

THE YALE LAW JOURNAL

NICOLE STELLE GARNETT

Save the Cities, Stop the Suburbs?

Sprawl: A Compact History

BY ROBERT BRUEGMANN

CHICAGO: UNIVERSITY OF CHICAGO PRESS, 2005. PP. 306. \$27.50

The City: A Global History

BY JOEL KOTKIN

NEW YORK: MODERN LIBRARY CHRONICLES, 2005. PP. 256. \$21.95

AUTHOR. John Cardinal O'Hara, C.S.C., Associate Professor of Law, Notre Dame Law School. I am indebted to Peg Brinig, Bob Ellickson, Tracey Meares, John Nagle, Mary Ellen O'Connell, Eduardo Peñalver, and Rick Garnett for valuable comments and suggestions. Eric Babbs provided excellent research assistance.



REVIEW CONTENTS

INTRODUCTION	600
I. DON'T STOP THE SUBURBS!	603
A. Natural, Universal, and Good	603
1. Sprawl in Historical Perspective	604
2. Sprawl as a Safety Valve	605
B. Let the Cities Die?	609
II. SACRED, SAFE, AND BUSY	612
A. Sacredness, Safety, and Busyness	613
B. Avoiding an Ephemeral Future	615
III. SAVING CITIES WITHOUT STOPPING SUBURBS?	617
A. Safety	618
B. Safety and Busyness	621
C. Busyness, Sacredness, and Beauty	625
CONCLUSION	629

INTRODUCTION

The fact that the word “sprawl” is uttered by curling the upper lip into a snarl captures some of the emotion generated by the current debate over American land use policy. Two recent books—Robert Bruegmann’s defense of sprawl and Joel Kotkin’s ambitious but short history of great cities¹—provide an opportunity to consider sprawl’s costs and benefits and also to examine the case for legal efforts to curtail sprawl in order to save our cities. These are important questions because, as Bruegmann observes, calls for “stopping” sprawl may proceed from serious misconceptions about its extent, causes, and consequences; they also may systematically underestimate the risks attendant to growth management.

Bruegmann’s descriptive account of suburbia, *Sprawl: A Compact History*, which proceeds on the assumption that dense areas are not sprawling ones, is informative and, at times, surprising. (For example, the densest urbanized area in the United States is Los Angeles.²) Bruegmann’s most important contribution, however, is to place the current debate over the distributional consequences of suburban growth controls in historical perspective. Bruegmann documents that all cities sprawl, in part because residents have long sought to escape the negatives of urban life when it has become possible for them to do so.³ And, because city life is most difficult for the poor, Bruegmann argues, sprawl does not exacerbate economic inequities but mitigates them.⁴ Ultimately, however, Bruegmann undermines the strength of his arguments about the benefits of *suburbs* by expressing a total lack of concern for the fate of American *cities*. A “so what” tone pervades his book, in large part because he views the city-suburb divide as an artificial one. Suburbs, in his view, are simply a less dense form of “urban” development.⁵ Yet it is possible to agree with Bruegmann that American suburbs are neither bad nor out of control and still to believe that the line between “city” and “sprawl” is

1. ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* (2005); JOEL KOTKIN, *THE CITY: A GLOBAL HISTORY* (2005).

2. Density in the Los Angeles area rose 26.4% between 1950 and 1990; in 2000, the area’s overall density was over 7000 people per square mile, nearly twice as dense as the Chicago area and significantly denser than the New York area. BRUEGMANN, *supra* note 1, at 64-65.

3. *See id.* at 21-32 (discussing early sprawl); *id.* at 73-80 (discussing sprawl outside the United States).

4. *See id.* at 215-19 (discussing winners and losers of suburban growth controls).

5. *See id.* at 18 (describing the historical urbanization process as encompassing sprawl).

not simply a matter of density.⁶ Cities, by virtue of their mixed land use patterns (and perhaps also their greater densities) may be different, in valuable and important ways, from suburbs. Moreover, even people who endorse Bruegmann's view that cities and suburbs are simply flip sides of the same urban development coin may harbor concerns about the urban poor, many of whom live in cities not by choice but because they have no choice. Thus, Bruegmann's refusal to countenance arguments that cities are worth saving may leave many readers asking if he is telling only part of the story.

Joel Kotkin's short history of urban life, *The City: A Global History*, begins to fill in these gaps in Bruegmann's book. Bruegmann's work is the stronger of the two; Kotkin's book is not, nor is it intended to be, an academic treatment of cities. But Kotkin offers a critical insight worthy of serious consideration in the academic debate about American land use policy. Like Bruegmann, Kotkin disfavors limits on suburban growth.⁷ But he also makes a strong case that cities can serve unique economic and social purposes. Cities, Kotkin argues, are "sacred, safe, and busy" places. That is, they inspire awe, serve as centers of community and economic life, and keep their citizens secure.⁸ Most of Kotkin's book is devoted to describing how various kinds of cities—Muslim and Christian, Eastern and Western—have historically fulfilled these important functions. But a clear contribution of his book is to ask why so many modern American cities now fulfill none of them. In fact, social critic James Howard Kuntsler might well have been describing Detroit, Cleveland, or St. Louis, when he complained that American *suburbs* are "soulless[,] . . . demoralizing" places that "disable[] whole classes of decent, normal citizens."⁹

6. There is a serious definitional challenge posed by any discussion of "sprawl": Should sprawl be measured by population densities (Bruegmann's choice)? By the total amount of land consumed by development? By the extent of development outside of major cities' boundaries? Or by land use patterns (for example, mixed-use versus single-use development)? Throughout the book, Bruegmann uses the Census Bureau's statistics for "urbanized areas"—areas "with a strong connection back to the central population centers and more than 1,000 people per square mile"—to describe trends in urban and suburban development. *Id.* at 61. These statistics do not map onto the more familiar "metropolitan areas," nor do they provide a useful dividing line between center cities and suburbia. *Id.* at 60-61 (explaining why statistics for "urbanized areas" are more useful in determining densities than statistics for "metropolitan areas" or municipalities).

7. See Joel Kotkin, *Suburbia: Homeland of the American Future*, NEXT AM. CITY, Summer 2006, at 19, available at http://www.americancity.org/article.php?id_article=183 (criticizing growth management).

8. See KOTKIN, *supra* note 1, at xix-xxii.

9. JAMES HOWARD KUNTSLER, *HOME FROM NOWHERE: REMAKING OUR EVERYDAY WORLD FOR THE TWENTY-FIRST CENTURY* 112 (1996).

The final Part of this Review uses Kotkin's "sacred, safe, and busy" formula as a template for considering what might be done to save cities *without* stopping the suburbs. Kotkin's work challenges city leaders to engage in serious soul-searching about what they might do to make city life attractive and enlivening, both for suburbanites and for their current residents. Many scholars assume that cities are so enfeebled, so systematically disadvantaged, as to be incapable of competing with suburbs.¹⁰ Yet, despite the steady progression of suburban sprawl, many cities have experienced a comeback in recent years.¹¹ Kotkin makes a plausible case that renewed city fortunes are the result of cities' own efforts to better compete with suburbs, especially by seeking to restore a basic sense of security in urban neighborhoods.¹² As Kotkin observes, however, safety is not enough. Cities must also be busy places and provide some modern version of "sacred" spaces. Here, land use scholars (and city government leaders) have much to learn from the inward-looking approach championed by order-maintenance scholars.¹³ Just as reforms to city policing practices make residents feel safer, city leaders should ask whether reforms to city land use policies could help restore social and economic vitality to our urban cores. If cities are to thrive, then they must demonstrate (contra Bruegmann) that the city-suburb distinction is about more than population densities—that cities serve social, cultural, and economic functions that suburbs do not. An important way to do so, in my view, is to guarantee that city land use policies enable city leaders to capitalize on urban distinctiveness. One important path to that goal, explored below, may be permissive land use reforms in our cities, rather than prohibitory ones in the suburbs.

