailing that is interesting or historic. A difference between the abandonment cycle and the gentrification cycle is that a landlord in a neighborhood anticipating gentrification will generally not milk a building to complete structural deterioration, which reduces the desirability to the prospective gentrifier. A gentrifying neighborhood will often be located within walking distance of a central business district, close to a waterfront or some other large public space. Buildings in such areas will probably have been built in a relatively consistent architectural style, such as Victorian-era brownstones or Federal-era row houses.

The demographics of gentrification are part of the baby boom generation. This postwar generation helped to swell the suburbs in the 1950s and 1960s. Many members of this generation were more highly educated and generally held higher paying jobs than their parents. When these baby boomers reached the household formation stage, the types of households that they formed tended to smaller than those of their parents. Thus, while these new households were smaller, there were more of them, each of which needed space. Many members of this highly educated and mobile generation chose to postpone family formation in favor of pursuit of professional fulfillment and wealth in the high-end service sector.[327]

This is where the baby boom generation's coming of age intersected with postwar American deindustrialization in the cities of the 1970s and 1980s to produce gentrification. As discussed earlier, deindustrialization reduced the importance of urban manufacturing, giving rise to a two-pronged service sector economy. The high-end of this new service economy involved expansion of the financial, insurance, legal,

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327. *See* Alonso, *supra* note 2, at 140-44.

and other sophisticated corporate management services, and the number of professional and white-collar jobs ballooned. Many highly educated and professional members of this generation working in high-end jobs in downtown areas chose, for a variety of reasons, to move into residences closer to their jobs.

By taking jobs in the expanding high-end sector located in downtown areas, these young professionals did not continue the steady outward-moving suburban patterns of their parents, but initiated a reverse pattern of moving back to the city. Demographics and geography provided further impetus for this return. By the late 1970s, suburban outward expansion had become so geographically distant from the central city that long commuting times in and out of the city were a powerful disincentive to professionals who already were spending long hours establishing their careers. Because many of these young, educated professionals were deferring having children until their careers were well-established, the attractiveness of suburban schools was diminished. This generation had also developed an appreciation of older architectural styles and neighborhoods, so that when young lawyers, accountants, or stockbrokers looked at an older urban neighborhood they saw historical ambiance, rather than unsightly architectural anachronism.[328]

These prosperous young in-movers had much more disposable income to use for housing and began bidding up housing prices in neighborhoods with desired characteristics, such as historical ambiance. Long-term residents of these working or lower-class neighborhoods were unable to match the amounts that these in-movers were willing and able to pay. Long-time poorer residents were displaced as these neighborhoods underwent gentrification. These residents were often forced into lower-quality housing, which because of inflation and the costs of the forced move, ended up costing them significantly more than they paid for housing in their former neighborhood.

Gentrification also generated increasing pressure on low-income housing in nongentrifying urban areas. Low-income housing in the 1980s suffered from Reagan-era policies that brought about major defunding and cutbacks in federal housing programs assisting in creation of new low-income housing. When these cutbacks were coupled with increasing gentrification, displaced low-income residents faced a drastically shrinking supply of available housing. This low-income housing scarcity was further exacerbated by growing landlord milking and arson-for-profit as landlords in deteriorating areas tried to

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328. *See* Marcuse, *supra* note 1, at 202 ("The shifting preference for quiche rather than hamburgers, boutiques instead of discount stores, has its spatial accompaniments.").

squeeze remaining value out of their properties as quickly as possible, taking yet more affordable housing units off the market.

As discussed earlier, growing numbers of urban low-income residents were caught in a squeeze. On the upper-end, they were being displaced by gentrification that increased the value and quality of their old neighborhoods. In the middle, the poor were being forced into "shelter poverty," that is, into situations where they were paying a much greater proportion of their income than they could afford for even low amenity level housing. And on the lower-end, many of the depressed neighborhoods that the poor were displaced into were being prematurely ruined by milking, abandonment, and arson-for-profit.

Co-op and condominium forms of home ownership became widespread during this period.[329] Many baby boomers who were priced out of the very expensive high-end luxury housing markets of the suburbs, but who wanted the tax benefits of ownership, welcomed these more affordable ownership alternatives. While luxury housing in the suburbs had been getting more expensive during this period, urban housing prices had generally been dropping. For all these reasons, older urban housing became increasingly attractive to young adults of relative affluence.

Once gentrification began in an urban neighborhood, explosive price increases for limited housing followed. Growing demand for housing and the resultant rise in prices enticed urban landlords to convert their rental units into high-priced condominiums. The new wealthy residents bid up prices beyond what long-term residents could afford. The latter were eventually displaced to other low-income areas, which were likely to have higher prices and lower amenity levels than the areas they had just left. Because the Reagan administration drastically reduced federal subsidies supporting the building of new low-income housing units, partly in reliance on the filtering theory of housing markets, units lost to condominium conversion did not get replaced, and the affordable housing supply dwindled. Many displaced people were unable to obtain even low-quality housing.

In this way, the pressure on low-income households increased. Deterioration, demolition, arson-for-profit, and abandonment, usually

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329. *See generally* OFFICE OF POLICY DEVELOPMENT AND RESEARCH, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES: A NATIONAL STUDY OF SCOPE, CAUSE AND IMPACTS (1980); *see also* Note, *The Condominium Conversion Problem: Causes and Solutions*, 1980 DUKE L.J. 306 (1980); Bannerman v. City of Fall River, 461 N.E.2d 793 (Sup. Jud. Ct. Mass. 1984); Flynn v. City of Cambridge, 418 N.E.2d 335 (Sup. Jud. Ct. Mass. 1981); Grace v. Town of Brookline, 339 N.E.2d 1038 (Sup. Jud. Ct. Mass. 1979).

followed by expensive renovation, drastically diminished the housing available to them. Gentrification transformed low- to moderate-income neighborhoods that had managed to avoid deterioration and abandonment. Housing prices were driven upward so that low-income residents were economically squeezed out of their former neighborhoods.[330]

Gentrification has been and continues to be a serious concern to low-income residents of urban America. The phenomenon, when viewed in a frame that looks beyond the resuscitation of a particular neighborhood's property values for new residents, is deeply problematic and represents the collision of rich and poor. A gentrified neighborhood represents the embodied aesthetics and values of a wealthy new urban elite, articulated through the language of postmodern aesthetics and trickle-down values. As has occurred many times before, the poor become marginalized externalities, ejected from these gentrified neighborhoods into other depressed and prematurely decaying areas, where questions of low-income housing, economic pain, and social equity will not disturb graceful gentrified fantasies of the vitality and charm of urban living.[331]

C. PostModern Aesthetics

Around 1970, a change swept the architecture and design professions causing a shift from the reigning modernist orthodoxy to a set of attitudes that may loosely be called architectural postmodernism.[332]

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330. *See* Leslie Brueckner, Linkage and the Low Income Housing Crisis (unpublished manuscript on file with Professor Duncan Kennedy, Harvard Law School).

331. *See* REPORT OF THE MANHATTAN BOROUGH PRESIDENT'S TASK FORCE ON HOUSING FOR HOMELESS FAMILIES, A SHELTER IS NOT A HOME (1987); PLUNZ, *supra* note 12, at 339 ("Housing starts declined from 20,000 in 1985 to 6,400 in 1987, indicating a saturation point for luxury within the marketplace. But the economic infrastructure has also been saturated with poverty, as the gap between rich and poor continues to widen. The cost of housing has increased disproportionately for the poor."); *see also* MICHAEL HARRINGTON, THE NEW AMERICAN POVERTY (1985); LOW-INCOME HOUSING INFORMATION SERVICE, LOW-INCOME HOUSING AND HOMELESSNESS: FACTS AND MYTHS (1989); NATIONAL HOUSING TASK FORCE, A DECENT PLACE TO LIVE (1988); NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANT'S RIGHTS (1981); NATIONAL HOUSING LAW PROJECT, SUPPLEMENT TO HUD HOUSING PROGRAMS: TENANT'S RIGHTS (1985); Barbara Sard et al., *Homeless: A Dialogue on Welfare and Housing Strategies*, 23 CLEARINGHOUSE REV. 105 (June 1989).