-
10. See, e.g., Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1136-37 (1996) ("Less affluent localities are nominally free to compete . . . , but if they start out having less to offer in terms of high quality services or low taxes there is, in practice, relatively little they can do to attract the affluent or increase their per capita tax base.").
 11. See generally Patrick A. Simmons & Robert E. Lang, *The Urban Turnaround*, in 1 REDEFINING URBAN AND SUBURBAN AMERICA: EVIDENCE FROM CENSUS 2000, at 51, 54 (Bruce Katz & Robert E. Lang eds., 2003) (finding that the 1990s was the best postwar decade for cities); Rebecca R. Sohmer & Robert E. Lang, *Downtown Rebound*, in 1 REDEFINING URBAN AND SUBURBAN AMERICA, *supra*, at 63, 65-70 (providing statistical evidence that many downtown areas of major cities experienced population gains during the 1990s).
 12. See KOTKIN, *supra* note 1, at 154-55; see also *infra* notes 98-110 and accompanying text (discussing the order-maintenance agenda).
 13. See, e.g., Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349 (1997); Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 LAW & SOC'Y REV. 805 (1998).

I. DON'T STOP THE SUBURBS!

Robert Bruegmann is a historian who argues like a lawyer. He uses historical evidence to challenge the conventional wisdom about suburban sprawl and to build a case against legal restrictions on suburban growth. While Bruegmann's case for sprawl is not without flaws,¹⁴ he does mount an important challenge to several commonly held assumptions about suburban development. Sprawl, Bruegmann argues, is not a postwar American anomaly; it is a universal fact of all urbanized societies.¹⁵ (Indeed, many of today's "urban" neighborhoods are old "suburban" communities, absorbed by cities through annexation.¹⁶) Sprawl also is not out of control. On the contrary, the decentralization of American cities peaked decades ago, and many of our urbanized areas are now becoming denser.¹⁷ And his central point: sprawl is not a negative reflection of Americans' selfish souls, but rather a natural result of affluence that benefits even those of the most modest means. Contrary to the assertions of growth-control proponents, Bruegmann argues that suburban development maximizes overall social welfare by opening up a housing safety valve that helps even the poor.¹⁸ The case that Bruegmann builds for sprawl, however, is partially undermined by his nonchalant attitude about our cities.

A. Natural, Universal, and Good

The animating thesis of Bruegmann's book is that sprawl is natural, universal, and good. To the extent that we think otherwise, Bruegmann argues, it is because we misunderstand sprawl (or perhaps because we have been misled by sprawl's opponents). Moreover, and more importantly, Bruegmann demonstrates that the costs of urban life have always fallen disproportionately on the poor, and, therefore, that those of moderate means have the most to

14. Bruegmann's effort to rebut the environmentalist critique of sprawl, for example, could be stronger. He argues that sprawl's environmental consequences have been overstated—both because we are hardly in danger of running out of space and because most suburban developments consume agricultural lands that are themselves *artificial* places with negative environmental consequences (for example, erosion and pesticide use). But he tends to gloss over other difficulties, including the externalities generated by excessive automobile use. See BRUEGMANN, *supra* note 1, at 58-73, 138-51.

15. See *id.* at 6-12, 17-20.

16. See, e.g., KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 138-56 (1985) (discussing the rise and decline of urban annexation efforts).

17. See BRUEGMANN, *supra* note 1, at 58-73.

18. See *id.* at 109-12.

gain from suburban development. He then connects this historical argument to more familiar ones about the economic costs of growth management.

1. *Sprawl in Historical Perspective*

As Bruegmann carefully documents, sprawl—that is, low-density suburban development—“has been a persistent feature in cities since the beginning of urban history.”¹⁹ Bruegmann argues that most cities experience similar development patterns over time. During periods of rapid economic growth, urban densities increase, but when the economy matures and residents become more affluent, urban densities decrease and suburban growth increases.²⁰ Bruegmann uses a demographic tool—the density gradient—to illustrate this phenomenon. A density gradient graphically depicts population densities from the center of a city outward. Over time, Bruegmann argues, the density gradients of all wealthy cities flatten out—that is, center-city densities decrease and suburban densities increase.²¹ According to Bruegmann, for example, nineteenth-century suburbia developed along similar lines in the United States and Europe. Most suburban districts were home to the affluent; working class residents occupied smaller, denser, suburban pockets; and, as transportation technology developed, more commuter suburbs began to dot the countryside. In the twentieth century, suburbia exploded. By the 1920s, in both Europe and the United States, thousands of middle class families were able to move to detached and semi-detached suburban homes.²²

Bruegmann also builds a strong case against the prevailing view that suburban development patterns in the United States depart dramatically from those in other industrialized nations. While the density gradients of older, European cities flattened more slowly than younger, American cities, suburbanization and decentralization trends in the United States and Europe have been converging since the 1970s.²³ One reason for the convergence, Bruegmann argues, is that American sprawl appears to be slowing and, in some places, even reversing itself. Bruegmann documents how the decentralization

19. *Id.* at 18.

20. *See id.* at 24.

21. *See id.* at 19; *see also id.* at 91 (comparing the density gradients of modern European and American cities).

22. *See id.* at 35-36; *see also* JACKSON, *supra* note 16, at 116-37 (describing the democratization of suburban development in early-twentieth-century America); DOUGLAS W. RAE, CITY: URBANISM AND ITS END 230-34 (2003) (describing early suburban development in Connecticut).

23. *See* BRUEGMANN, *supra* note 1, at 90-93.

of urban areas in the United States—measured by consumption of land per person—peaked by the 1950s. Since then, while population growth continues to push the outer edge of urbanized areas farther from city centers, overall population densities of urbanized areas have been rising, primarily because suburban land use patterns are becoming more intense.²⁴

2. *Sprawl as a Safety Valve*

Bruegmann's most important contribution is to highlight how suburbs have long served as a housing safety valve, improving the living conditions of both the wealthy and those of very moderate means. By demonstrating how the poor disproportionately bear the costs of urban life, Bruegmann places a human face on the longstanding economic debate over the wisdom of restricting suburban growth. Growth-control skeptics rely on a very simple economic calculus: restricting the supply of land available for development will increase its price. And, if the price of land rises, the price of the structures built on it—including, importantly, housing—will rise as well. Suburban growth restrictions might also slow the housing filtering process, by which a wealthier individual moving to a larger house sets off a "chain of moves" that increases the availability of quality housing for poor and moderate-income individuals.²⁵ Michael Schill succinctly summarized the problem as follows: "The Achilles' heel of the 'smart growth' movement is the impact that many of the proposals put forth by its advocates would have on affordable housing."²⁶

Moreover, most growth restrictions are imposed by local governments that, as Charles Tiebout influentially predicted, use tax and regulatory policies (including land use policies) to compete for "consumer-voters."²⁷ Many

24. See *id.* at 60-69 (discussing possible causes of increasing suburban densities, including smaller lot sizes, a greater diversity of suburban housing types, and land recycling or "teardown" efforts).

25. See, e.g., Brian J.L. Berry, *Ghetto Expansion and Single-Family Housing Prices: Chicago, 1968-1972*, 3 J. URB. ECON. 397, 417 (1976) (arguing that suburbanization led to a massive chain of moves, which mitigated the price effects of racial discrimination in urban Chicago and enabled many families to improve their living situations); John C. Weicher, *Private Production: Has the Rising Tide Lifted All Boats?*, in HOUSING AMERICA'S POOR 45 (Peter D. Salins ed., 1987) (describing the filtering process).

26. Michael H. Schill, *Comment on Richard P. Voith & David L. Crawford's Smart Growth and Affordable Housing*, in GROWTH MANAGEMENT AND AFFORDABLE HOUSING: DO THEY CONFLICT? 102, 102 (Anthony Downs ed., 2004).

27. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 417-20 (1956); see also WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE AND LAND-USE POLICIES 65-68 (2001) (discussing the role of land use policies in Tiebout's model); Bruce W. Hamilton, *Zoning*

economists applaud this competition, arguing that it subjects localities to some approximation of market forces.²⁸ Other commentators warn that municipalities frequently compete by excluding unwanted residents and land uses, including affordable multifamily housing.²⁹ Growth controls are an attractive exclusionary device because limits on *all* new development serve the double purpose of excluding disfavored land uses (and questionable new neighbors) and making existing homes a scarcer, and therefore more valuable, resource.³⁰ And because existing homeowners tend to be “richer” and “whiter” than renters, the results of exclusion are frequently regressive.³¹

Many land use and local government scholars favor centralizing control over development policy at the state or regional level, in part to curtail local governments’ exclusionary tendencies.³² There are reasons to worry, however, that centralized growth management policies might exacerbate, rather than

and Property Taxation in a System of Local Governments, 12 URB. STUD. 205 (1975) (discussing the importance of zoning to local tax policy); J. Vernon Henderson, *Community Development: The Effects of Growth and Uncertainty*, 70 AM. ECON. REV. 894 (1980) (discussing the role of land use policies in Tiebout’s model).

28. See, e.g., Wallace E. Oates, *The Many Faces of the Tiebout Model*, in *THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES* 21 (William A. Fischel ed., 2006) (comprehensively surveying empirical literature testing the Tiebout hypothesis); see also MARK SCHNEIDER, *THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA* 62-69 (1989) (purporting to find that tax rates are lower in more fragmented metropolitan areas); John D. Donahue, *Tiebout? Or Not Tiebout?: The Market Metaphor and America’s Devolution Debate*, J. ECON. PERSP., Autumn 1997, at 73, 74 (“Diverse policy regimes can cater to heterogeneous preferences . . .”); Robert P. Inman & Daniel L. Rubinfeld, *The Political Economy of Federalism*, in *PERSPECTIVES ON PUBLIC CHOICE* 73, 83-85 (Dennis C. Mueller ed., 1997) (arguing that interlocal competition will increase efficiency in the production of public goods).
29. See, e.g., Lee Anne Fennell, *Exclusion’s Attraction: Land Use Controls in Tieboutian Perspective*, in *THE TIEBOUT MODEL AT FIFTY*, *supra* note 28, at 163, 177 (“Tiebout’s ideas cannot be fully appreciated without taking into account the place of exclusion both as an attractive item . . . available to consumer-voters and as a constraint on the choice sets that consumer-voters encounter.”).
30. See, e.g., Vicki Been, *Impact Fees and Housing Affordability*, 8 CITYSCAPE: J. POL’Y DEV. & RES. 139, 146 (2005) (discussing the literature); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 400 (1977) (“Antigrowth measures have one premier class of beneficiaries: those who already own residential structures in the municipality doing the excluding.”); William A. Fischel, *An Economic History of Zoning and a Cure for Its Exclusionary Effects*, 41 URB. STUD. 317, 331 (2004) (arguing that growth controls are a form of exclusionary zoning).
31. See Lee Anne Fennell, *Homes Rule*, 112 YALE L.J. 617, 628 (2002) (book review).
32. See, e.g., ROBERT H. FREILICH, *FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS* (1999); ARTHUR C. NELSON & JAMES B. DUNCAN WITH CLANCY J. MULLEN & KIRK R. BISHOP, *GROWTH MANAGEMENT PRINCIPLES AND PRACTICES* (1995); DOUGLAS R. PORTER, *MAKING SMART GROWTH WORK* (2002).

mitigate, the price effects of suburban growth restrictions. Importantly, local growth controls may promote suburban sprawl because the exclusion of new growth by wealthier inner suburbs pushes development outward.³³ One benefit of this pattern is that new development on the suburban fringe may mitigate the price effects of growth controls in inner suburbs. Thus, comprehensive growth management might be expected to increase overall regional housing prices more than local controls.³⁴ Empirical evidence on the price effects of existing regional planning programs is mixed,³⁵ and proponents argue that planning tools—such as housing linkage, inclusionary zoning, density bonuses, impact-fee waivers, and mixed-use zoning—can increase the supply of affordable housing.³⁶ There is little question, however, that such programs carry a significant risk of reducing housing affordability.

-
33. See WILLIAM A. FISCHER, LINCOLN INST. OF LAND POLICY, DO GROWTH CONTROLS MATTER? A REVIEW OF EMPIRICAL EVIDENCE ON THE EFFECTIVENESS AND EFFICIENCY OF LOCAL GOVERNMENT LAND USE REGULATION 53-57 (1990) (“[G]rowth controls probably cause metropolitan areas to be too spread out.”); Q. Shen, *Spatial Impacts of Locally Enacted Growth Controls: The San Francisco Bay Region in the 1980s*, 23 ENV’T & PLAN. B: PLAN. & DESIGN 61, 86 (1996) (finding that local controls pushed development to unrestricted areas).
 34. See, e.g., Vicki Been, “Exit” as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine, 91 COLUM. L. REV. 473, 509-28 (1991) (arguing that competition between municipalities may reduce their ability to exact concessions from developers); Nicole Stelle Garnett, *Trouble Preserving Paradise?*, 87 CORNELL L. REV. 158, 165-68 (2001) (observing that affordable-housing advocates in Arizona and Colorado organized to oppose statewide growth management proposals due to concerns about housing affordability); Arthur C. Nelson et al., *The Link Between Growth Management and Housing Affordability: The Academic Evidence*, in GROWTH MANAGEMENT AND AFFORDABLE HOUSING, *supra* note 26, at 117, 127-28 (predicting that regional growth management policies will have greater price effects than local policies, which permit housing consumers to migrate to uncontrolled jurisdictions).
 35. For example, growth management proponents frequently cite evidence that Portland’s longstanding regional growth management program has not directly increased housing prices. (Housing prices have skyrocketed in Portland, but it is unclear whether the increase can be attributed to growth management.) See GERRIT KNAAP & ARTHUR C. NELSON, *THE REGULATED LANDSCAPE: LESSONS ON STATE LAND USE PLANNING FROM OREGON* 39, 51-58 (1992) (discussing conflicting evidence on the price effects of Oregon’s comprehensive growth management program); Nelson et al., *supra* note 34, at 134-58 (reviewing the empirical literature suggesting that rising housing prices in Portland are not linked to growth management, but acknowledging the risks of such programs); see also BRUEGMANN, *supra* note 1, at 209-12 (discussing the debate); FISCHER, *supra* note 27, at 257 (discussing the possibility of a connection between rising housing prices in Washington—including those of units originally set aside as “affordable”—and statewide growth management programs).
 36. See, e.g., Richard P. Voith & David L. Crawford, *Smart Growth and Affordable Housing*, in GROWTH MANAGEMENT AND AFFORDABLE HOUSING, *supra* note 26, at 82, 86-100. But see Robert C. Ellickson, *The Irony of “Inclusionary” Zoning*, 54 S. CAL. L. REV. 1167, 1184-85 (1981) (arguing that inclusionary zoning will reduce the supply of affordable housing);

Bruegmann recounts these economic arguments,³⁷ but his work also makes a qualitative case against the view that the urban poor are victims of suburban growth (and therefore will be the beneficiaries of efforts to slow it). Until recently, Bruegmann argues, urban life generally was an unpleasant necessity: even after the residents no longer needed walls to shield them from bandits and marauders, the lack of effective transportation required them to live in close proximity to work and to one another. But overcrowding, disease, substandard city services, and poor public infrastructure made cities unpleasant and dangerous places to live. Bruegmann observes, moreover, that urban life has always been particularly difficult for the poor. Until the early twentieth century, the population densities of most thriving cities approximated 150,000 people per square mile (200 people per acre).³⁸ Poorer neighborhoods, however, were much denser. Since ancient times, wealthy urban residents were able to purchase the luxury of space—leaving the poor crammed into dangerous and disease-ridden slums. For example, the population density of Manhattan Island peaked in 1910 at 106,000 people per square mile.³⁹ During the same period, densities in the poor, immigrant ghettos on the Lower East Side exceeded “400,000 people per square mile or more than six hundred people per acre.”⁴⁰

Against this backdrop, Bruegmann carefully documents how suburban development has long served as a safety valve for the urban poor. The suburbs of preindustrial cities, as discussed above, tended to house those too poor to afford housing in cities.⁴¹ The social and economic dislocations of the industrial revolution, however, reversed this trend. Industrialization both increased city densities and also drove more residents to flee the unpleasant and dangerous aspects of urban life.⁴² While early suburban developments catered primarily to the wealthy and the burgeoning middle class,⁴³ smaller, denser pockets of

Schill, *supra* note 26, at 103 (“[M]ost of the popular support for smart growth is based upon a variety of factors that will create strong incentives for municipalities to adopt growth restrictions *without* simultaneously promoting affordable housing.”).