332. *See* JEAN-FRANCOIS LYOTARD, THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE (1979); *see also* Richard Bolton, *Architecture and Cognac, in* DESIGN AFTER MODERNISM: BEYOND THE OBJECT 87 (John Thackara ed., 1988):

The failure of modernism has given way to malaise, confusion, and reactionary agendas, it seems that architecture has chosen this time to ignore its social commitments, instead withdrawing into the world of the corporation . . . the architect is a plausible spokesperson for luxury products because the architect is a

Many factors converged to bring about this reorientation of taste and theory: increasingly strident criticisms of modernism within the architecture profession itself;[333] the civil rights movement; the student protests of the 1960s and their relationship to community resistance to urban renewal and expressway construction;[334] grass-roots protests against the Vietnam war, which engendered skepticism toward governmental and corporate claims of "working for the social good;" hostility to the use of the social sciences to back up these institutional claims of bureaucratic authority;[335] generational restlessness and desires to overturn prior orthodoxies; growing disillusionment with technocratic, planning-by-the-numbers approaches coupled with a rise in the rhetoric of small scale, community-level neighborhood planning; increasing affluence of the middle- and upper-classes that increased their access and sensitivity to different areas and cultures of the country and the world; a growing perception of architecture's homogenization under the aegis of the International style and its fierce geometric purism and its ahistorical, confrontational stance;[336] and perceptions, again arising out of the Vietnam experience, of the steril-

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member of the corporate class. He already speaks for the system through his work—the building is just one more luxury commodity.

. . . In the past, architecture identified with religion or science or engineering: today another equation is apparent: architecture = advertising. For it is advertising that is the dominant form of discourse in contemporary life, and architecture and all other forms of cultural production have been recast by this fact.

. . . It is this process of social control that architecture has borrowed from advertising. Present-day architecture turns our attention to discontinuities of surface, distracting us from the institutional authority that forms architecture. Post-modern pastiche, architectural 'quotation'—architecture portrays experience and history in the same way as the media do, as an archive of stereotypes. Like advertising, architecture offers a simulation of difference while upholding the power of the same.

Id. at 87-89.

333. *See generally* JACOBS, *supra* note 72; PETER BLAKE, FORM FOLLOWS FIASCO: WHY MODERN ARCHITECTURE HASN'T WORKED 10 (1977) (" 'Modern Architecture is a flop . . . there is no question that our cities are uglier than they were fifty years ago.' "); BRENT C. BROLIN, THE FAILURE OF MODERN ARCHITECTURE (1976); FRAMPTON, *supra* note 10, at 290 ("The Loosian recognition of the loss of cultural identity that urbanization had brought in its wake returned with a vengeance in the mid 1960s as architects began to realize that the reductive codes of contemporary architecture had led to an impoverishment of the urban environment."); ADA L. HUXTABLE, WILL THEY EVER FINISH BRUCKNER BOULEVARD? 11 (1970); WOLFE, *supra* note 109.

334. *See* Mike Davis, *Urban Renaissance and the Spirit of Postmodernism*, NEW LEFT REV. 106 (1984).

335. *See generally* THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1962); EDWARD A. PURCELL, JR., THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATIONALISM AND THE PROBLEM OF VALUE (1973).

336. *See* Marshall Berman, *The Experience of Modernity, in* DESIGN AFTER MODERNISM 45 (John Thackara ed., 1988).

ity of suburban life and a concomitant romanticization of urban life as more "primitive" or "real."

Against this complex backdrop of social and generational conflict, the very fabric of architectural theory itself was shifting. While much of twentieth century modern art moved toward emptiness, self-destruction, chaos, and contradiction, because people had to live and work in architects' buildings, the field of architecture was not similarly able to decompose itself.[337]

In the early years of the twentieth century, architects could propose grand schemes that were beyond then-current production capacities. However, after the labor and materials shortages of World War II, mass-production building technology—poured cement, air-conditioning, glass production, etc.—began catching up with some of the possibilities suggested by architectural theory. This gap between theory and technology's ability to produce what theory proposed allowed earlier twentieth century architects to ignore shortfalls between their rhetoric and reality. As this gap closed, problems with mass-produced modernism became clear (from Pruitt-Igoe to the Pan Am Building), and the critique of modernism emerged.