37. BRUEGMANN, *supra* note 1, at 202-15.

38. *Id.* at 22.

39. Demographia, City of New York & Boroughs: Population & Population Density from 1790, <http://www.demographia.com/dm-nyc.htm> (last visited Nov. 11, 2006).

40. BRUEGMANN, *supra* note 1, at 26-27.

41. *Id.* at 23.

42. *Id.* at 26-27.

43. See *id.* at 27-29 (discussing early suburban development in Europe and the United States); see also JACKSON, *supra* note 16, at 20-116 (documenting suburban development in the United States).

suburban development housing poorer laborers also developed. The standardization of building methods and the development of inexpensive public transportation enabled these residents to move farther away from city centers into even less dense communities.⁴⁴ The democratization of suburbia was particularly pronounced in the United States, where detached suburban homes became an option for people of very modest means by the end of the 1920s.⁴⁵ Bruegmann strenuously resists the characterization of late-twentieth-century suburban development as an “unprecedented” departure from earlier historical patterns. The postwar economic boom, in his view, simply enabled more people than ever before to take advantage of the benefits of suburban life.⁴⁶

B. Let the Cities Die?

Robert Bruegmann’s book makes many important contributions to the current academic and political debates about the costs and benefits of suburban sprawl. It is a valuable addition to the voluminous land use literature—well-researched, well-written, thought-provoking, and full of captivating history and surprising data on urban development, both here and abroad. But Bruegmann’s unorthodox views on the connections between cities and their suburbs will likely prove a stumbling block for many readers. Bruegmann tries to convince readers that it is illogical to care about cities qua cities. Cities and suburbs are simply different types of urban development; suburban increase and urban decrease both are naturally occurring economic phenomena.⁴⁷ For example, when discussing cities’ future prospects, Bruegmann observes that the fortunes of many center cities and older suburbs improved over the past two decades (although the extent of the improvement is subject to debate).⁴⁸ Bruegmann posits several possible explanations, all of them in keeping with his general view that cities and suburbs are simply different dots on the same

44. See BRUEGMANN, *supra* note 1, at 25-28; see also JACKSON, *supra* note 16, at 116-38.

45. See BRUEGMANN, *supra* note 1, at 36; see also JACKSON, *supra* note 16, at 103-37 (describing the democratization of suburban development in early-twentieth-century America); RAE, *supra* note 22, at 230-31 (describing early suburban development in Connecticut).

46. See BRUEGMANN, *supra* note 1, at 44-45.

47. See *id.* at 54 (“[M]any central cities have been thoroughly transformed as part of the same decentralization process that has been at work throughout metropolitan regions. They participate just as fully in sprawl as the farthest subdivisions.”).

48. See Edward L. Glaeser & Jesse M. Shapiro, *City Growth: Which Places Grew and Why*, in 1 REDEFINING URBAN AND SUBURBAN AMERICA, *supra* note 11, at 13, 18-30 (discussing factors affecting urban growth in the 1990s); Simmons & Lang, *supra* note 11, at 54-58 (discussing population gains in previously declining cities).

urban development continuum. He notes, for example, that at the very time that city prospects looked bleakest, “nostalgia for the historical city” converged with the declining “exclusivity” of suburbia.⁴⁹ Moreover, he argues that the very economic changes lamented by many scholars—including the decline in the urban industrial base⁵⁰—ultimately may save the cities. Freed from the congestion, pollution, and disease that once characterized urban life, cities have become more attractive to wealthy individuals who might previously have chosen to live in the suburbs.⁵¹ As a result, he suggests, “[i]t is quite possible that sprawl could recede everywhere as more citizens become affluent enough to live like the residents of the Upper East Side,” because “as individuals pass from affluent to extraordinarily affluent they are better able to enjoy the benefits of density without the negative side effects.”⁵² Perhaps, he opines, “some attractive central cities will become essentially resort areas filled with second homes.”⁵³

Bruegmann’s refusal to countenance arguments that cities are worth worrying about is also linked to his belief that much anti-sprawl sentiment is motivated by an elite distaste for the aesthetics and culture of suburban life. “Sprawl,” he asserts, “like ‘conspicuous consumption’ or ‘elitism,’ has always conveyed a not-so-subtle accusation against the way that other people choose to live their lives.”⁵⁴ He argues that sprawl first became a political issue when commoners began to invade countryside previously enjoyed exclusively by the wealthy⁵⁵ and asserts that modern anti-sprawl sentiment results in part from the further democratization of sprawl. Bruegmann observes that “the chorus of complaints about growth swelled during the boom periods,” as in eighteenth-

49. BRUEGMANN, *supra* note 1, at 53.

50. E.g., WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 25-35 (1996) (linking inner-city crisis to decline in the urban industrial base).

51. See BRUEGMANN, *supra* note 1, at 53-54. This gentrification process was aided by the development of a new property form—the condominium—that enabled people to combine urban living and the benefits of home ownership. See *id.* (discussing the role of the condominium in urban development); see also Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L.J. 1, 15-16 (2000) (describing the “dramatic development” of condominiums in the 1960s).

52. BRUEGMANN, *supra* note 1, at 221.

53. *Id.*

54. *Id.* at 18.

55. Bruegmann’s discussion of elite opposition to London’s eighteenth-century suburban growth is particularly withering. He quotes one horrified detractor with great effect: “We are making a screaming mess of England. . . . A gimcrack civilization crawls like a gigantic slug over the country, leaving a foul trail of slime behind it.” *Id.* at 117.

century London and late-twentieth-century Atlanta.⁵⁶ Bruegmann further speculates that suburbia tends to lose its “social cachet” when less affluent, formerly urban residents arrive.⁵⁷ Opponents frequently deride the polluting influence of “McMansions,” cookie-cutter houses, and strip malls—places that provide shelter and services for the masses, yet are described as a “lethal disease” by leading anti-sprawl activists.⁵⁸

Bruegmann also critiques sprawl opponents for supporting policies that have the effect of decreasing densities in both cities and suburbs, including restrictions on “teardowns” in older, inner-ring suburbs (in the name of community preservation)⁵⁹ and the “downzon[ing]” of city neighborhoods to reduce their population.⁶⁰ But other examples abound. As Schill has observed, “[M]any inner-city residents would be happy not to have new neighbors, new barriers to their views, and new competitors for parking spaces. . . . Community opposition to new development manifests itself every day in opposition to rezoning, drawn-out land use and environmental approval procedures, and endless lawsuits, meritorious and frivolous”⁶¹ Opponents of suburban sprawl have opposed urban infill development, citing concerns about randomly filling up the vacant lots around the city, “vertical sprawl,”⁶² and the loss of urban green space.⁶³ The Attorney General of New York went so far as to file a lawsuit seeking to freeze construction of nearly 3000 new apartments that threatened community gardens.⁶⁴ Elsewhere, environmentalists express concerns that new infill developments featuring affordable, multifamily

56. *Id.* at 165.

57. *Id.* at 53.

58. *Id.* at 151, 164.

59. *Id.* at 69–70.

60. *Id.* at 57–58.

61. Schill, *supra* note 26, at 104.

62. Nicholas Confessore, *Cities Grow Up, and Some See Sprawl*, N.Y. TIMES, Aug. 6, 2006, § 4 (Week in Review), at 3 (describing opposition to infill in New York City).