Instead of enabling a new form of society (the failed promise of early modernism), architecture had been reduced to a mere instrument of production in the service of large corporate and institutional elites that dominated the postwar world. Against increasing attacks, late architectural modernism tried to justify itself by claiming that architects were design specialists (with access to complex analyses and studies), and that their designs were uniquely "objective" and rational. However, in the Watergate/post-Vietnam climate of the early 1970s, many claims of professional expertise by authority were successfully challenged. Architectural modernism fell victim to both external and internal critiques of it authoritative claims.

As critics assailed the way in which architectural modernism facilitated malignant social engineering, two emerging movements—the historical preservationists and the community organizers—began finding that many of their aims overlapped. Preservationists were opposed to architectural modernism because of its destruction of older neighborhoods and buildings, which preservationists likened to a natural resource that must be conserved and protected.[338] Grass-roots community activists opposed architectural modernism on the grounds

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337. *See generally* GARDNER, *supra* note 5, at 768-88; MODERN ART AND MODERNISM: A CRITICAL ANTHOLOGY (Francis Frascina & Charles Harrison eds., 1982).

338. *See generally* The National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 to 470w-6 (1970), *amended by* 16 U.S.C. § 470 a(a)(6) (1980).

that it fragmented whatever small-scale local political power might have existed in an area marked for development as well as on the grounds that the planning process tended to lack inputs for traditionally excluded and marginalized groups. Community activists were also opposed to the general level of corporate identification and centralized power that architectural modernism represented. Against the collapse of architectural modernism, preservationists and organizers laid groundwork for the acceptance of postmodernism.

The rapid destruction and increasing scarcity of older buildings, such as brownstones and row houses, spurred the historic preservation movement into obtaining legislation designating certain buildings and neighborhoods as historic, thereby preventing their demolition. The effective lobbying of historic preservation groups, and the demonstrated commercial success of restored buildings and areas wrought a change in public attitudes. Older buildings and neighborhoods no longer seemed like outmoded impediments to rational modern planning, and urban planners found themselves forced to work existing structures into their "revitalization" plans.[339]

Historic preservation heightened awareness and appreciation of reclaimed historicity, and in so doing, placed an aesthetic and economic premium on older buildings in general.[340] While renovators of historic districts focused their attention on architectural detail and historical accuracy, completed historic districts were generally used to accommodate business directed at tourists, like upscale restaurants, boutiques, and museums. The preservationist impulse enriched the postmodern architectural consciousness of architectural elites which, in turn, affected the tastes and investment decisions of potential developers and buyers, eventually feeding into gentrification trends of the

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339. *See* Pennsylvania Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978) (prohibitions imposed by the New York City Landmark Preservation Law restricting construction of a high-rise skyscraper on top of Grand Central Station served general welfare and did not constitute a taking); Maher v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975) (upholding constitutionality of municipal historic preservation ordinance); *see also* National Historic Preservation Act of 1966, 16 U.S.C. § 470(b); NATIONAL TRUST FOR HISTORIC PRESERVATION, A GUIDE TO STATE HISTORIC PRESERVATION PROGRAMS (1976); NATIONAL TRUST FOR HISTORIC PRESERVATION, DIRECTORY OF LANDMARK AND HISTORIC COMMISSIONS (1976); Eric Morgenthaler, *Design for Living: Old-Style Towns Where People Have Modern Backers*, WALL ST. J., Feb. 1, 1993, at A1, A14; Diana Solis, *Past v. Future: A Historic Black Area in Houston Battles Developers and Decay*, WALL ST. J., Apr. 12, 1991, at A1, A6. *See generally* Note, *The Police Power, Eminent Domain, and the Preservation of Historic Property*, 63 COLUM. L. REV. 708 (1963); Comment, *Aesthetic Zoning: Preservation of Historic Areas*, 29 FORDHAM L. REV. 729 (1961).

340. *See* Lang, *supra* note 1, at 158.

1970s and 1980s.[341] The new preference for historical ambiance, both in specific dwelling and general neighborhoods brought a generation of inhabitants back to the central city neighborhoods their grandparents had fled long ago.[342]

A selective revival of older historical styles formed the basis for architectural postmodernism, as it emerged in the 1960s and 1970s. Both the suburbs and the city manifested similar concerns with self-conscious historical revival, emphasizing expensive and historically accurate finish and detailing in hardware, fixtures, and materials, which were consistent with whatever period style had been selected by the architect. Even the corporate homogenization of the 1970s commercial strip reflected a similar retreat from modernism and revival of historical sensibilities, in, for example, the McDonald's brick and shingle mansard-roofed franchises.

Architectural postmodernism can be roughly described as a move from harshly geometric purism of the glass slab to the quaint, the vernacular, the stylish, and the ornamented. At least superficially American cities and suburbs embraced the postmodernist style. It seemed playful and nonthreatening, unlike the confrontational, harsh, and unforgiving orthodoxy of "high" modernism. Houses, buildings, and malls acquired nonfunctional trim, columns, false pediments, and odd combinations of pastel colors. The Palladian window became ubiquitous, whether in an office park, a mall, or a new home.

In 1966, architect Robert Venturi published his influential postmodernist manifesto, *Complexity and Contradiction in Architecture*, and proclaimed that "it is perhaps from the everyday landscape, vulgar and disdained, that we can draw the complex and contradictory order that is valid for our architecture."[343] It was, however, ironic that at the same time Venturi was celebrating the banal, tacky, but oddly inventive style of the mid-century American commercial

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341. *Id.* The author states:

> An initial pre-gentrification stage occurs when urban pioneers stake out candidate neighborhoods; these pioneers are the artists, students, and others who value the ambience of the city but, due to low incomes, seek out undiscovered low cost areas. Such areas are almost always characterized by significant architecture and a convenient location near the city center. *Id.* at 158.

342. *Id.* ("[G]entrifiers are typically affluent, well educated professionals in their twenties or thirties and it is to their upscale tastes to which the market responds.").

343. *But see* FRAMPTON, *supra* note 10, at 291 ("[V]enturi sought to transcend through the contradictory circumstances under which [he was] asked to build . . . [but subsequent post-modern architecture] seems to degenerate into total acquiescence and the cult of 'the ugly and the ordinary' becomes indistinguishable from the environmental consequences of the market economy."). *See generally* VENTURI, *supra* note 10.

strip, these strips were in the process of becoming toned-down, sub-dued, standardized, and homogenized.

The abandonment of architectural modernism and subsequent widespread adoption of the postmodern style led to a paradoxical situation: architects began using historical references to increase visual diversity; however, as more and more architects began using many of the same references and elements, visual diversity actually decreased, and suburban and urban landscape became homogenous, albeit in a postmodern mode. The chaotic, neon commercial strips of the 1940s and 1950s were rapidly becoming extinct. Gaudy, quasi-"moderne" chrome and formica coffee shops with parabola-like signs took on a country style, complete with wood beams, brick exteriors, and land-scaping that used low plants to soften the look of the buildings with-out hiding them. Gone were the days when buildings stood alone in asphalt deserts. As postmodernism subdued the commercial strip, it likewise subdued the mass-produced suburban tract house. New sub-urban construction had moved upscale, becoming architecturally more sophisticated.

Venturi advanced the principles of "accommodation" and "multiplicity" over the architectural modernist principles of "confronta-tion." This meant that architects should be aware of local context and try to use visual elements of a particular area when designing a new building. For example, in the northeast, red colonial brick would be a good local choice, or likewise the use of antebellum-style Greek columns in the south, or clay roofing tile and adobe in the southwest.

A generally unacknowledged core assumption of much postmodern design was that refined tastes for quaintness and subtle historical eclecticism signified affluence.[344] Catering to these appetites, postmodern design and high architecture turned a blind eye to the problems of displacement brought about by gentrification and sought to re-establish visual connections with quaint local geographical set-tings like canals, waterfronts, and rivers. These sites deployed "new" historical developments, attempting to recapture architecture's all-but vanished populist constituency by giving people buildings that they "liked" again.