63. See Trip Pollard, *Greening the American Dream?*, PLANNING, Oct. 2001, at 10, 12 (discussing environmentalists’ mixed feelings about infill); Chris Poynter, *Neighbors Oppose Plans To Build Up Instead of Out*, COURIER-J. (Louisville), Nov. 21, 2002, at A1 (discussing opposition to an infill project); Nancy Salem, *Infill Imbroglio*, ALBUQUERQUE TRIB., Oct. 4, 1999, at B3 (discussing one group’s response to developer complaints about the impediments to downtown infill projects, including neighbor opposition and regulatory hurdles); see also Steve Twomey, *Here Comes (There Goes) a Neighborhood*, WASH. POST MAG., July 2, 2000, at W8 (discussing neighbor opposition to infill projects as an impediment to slowing suburban growth).

64. See Jennifer Steinhauer, *Ending a Long Battle, New York Lets Housing and Gardens Grow*, N.Y. TIMES, Sept. 19, 2002, at A1.

housing units create significant health risks,⁶⁵ and they complain that subsidies for urban “brownfield” redevelopment are “corporate welfare.”⁶⁶ These efforts, Bruegmann argues, suggest that much anti-sprawl sentiment simply reflects a desire to stop *all* development, rather than to promote denser development. They also raise serious questions about whether political leaders will be able to muster the will to promote the regulatory tools needed to counter possible regressive effects of growth management, including, importantly, density bonuses for urban-infill and affordable-housing projects.

Bruegmann may be right about the motives of some sprawl opponents, and one or more of his positive predictions about city health may come to pass. Still, his nonchalant attitude about the fate of central cities is unsettling, even for growth management skeptics. His case against restrictions on suburban growth would have been far more convincing had he proffered some realistic alternative—other than good luck—for saving our cities. It is safe to assume that many readers come to Bruegmann’s book convinced that something should be done about American cities. They are not likely to come away from it unconvinced, but they may come away wondering whether growth management proponents are correct after all: if we want to save our cities, we need to stop our suburbs.

II. SACRED, SAFE, AND BUSY

Joel Kotkin’s short history of urban life, *The City: A Global History*, is a useful starting point for thinking about the questions that Bruegmann leaves unanswered. Kotkin is an excellent writer who clearly loves his subject. On most technical points, however, Kotkin’s treatment of cities pales in comparison to Bruegmann’s exploration of suburbs. Indeed, his ambitious effort to review the entire global history of urban life lends itself to superficiality. But *The City* is not meant for an academic audience. Kotkin’s goal is clearly to inform (and even to inspire) the intelligent layperson, and he achieves it. The book is a worthy read, especially as a supplement to Bruegmann’s work. It is in many ways fortuitous that the books’ publications coincided, for Kotkin highlights the limitations of Bruegmann’s approach, reminding readers that cities may be worth saving after all. His book also provides critical insights about changes to urban land use policies that might

65. See John Krist, *State Air Guidelines Conflict with ‘Smart Growth,’* 20 CAL. PLAN. & DEV. REP. 6 (2005).

66. Editorial, *Is Thompson Going Green?*, CAP. TIMES (Madison), Feb. 12, 1997, at 12A.

foster renewed city fortunes without necessitating restrictions on suburban growth.

A. Sacredness, Safety, and Busyness

Kotkin's central thesis is that healthy cities, throughout history, have been "sacred, safe, and busy" places. Kotkin's review of how different cities, in different cultures, served (and, in modern times, have ceased to serve) these functions is informative and thought-provoking, if unfortunately brief. Until quite recently, Kotkin observes, most great cities were centers of religious life—dominated by majestic cathedrals, mosques, or temples, filled with pilgrims from near and far.⁶⁷ The case for modern city "sacredness" is more difficult to make, but Kotkin believes that it is critically important; modern cities must continue to serve as "sacred" places that bind their citizens together with a common purpose and shared values. "Urban areas," he argues, "must be held together by a consciousness that unites their people in a shared identity."⁶⁸ Ancient cultures depended on the "priesthood" to enforce this consciousness, Kotkin observes. But he insists that, if our cities are to thrive, our secular, individualistic culture must find other ways to build this kind of social capital.⁶⁹

Cities, according to Kotkin, must also be safe. There is little doubt that urban societies fail unless they guarantee their citizens' safety. As Kotkin demonstrates, city life has long depended upon two kinds of security—protection from invading outsiders and protection from deviant insiders. Until quite recently, urban civilizations' very existence depended upon the ability to repel invaders. Ancient cities—Assyrian, Greek, Indian, Roman, and American—developed and flourished when that security was established and foundered when it failed.⁷⁰ As Kotkin observes, the rise of city walls once marked the beginnings of an urban society: when large walled towns first appeared in China (as early as 1110 B.C.E.), the characters for "wall" and for "city" were identical.⁷¹ Even during the Pax Romana, when unprecedented security enabled the free movement of people, goods, and ideas, many cities—especially on the frontier—depended upon the protection of walls and

67. See KOTKIN, *supra* note 1, at 4 ("It is difficult, perhaps, to imagine in our current secular era the degree to which religion played a central role during most of urban history.").

68. *Id.* at 157.

69. See *id.* at 158–60.

70. See *id.* at 11 (describing the fall of ancient civilizations in Asia and the Americas); *id.* at 20–24 (describing the destruction of Greek civilizations by less sophisticated invaders).

71. *Id.* at 11.

legionaries.⁷² The return of urban life to Europe in the centuries after the fall of Rome was similarly marked by the erection of a defensive perimeter.⁷³

Security from outsiders, of course, plays a minor role in modern urban life—although Kotkin asks in closing whether the modern terrorist threat will change this reality.⁷⁴ While protecting inhabitants from invading outsiders is no longer their primary function, cities must continue to guarantee their residents security by adopting and enforcing the rules necessary to protect them from deviant insiders. As Kotkin observes, many cities in the developing world are crippled by a lack of internal security. In these places, those citizens who can afford to do so retreat into guarded, walled suburban enclaves or emigrate abroad.⁷⁵ Only a few decades ago, many people assumed that same fate eventually would befall American cities. Crime rates rose dramatically during the 1960s and 1970s and stubbornly remained at these unprecedented levels despite increases in police expenditures. As the crime rate rose, so did fear of crime, especially in urban areas. During this time, most Americans came to take ever-spiraling crime rates and crippling fear of urban disorder as a given.⁷⁶ By the end of the 1980s, many people simply chose to avoid urban public spaces.⁷⁷ Kotkin argues—quite plausibly—that efforts to reverse these trends and to restore citizens' basic sense of security have done much to renew city prospects in recent years: "One critical element in the late-twentieth-century revival in some American cities . . . can be traced to . . . the adoption of new policing methods and a widespread determination to make public safety the number one priority of government."⁷⁸

Finally, Kotkin argues, great cities must be busy. He asserts that urban centers have long served as centers of economic life. The most successful cities, according to Kotkin, have permitted commerce to flourish relatively free of restrictive regulation, and a less-than-robust economy eventually spells urban doom. Kotkin celebrates the intellectual and economic glories of Asian and Islamic cities of the Middle Ages; he argues that Islamic society in particular

72. *Id.* at 32-33.

73. *Id.* at 66.

74. *Id.* at 155-57.

75. *Id.* at 155.

76. See Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 568-71 (1997).

77. See, e.g., PAUL S. GROGAN & TONY PROSCIO, COMEBACK CITIES 152 (2000) ("Out-of-control crime was the nearly universal expectation for the inner city. Any other positive trend there . . . was sharply hemmed in by the prospect of continued crime and, just as important, an all-but-unshakable fear of crime.").

78. KOTKIN, *supra* note 1, at 154-55.

created a new kind of urban culture and exported it throughout much of the civilized world.⁷⁹ Yet these great cities declined at the same time that European cities triumphed. The reason, he hypothesizes, was that European societies in the late Middle Ages trended toward a freer economy. According to Kotkin, the erosion of religious and political restrictions on economic activity fomented cultural resurgence and the rise of a vast middle class in Europe, ultimately paving the way toward the triumphant nineteenth- and twentieth-century industrial cities.⁸⁰ Unfortunately (or in Bruegmann's view, inevitably), the successes and limitations of the industrial cities led to suburbanization and the decline of urban busyness.⁸¹

B. Avoiding an Ephemeral Future

Kotkin strenuously—and explicitly—rejects Bruegmann's suggestion that cities might be saved by becoming gentrified playgrounds for the wealthy.⁸² He worries that H.G. Wells's prediction of a century ago may be coming to pass: "[C]ities may now be morphing . . . from commanding centers of economic life toward a more ephemeral role as a 'bazaar, a great gallery of shops and places of concourse and rendezvous.'" ⁸³ Kotkin does not, in my view, devote sufficient effort to explaining this concern about the fate of American cities. He apparently worries that many cities, even successful ones, are no longer the centers of social, cultural, and economic activity that they once were. Kotkin believes that, to succeed, cities must be "real" places, with real communities, where people choose to live, work, and raise families—not simply places that wealthy individuals occasionally visit for entertainment. And he is right that many cities no longer serve these desired functions. By the 1960s, more Americans lived in suburbs than central cities;⁸⁴ by 1990, the United States had become a suburban nation, with a solid majority of all Americans residing in

79. See *id.* at 43–51 (discussing Islamic cities); *id.* at 52–57 (discussing Asian cities).

80. See *id.* at 65–70. Ultimately, Kotkin argues, the calcification of an autocratic ruling class in Islamic and Asian societies led to citizens burdened with confiscatory taxes, limits on property ownership, and court favoritism. See *id.* at 58–61.

81. See *id.* at 120–22.

82. *Id.* at 153 (citing Robert Bruegmann, *The American City: Urban Aberration or Glimpse of the Future*, in *PREPARING FOR THE URBAN FUTURE: GLOBAL PRESSURES AND LOCAL FORCES* 59 (Michael A. Cohen et al. eds., 1996)).

83. *Id.* at 151 (quoting H.G. WELLS, *ANTICIPATIONS OF THE REACTIONS OF MECHANICAL AND SCIENTIFIC PROGRESS UPON HUMAN LIFE AND THOUGHT* 32 (1902)).

84. See PETER O. MULLER, *CONTEMPORARY SUBURBAN AMERICA* 4 (1981).

the suburbs.⁸⁵ The employment balance shifted to the suburbs by the mid-1970s.⁸⁶ In 2000, roughly three out of five jobs in American metropolitan areas were located in suburbs, with only 22% of people working within three miles of the center city.⁸⁷ Important to Kotkin's concerns about the rise of "ephemeral" cities, fewer and fewer families—especially middle class families—build their lives in city neighborhoods. A recent Brookings Institution study of twelve large metropolitan areas found that only 23% of central-city neighborhoods had middle-income profiles (compared to 45% in 1970), and, moreover, that even cities that gained population lost families in general and middle class families in particular.⁸⁸

Unfortunately, Kotkin offers no specific reform proposals to help cities avoid an ephemeral future. Indeed, he does little to explain what is wrong with ephemeral cities other than to suggest—as discussed more fully below—that such cities fail to foster the shared norms that he equates with modern sacredness. His suggestions for shaping cities' future, to the extent that he offers any, are painted in broad strokes: "cities must emphasize those basic elements long critical to the making of vital commercial places";⁸⁹ they must ensure that their residents "feel at least somewhat secure in their persons";⁹⁰ and they must "occupy[] a sacred place that both orders and inspires the complex natures of gathered masses of people."⁹¹ This is not an agenda for reform, and his book is made weaker by his failure to offer specifics. But his exhortation does provide a template for considering the question that both books leave unanswered: can we save our cities without stopping our suburbs?

85. See Kevin M. Kruse & Thomas J. Sugrue, *Introduction* to *THE NEW SUBURBAN HISTORY* 1, 1 (Kevin M. Kruse & Thomas J. Sugrue eds., 2006).

86. See John D. Kasarda, *Industrial Restructuring and the Changing Location of Jobs*, in 1 *STATE OF THE UNION: AMERICA IN THE 1990S*, at 215, 235 (1995).

87. Kotkin, *supra* note 7.

88. JASON C. BOOZA ET AL., BROOKINGS INST., *WHERE DID THEY GO? THE DECLINE OF MIDDLE-INCOME NEIGHBORHOODS IN METROPOLITAN AMERICA* 1, 9-11 (2006), available at http://www.brook.edu/metro/pubs/20060622_middleclass.pdf.

89. KOTKIN, *supra* note 1, at 154.

90. *Id.*

91. *Id.* at 160.

III. SAVING CITIES WITHOUT STOPPING SUBURBS?

Robert Bruegmann is, in my view, correct to worry about the transitional fairness questions raised by growth restrictions.⁹² The suburbs have long represented the hope of a better life for the urban poor, and this continues to be the case today. Smokestacks and overcrowding are no longer poor city dwellers' primary concerns—crime, education, and employment are. The suburbs offer the good schools, economic opportunities, and environmental amenities that wealthy urban dwellers can afford to purchase and poorer residents cannot.⁹³ Moreover, there has been, in recent years, a promising trend toward racial and economic diversity in the suburbs.⁹⁴ Regional growth management proposals to channel development into the urban core could jeopardize these trends, especially because many of the most diverse neighborhoods have characteristics that draw the ire of sprawl opponents: they are located in low-density metropolitan areas in the West and Southwest and are filled with relatively low-cost “starter homes.”⁹⁵

Bruegmann, however, mistakenly discounts the two important ways that cities influence thinking about suburban sprawl. First, both growth-control and regional-government proponents use the fate of cities to argue that suburban sprawl is both inefficient and unjust. It is inefficient because it leads to overinvestment of public resources in roads, schools, services, and utilities and overconsumption of land at the suburban fringe at the same time that city services and city lands lie idle.⁹⁶ It is unjust because suburbanites' right of exit permits them to take advantage of the cultural amenities of urban life without paying for them, and, importantly, to turn their backs on the poorest members

92. See Nicole Stelle Garnett, *Unsubsidizing Suburbia*, 90 MINN. L. REV. 459, 495-96 (2005) (book review) (discussing transitional fairness questions raised by restrictions on urban-suburban mobility); see also Saul Levmore, *Changes, Anticipations, and Reparations*, 99 COLUM. L. REV. 1657 (1999) (discussing the transitional fairness problem).

93. See, e.g., James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2102-08 (2002) (discussing the connection between economic status and educational achievement); Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 CHI.-KENT L. REV. 795, 811-21 (1991) (advocating policies that help the urban poor move to suburbs).

94. See, e.g., WILLIAM H. FREY, BROOKINGS INST., *DIVERSITY SPREADS OUT: METROPOLITAN SHIFTS IN HISPANIC, ASIAN, AND BLACK POPULATIONS SINCE 2000* (2006), available at http://www.brookings.edu/metro/pubs/20060307_Frey.pdf.

95. Been, *supra* note 30, at 164; see William H. Frey, *Melting Pot Suburbs: A Study of Suburban Diversity*, in 1 REDEFINING URBAN AND SUBURBAN AMERICA, *supra* note 11, at 155.

96. See, e.g., ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 3-16 (1994); NELSON & DUNCAN, *supra* note 32, at 4-6; MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 9-10 (1997); Briffault, *supra* note 10, at 1132-41.

of what is in reality one metropolitan polity.⁹⁷ Even if Bruegmann is correct about the risks of growth controls and the benefits of suburban growth, it is reasonable to ask him to explain what should be done—other than restricting growth—to improve the lives of people who remain in city neighborhoods because they have few residential choices. After all, as Bruegmann skillfully demonstrates, the very people whose mobility is most restricted by economic circumstance are also those likely to find urban life especially difficult. Second, many sprawl opponents assert that cities, with their higher densities and mixed land use patterns, are *qualitatively* different from suburbs. Thus, even if Bruegmann's descriptive account of suburbia is accurate, cities may serve unique cultural and economic functions that suburbs cannot. If so, we should not be content to let the cities die. Bruegmann dismisses these arguments as elitist, but Kotkin issues a convincing challenge to consider the claim for city exceptionality.