Shopping malls and high-end home design of the 1970s and 1980s similarly incorporated a postmodern vocabulary of historical ele-ments. Stores in shopping malls took on pseudo-historical facades, clapboard next to Tudor, Western Frontier next to Georgian, and so on. By the mid-1970s entire plazas were developed in a single bogus

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344. *See* Richard Plunz & Kenneth Kaplan, *On Style*, 5 PRECIS 32, at 43 (1984).

historical style with "ambiance" a crucial buzzword that justified the creation. "Ambiance creation" was also applied to the city center where streets containing run-down stores, warehouses, and docks were reclaimed and adapted for upscale boutiques and expensive cafes.[345] These areas were given newly cobbled streets of interlocking brick that looked appropriately "old," with new "old" street lights and signs.[346] However, the pastiche was still disorderly, and no wonder, to create correct ambiance, history was reworked freely, with a Disney-esque hand.[347] At its core, "ambiance enhancement" was nothing more than commercial gentrification and displacement. Older mixed-use and working-class districts were replaced by trendy shops, offices, and condominiums occupied by yuppies who moved back to the central city and paid a premium for recreated ambiance.

Formerly undistinguished Victorian-era buildings were sandblasted to remove peeling paint and grime. They were then steam-cleaned, repainted, and fitted with new doors, and appropriate interior moldings, new brass hardware, and new wrought iron fences, all meticulously recreated in the correct historical style. The obvious "brand-newness" of renovated condominiums and apartment buildings was a dreamlike, surreal superimposition on the historical structure of the building itself. These gentrified neighborhoods of the 1980s, like their commercial counterparts, had an air of unreality about them. Such tasteful, luxurious unreality contrasted sharply with the harsh predicament of people displaced by gentrification, and their bogus antiquity belied their complete modernity with respect to communications and security technology.[348]

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345. *See* PLUNZ, *supra* note 12, at 339.

346. See New York's South Street Seaport; Boston's Fanueil Hall; Seattle's Pike Street Market.

347. *See* Bolton, *supra* note 332, at 92 ("Much postmodernism is merely 'decadent' modernism; no longer able to sustain the fantasy of utopia, we cynically remain tied to its shell of illusions. Postmodernism might be better name 'fin-de-moderne' or even 'capitalist baroque.' "); *see also* Jerry Adler & Marc Peyser, *A City Behind Walls: After the Riots in Los Angeles, Planners Search for a New Design for Living*, NEWSWEEK, Oct. 5, 1992, at 68-69 (discussing "fortification chic").

348. SEE Reich, *supra* note 9, at 270-71.

> Public funds have been applied in earnest to downtown "revitalization" projects, entailing the construction of clusters of postmodern office buildings (replete with fiber-optic cables, private branch exchanges, satellite dishes, and other state-of-the-art transmission and receiving equipment), multilevel parking garages, hotels with glass enclosed atriums rising twenty stories or higher, upscale shopping plazas, and gallerias, theaters, convention centers, and luxury condominiums. Ideally, the projects are entirely self-contained, with air-conditioned walkways linking residential, business, and recreation functions . . . . As Americans continue to segregate according to what they earn, the shift in financing public services from the federal government to the states, and from the

Thus, shifts in the aesthetic ideology of urban planners of the 1970s and 1980s helped produce the devastating phenomena of abandonment, gentrification, and displacement in urban areas of the U.S. The aesthetic and economic revaluation of "historical ambiance" had extremely negative consequences for poor residents of urban neighborhoods, as much wealthier and better educated residents began desiring neighborhoods with proper "historical ambiance." Ambiance-seekers drove prices upward in these neighborhoods, unleashing the twin scourges of speculation and abandonment on these areas. Landlords in such neighborhoods had to decide whether to cash in immediately or wait for gentrification to proceed further. Whichever decision they made, however, lower-income residents had to be removed. Accelerated deterioration and abandonment of rental stock in areas bordering on gentrifying neighborhoods were widespread as landlords and speculators drove out lower-income residents to make way for hoped-for windfalls from gentrification. As the older stock was upgraded and sold or rented to new occupants, the quality and amount of low-income housing stock diminished.

The privatization rhetoric of the Reagan era valorized gentrification as a free-market solution to urban decay. It celebrated trickle-down economics and supply-side theory allowing policymakers to feel that they were helping low-income urban residents by supporting the creation of new luxury housing in the suburbs. At the same time, many of these policymakers were busy dismantling the foundations of low-income housing policy on federal, state, and local levels.[349]

Conclusion

Since the early nineteenth century, American planning has, with

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states to the cities and towns, has functioned as another means of relieving America's wealthier citizens of the burdens of America's less fortunate.