For both of these reasons, the case against growth controls would be strengthened by exploring what changes to city policies might help make our urban areas, in Kotkin's words, "sacred, safe, and busy" once again. This final Part explores that important question by asking city leaders and land use scholars to consider the connections between safety and busyness and between busyness and sacredness.

A. Safety

As Kotkin recounts in his concluding chapter, cities across the country have enacted myriad policies seeking to curb urban disorder and crime since the publication of the famously influential *Broken Windows* essay in 1982.⁹⁸ The diverse policies falling under the order-maintenance umbrella differ in detail⁹⁹

97. See, e.g., DAVID RUSK, *CITIES WITHOUT SUBURBS* 31-34 (2d ed. 1995); Briffault, *supra* note 10, at 1138-41; Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2015 (2000).

98. James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29; see also Herman Goldstein, *Toward Community-Oriented Policing: Potential, Basic Requirements, and Threshold Questions*, 33 CRIME & DELINQ. 6 (1987) (arguing that "[t]he direction of change in policing has turned an important corner" toward problem-oriented, crime-prevention, and order-maintenance strategies); Livingston, *supra* note 76, at 577 ("Today, hundreds of police departments across the country . . . are experimenting with both community and problem-oriented policing.").

99. For a description of some of the many distinctive strategies, see Livingston, *supra* note 76, at 573-91. See also Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1527-38 (2002) (describing order-maintenance policing, church-police collaboration, and selective privatization).

but proceed from the same assumption—namely, that crime, disorder, and urban health are inextricably and causally linked.¹⁰⁰ The social norms scholars who champion order-maintenance policies reason that disorder leads to more serious crimes because it has a negative social influence effect. Unchecked disorder signals that a community does not—or cannot—enforce the basic norms of civil society. As a result, disorder “erode[s] deterrence by emboldening law-breakers and demoralizing law-abiders.”¹⁰¹ Thus, government intervention to check physical and social disorder in city neighborhoods should not only help reverse the spiral of urban decline but also should prevent more serious crimes. The effectiveness of order-maintenance policies, however, is hotly contested. Proponents cite empirical evidence supporting the crime-disorder nexus—including Wesley Skogan’s influential work¹⁰² and the apparent correlation between New York City’s dramatic crime-rate reduction and the implementation of aggressive order-maintenance policing policies.¹⁰³ These empirical claims have been challenged, however, notably by Bernard Harcourt, who has questioned Skogan’s data and, more recently, has proffered a serious counter-explanation for the New York City experience.¹⁰⁴

This debate is a critically important one, but it does not speak directly to what might be called the potential “land use” benefits of the order-

100. See Livingston, *supra* note 76, at 578-84 (reviewing the literature).

101. Kahan, *supra* note 13, at 387.

102. WESLEY G. SKOGAN, *DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS* (1990).

103. See, e.g., GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 108-56 (1996); Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 J.L. & ECON. 235 (2005); Kahan, *supra* note 13, at 367-73; George L. Kelling & William H. Sousa, Jr., *Do Police Matter?: An Analysis of the Impact of New York City's Police Reforms* (Manhattan Inst. Ctr. for Civic Innovation, Civic Report No. 22, 2001).

104. See BERNARD E. HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* 59-78 (2001) (disputing Skogan’s data); Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271, 287-300 (2006) (arguing that New York City’s dramatic decline in crime can be explained by “mean reversion”—that crime rates were returning to natural averages following an unusual spike in past years); see also Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Six That Do Not*, J. ECON. PERSP., Winter 2004, at 163, 172, 176-83 (rejecting “better policing strategies” as an explanation for the drop in crime rates and offering four counter-explanations: more police, higher incarceration rates, the decline in the crack epidemic, and legalized abortion); cf. Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 628, 637 (1999) (finding that disorder was correlated with robbery but not with other serious crimes).

maintenance agenda. The original *Broken Windows* essay urged that attention to disorder was important not just because disorder was a precursor to more serious crime, but also because disorder undermined residents' sense of security.¹⁰⁵ The later scholarly explications of the broken windows hypothesis also emphasize the connection between restoring the *perception* of security and its reality.¹⁰⁶ One reason that social norms scholars link disorder and crime is disorder's predictable effect on law-abiding citizens: those with financial resources move away from, or choose not to move into, disorderly neighborhoods; those without resources remain inside and avoid public places. Even if these reactions (somewhat surprisingly) do not lead to more crime in a community by increasing the concentration of individuals with criminal propensities,¹⁰⁷ they certainly disadvantage city neighborhoods vis-à-vis their suburban alternatives.¹⁰⁸

Moreover, and importantly, the goals of reducing crime and of helping poor, inner-city residents feel better about, and more invested in, their current communities are not necessarily coterminous; order-maintenance policies might achieve the latter without achieving the former. In other words, it might be the case that order-maintenance policies do not curb serious crime *and* that they make cities more attractive places to live, thereby improving the lives of current residents and helping them compete with suburban alternatives. Survey evidence suggesting both that residents' perceptions of security do not map neatly onto crime rates and that residents regard safety as one of the primary factors affecting housing choice tends to support this conclusion.¹⁰⁹

105. See Wilson & Kelling, *supra* note 98.

106. See Livingston, *supra* note 76, at 581.

107. See Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075, 1115-17 (2005) (discussing the risks of concentrated disorder).

108. See Kahan, *supra* note 13, at 371.

109. On the perception of security versus its reality, see, for example, CHI. CMTY. POLICING EVALUATION CONSORTIUM, COMMUNITY POLICING IN CHICAGO, YEAR TEN: AN EVALUATION OF CHICAGO'S ALTERNATIVE POLICING STRATEGY 66 (2004), *available at* http://www.northwestern.edu/ipr/publications/policing_papers/Yr10-CAPSeval.pdf. Several surveys identify safety as a factor influencing housing choice. See, e.g., NAT'L ASS'N OF HOME BUILDERS, 2005 MULTIFAMILY RENTER AND CONDO BUYER PREFERENCE SURVEY 20-21 (2005), *available at* <http://www.nahb.org/generic.aspx?genericContentID=46103>; PUB. POLICY INST. OF CAL., SPECIAL SURVEY ON LAND USE 7 (2002), *available at* http://www.ppic.org/content/pubs/survey/S_1102MBS.pdf (concluding from a survey of 2010 California residents that "when it comes to choosing a home and neighborhood, two issues [other than price] remain consistently at the top of the list for all residents—safety and living space"); Lee Sigelman & Jeffrey R. Henig, *Crossing the Great Divide: Race and Preferences for Living in the City Versus the Suburbs*, 37 URB. AFF. REV. 3, 7-8 (2001) (finding that both African-American and white

Unfortunately, not enough is known about how the order-maintenance agenda fares as land use policy. It is reasonable to speculate that urban disorder affects cities' ability to compete with suburbs for residents and businesses under some circumstances. That is, above a certain threshold, pervasive disorder undoubtedly drives some people to move to the suburbs—and decreases the quality of life for those who remain. But it is also reasonable to assume that some level of ambient disorder is tolerable, even enlivening, to those who enjoy city life. Moreover, the order-maintenance literature frequently glosses over important definitional difficulties: What is “disorder”? Which kinds of “disorder”—physical, social, aesthetic, criminal—matter and which do not?¹¹⁰ These questions are important ones, especially because, as discussed below, many city land use policies equate economic activity with disorder and therefore stifle city busyness in the name of city safety.

B. Safety and Busyness

While Kotkin suggests that a renewed emphasis on safety may have helped some cities rebound in recent years, Bruegmann attributes positive trends in urban development entirely to economic forces—the decline in the urban industrial base, changes in residential preferences, and an increase in the number of Americans wealthy enough to enjoy urban life. Bruegmann's neglect of order-maintenance policies is unfortunate, if understandable. It is unfortunate because the apparent success of the order-maintenance agenda (as a land use policy, if not as a criminal law policy) suggests that restrictions on suburban growth are not necessarily the only way to renew urban fortunes. It is understandable because someone who rejects urban exceptionalism would not be expected to pay much attention to policies primarily aimed at restoring the health of urban neighborhoods. Moreover, for many of the same reasons that he raises red flags about the growth management agenda, Bruegmann might worry about the potential costs of order-maintenance policies¹¹¹—

residents of the Washington, D.C., area ranked the suburbs higher than the city in terms of safety).