Id. at 273. A darker, yet more revealing aspect of urban revitalization may be seen in New York City's attempts to place decals of windows with curtains and flowerpots in the burned out windows of South Bronx tenements so that drivers passing these buildings on the freeway would not be disturbed by urban blight. *See* Patricia Leigh Brown, *The Architecture of Those Called Homeless*, N.Y. TIMES, Mar. 28, 1993, at A1, A18; William Geist, *Residents Give a Bronx Cheer to Decal Plan*, N.Y. TIMES, Nov. 12, 1983, at 1; Robert McFadden, *City Puts Cheery Face on Crumbling Facades*, N.Y. TIMES, Nov. 14, 1983, at 18; Robert McFadden, *Derelict Tenements in the Bronx to get Faked Lived-in Look*, N.Y. TIMES, Nov. 7, 1983, at 1; Roger Starr, *Fake Blinds Can't Hide Blight*, N.Y. TIMES, Nov. 14, 1983, at 18.

349. *See* Peter Marcuse, *The Contradictions of Housing, in* HOUSING: SYMBOL, STRUCTURE, SITE, *supra* note 1, at 23 ("[P]rivatization accentuates polarization. As the well-to-do become better off in ever narrower cirles, the less well-off become less well off in ever larger numbers."); *see also* Milo Geyelin, *Hired Guards Assume More Police Duties as Privitization of Public Safety Spreads*, WALL ST. J., June 1, 1993, at B1, B8.

varying degrees of success, sought to reconcile the city with the countryside, either by bringing the countryside into the city (i.e., parks) or by bringing the city into the country (i.e., highways and suburbs). Two ideological strands have influenced the direction of twentieth century U.S. urban and suburban development. The anti-urban strand advanced the growth of suburban development in the twentieth century, often with disastrous results for the core cities they surrounded. The efficiency-based strand, on which zoning is based, intertwined with Arcadian idealism to produce, in both urban and suburban spaces, through the vehicles of land use planning, a relentless segregation of uses. This spatial segregation of uses contributed to and reflected strict economic, social, class, and racial segregations. More pernicious segregations were often masked under the more neutral, efficiency-based language of use zoning.

During the mid-twentieth century, spatial segregation based on differing uses underwent further transformation as U.S. society grappled with racial discrimination. The massive, continuous migration of displaced southern black workers into northern industrial cities throughout most of the twentieth century affected macroeconomic trends and radically influenced patterns of racial distribution in American cities and suburbs. As southern migrants flooded the northern cities, large numbers of prior city dwellers fled, following ambiguous Arcadian promises of the suburban life. Post World War II suburbs like Levittown were created to accept them. These suburbs were supported and subsidized in large part by federal policies like the construction of the interstate highway system and various tax incentives encouraging suburban home ownership. The anti-urban Arcadian ideal was marketed *en masse*. The mass marketing of Arcadia, which the growth of the suburbs represented, was paralleled by the widespread reception of architectural modernism, which as an element of urban renewal, was seen as a panacea for problems of deteriorating inner cities.

During the first half of the twentieth century, architectural modernism served to disguise from architects and planners the degree to which their choices of building type and style were not based on objective, scientific, and functional criteria, but were in large part based on unarticulated, value-laden, and subjective pre-biases. According to planners influenced by architectural modernism, a dwelling's form was supposed to be tailored to the functions of its inhabitants. Arising in early twentieth century Europe, architectural modernism initially developed out of a revolutionary socialism impulse seeking to transform the world by creating new structures for a new society. However, in mid-twentieth century America, architectural modern-

ism retained only the stock geometric forms of its European genesis and had recanted or lost the potentially wide-ranging social and ideological implications of the style's inception.

In mid-twentieth century America, architectural modernism became a key tool of urban planners working hand in hand with unscrupulous developers and incompetent bureaucrats. As such, it generated substantial opposition from a diverse mix of groups during the 1960s and 1970s, including grass-roots community activists, historical preservationists, and many younger architects. Opposition to architectural modernism crystallized into the postmodern style that reexamined and revalued the historical detail, nuance, and context of older urban structures, making gentrification possible.

This aesthetic and economic revaluation of older building styles coincided with a number of macro-demographic and economic trends, such as the coming of age of the post war baby boom generation, the deindustrialization of the U.S. economy in the 1970s and 1980s, the rise of the service economy and its move into the city centers, and the sharp bifurcation of the general service economy into polar high- and low-end jobs. Revalued "historical ambiance" was disseminated by architectural elites during the 1970s and 1980s and was an important, but largely unacknowledged, factor in the processes of gentrification and displacement.

The role of law in this dense mix of factors has been pervasive, but indeterminate. At different points in time federal and state laws were antagonistic toward social reformers with progressive agenda that included proposals for high-quality low-income housing on a wide scale. During the first third of the twentieth century, for example, racial discrimination was an official policy of the FHA, which routinely denied mortgage insurance in areas with a racial mix.[350] Two decades later, the Supreme Court outlawed the use of racially restrictive covenants,[351] and almost twenty years after that, Congress enacted Title

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350. *See* Hirsch, *supra* note 190. The author states:

> This is not to say frequent conservative attacks on government intervention are totally without basis. For example, in the area of housing, the Federal Government has had a contradictory and wavering urban housing policy, which even when it was coherent, could be seen as manifesting malign intent towards minorities and the poor . . . . The Federal Government never produced anything coherent enough to be called an urban "policy" but it did develop a series of related programs, that, in their cumulative effect, greatly accelerated the social segmentation of metropolitan America and provided sanction for existing racial patterns.

Id. at 69.

351. *See* Shelley v. Kraemer, 334 U.S. 1 (1948).

VIII,[352] officially outlawing racial discrimination in housing. Nonetheless, discrimination in housing proved to be tenacious, successfully resisting the prescriptions of legislatures, policymakers, and courts.

Government's role in establishing the baseline of entitlements and expectations has often been ambiguous, with various agencies and departments frequently working at cross purposes with one another. At other points and in those rare situations when government and private interests have been able to reach rough consensus on the need for housing reform, various laws implementing housing policies have been ineffective, underenforced, too little too late, or simply irrelevant, failing to squarely face entrenched situations of poverty and social disadvantage caused by the problems of low-income housing policy in the U.S.

There has been a conceptual crisis in American urban planning. Growing stalemates over shrinking federal, state, and local budget allocations for affordable housing show the effects of a severe breakdown of confidence in the ability to reach consensus on what the content of a collective public interest might be, and how this public interest is advanced by the widespread provision of decent and affordable housing. Such a dialogue and consensus is necessary to justify the massive public and private interventions needed to implement deep and widespread housing reform.

During the 1980s, predominant public principles favored private market actions as the government favored policies premised on the filtering model of housing markets. In the area of affordable housing, as legitimate public action diminished, funding decreased, and government agencies responded to smaller budgets by becoming mere "rubber-stamps" for proposals submitted to them by wealthy private interests, rather than originating policies promoting a well-defined and independent public interest.

The problem of restoring faith in a public interest, to be implemented through a reinvigorated area of acceptable public action, is key to solving the problem of affordable housing. As we have seen, the "private" housing market is not really that private, and the sphere of government action (or inaction, as in the 1980s) is not that "public." The re-formulation of a vigorous and substantive public domain transcending private interests will not be easy or simple, but is absolutely necessary if we are going to be able to confront grave problems in the area of housing, such as homelessness, sharp economic and ra-

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352. *See* The Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, *amended by* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619.

cial polarization, and pernicious racial discrimination, which only grow more serious as time goes on.

The contemporary U.S. city is Dickensian, embodying, "the best of times and the worst of times," with reinvigorated financial centers within walking distance of burned-out enclaves of entrenched poverty, despair, and homelessness. These contradictions must be grappled with by policymakers, without allowing either stylistic or technocratic pre-biases to obscure the profoundly political and social nature of so-called "design problems." As our cities and suburbs face the next century, rife with conflicts and possibilities, the distorting blinders of aesthetic ideologies of the past, which have repeatedly influenced decisions by the powerful affecting the poor and powerless, must be confronted, debated, and cast off, as a first step in fashioning new policies, purposes, and principles that do more than lock us into unacceptable cycles of paralysis and polarization.