110. See, e.g., Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of “Broken Windows,”* 67 SOC. PSYCHOL. Q. 319, 319, 336 (2004) (examining what kinds of disorder trigger “broken windows” problems and concluding that perceptions of disorder are linked to race); see also SKOGAN, *supra* note 102, at 21–50 (describing the effects of various kinds of disorder on neighborhood life).
111. Opponents worry that order-maintenance policies raise serious civil liberties concerns, both because they tend to target poor, minority communities and because they increase the level of police-citizen interaction. See, e.g., HARCOURT, *supra* note 104, at 127–38; David Cole, *Foreword: Discretion and Discrimination Reconsidered: A Response to the New Criminal Justice*

perhaps their potential downsides are unjustifiable if we should be unconcerned with the health of cities qua cities.

Finally, of course, the order-maintenance agenda usually is considered a criminal law matter, which explains why Kotkin's general history of urban life discusses it and Bruegmann's more narrow treatment of land use trends does not. Land use scholars—especially growth management skeptics like Bruegmann—*should*, however, pay more attention to the order-maintenance agenda. Not only might efforts to suppress urban disorder help city neighborhoods attract new residents, partially negating the case for suburban growth restrictions, but many order-maintenance policies *are* land use policies.¹¹² The order-maintenance agenda encompasses physical as well as social disorder, and many cities incorporate the vigorous enforcement of property regulations into their disorder-suppression arsenal.¹¹³

Moreover, the order-maintenance agenda intersects with efforts to promote city busyness in at least three important and understudied ways. First, safer cities are likely to be busier cities. Fear of crime and disorder drives many people with choices away from cities: residents move to safer neighborhoods, often in the suburbs; businesses also relocate, responding to the fear of property crime, high insurance rates, and pressure from present and would-be employees and customers. For the reasons discussed above, successful efforts to improve security—or at least the perception of security—may convince residents and businesses to make cities their home again. Second, busier cities are likely to be safer cities. As Jane Jacobs influentially hypothesized, the complexity and diversity of healthy urban life guarantees the presence of many

Scholarship, 87 GEO. L.J. 1059, 1062 (1999); Carol S. Steiker, *More Wrong than Rights*, in URGENT TIMES: POLICING AND RIGHTS IN INNER-CITY COMMUNITIES 49, 49-57 (Tracey L. Meares & Dan M. Kahan eds., 1999). Proponents counter that poor, minority residents overwhelmingly support order-maintenance policies. See, e.g., Dan M. Kahan & Tracey L. Meares, *Foreword: The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153, 1160-71 (1998); Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong: The Paradox of Unwanted Rights*, in URGENT TIMES, *supra*, at 3, 3-30. Order-maintenance policies also are resource-intensive and therefore expensive, see, e.g., Kelling & Sousa, *supra* note 103, at 1, leading opponents to express concern that these policies divert police attention away from serious crimes, see, e.g., Harcourt & Ludwig, *supra* note 104, at 314-15.

112. See Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1171 (1996) ("A specialist in property law approaches the issue of street order as a problem . . . of land management."); Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1, 3 (2004) ("Largely missing from the academic debate about these developments is a discussion of the complex and important role of property regulation in order-maintenance efforts."); Neal Kumar Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039, 1101-22 (2002) (discussing ways in which property regulation could be used to deter crime).

113. See Garnett, *supra* note 112, at 11-21.

private “eyes upon the street” that serve to keep crime and disorder in check.¹¹⁴ Third, and perhaps most importantly, a city government determined to impose order may—tragically, in my view—mistake busyness for disorder and seek to suppress it.

As I have written elsewhere, there is a risk that local government officials may conclude that zoning’s segregation of land uses will suppress the physical and social disorders targeted by order-maintenance policies.¹¹⁵ Anecdotal evidence suggests, for example, that many cities consider the aggressive enforcement of property regulations, including zoning regulations, an important order-maintenance priority.¹¹⁶ These policies are in keeping with one of zoning laws’ foundational assumptions—namely, the equation of economic activity with social disorder. As Richard Chused has persuasively argued, the Progressives who promoted zoning in the early decades of the twentieth century were “positive environmentalists.” They believed that the busyness of urban life—characterized by the mixing of commercial and residential land uses—degraded human character and that changing the physical surroundings of a community to a single-use suburban model would nurture good citizens.¹¹⁷

The zoning regulations codifying these assumptions have proven stubbornly resistant to change over the past century. Many city officials resist even incremental reforms to zoning rules, such as the liberalization of home business regulations.¹¹⁸ There are a number of reasons to question the regulatory status quo, however. While zoning laws proceed from the assumption that ordered land uses suppress disorder, the relationship between land use patterns and disorder is a complicated one, especially in urban communities. Some studies do suggest the presence of more observable

114. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 40–45 (1993).

115. See Garnett, *supra* note 112, at 21–23.

116. See *id.* at 22 (discussing the incorporation of zoning enforcement into multi-agency code-enforcement “sweeps”). In Georgia, a recently elected official promised in an op-ed that “[b]y putting more resources into enforcing the county’s zoning ordinance . . . we can create an environment where it will be more difficult for crime to take root.” Mike Beaudreau, *Gwinnett Opinions: Citizens Can Expect Changes for the Better*, ATLANTA J.-CONST., Jan. 2, 2005, at J4; see also Ginny Skalski, *City Picks Baker; Crime Tops Agenda*, HERALD-SUN (Durham), Jan. 15, 2005, at A1 (reporting that the city manager’s top crime-reduction priorities included zoning enforcement).

117. Richard H. Chused, *Euclid’s Historical Imagery*, 51 CASE W. RES. L. REV. 597, 601 (2001).

118. See, e.g., Nicole Stelle Garnett, *On Castles and Commerce: Zoning Law and the Home-Business Dilemma*, 42 WM. & MARY L. REV. 1191, 1233 (2001) (discussing resistance to regulatory reform in the home business context).

disorder in mixed land use environments.¹¹⁹ On the other hand, by prohibiting a mixing of land uses, zoning may deprive urban neighborhoods of economic vitality, which, as Kotkin demonstrates, is one of the most important prerequisites of healthy cities. Moreover, property regulations are enormously costly. Housing and building codes, for example, frequently are indicted for contributing to the problem of vacant and abandoned property in city neighborhoods.¹²⁰ Zoning regulations impose additional expenses—from cumbersome off-street parking requirements to limits on home businesses—that may prove cost-prohibitive, especially for would-be entrepreneurs in city neighborhoods.¹²¹ To the extent that these regulations depress economic activity in city neighborhoods, they may also contribute to the social disorder associated with joblessness.¹²² Finally, cities seeking to impose “order” through the aggressive enforcement of traditional zoning rules may undermine their ability to compete with their suburban neighbors. Bruegmann may be right that cities will survive (and be revived) if, and perhaps only if, some subset of would-be residents prefer the (somewhat disorderly) aesthetic of urban life. But cities are unlikely to capture that demographic by seeking—through the enforcement of zoning laws—to become more like suburbs.

A number of commentators have noted the difficulty of defining the appropriate universe of “disorder[s]” that are socially problematic.¹²³ One unfortunate manifestation of this confusion is that city policymakers may be overinclusive and mistake “busyness” for disorder in need of suppression. Land use reforms that reject the traditional assumption that ordered land uses

119. See Sampson & Raudenbush, *supra* note 104, at 624.

120. See, e.g., RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 470-74 (4th ed. 1992) (attributing the shortage of affordable housing to housing codes); STEPHEN R. SEIDEL, HOUSING COSTS AND GOVERNMENT REGULATIONS: CONFRONTING THE REGULATORY MAZE 73-77, 90 (1978) (arguing that building codes introduce distortions into the housing market); Peter D. Salins, *Reviving New York City's Housing Market*, in HOUSING AND COMMUNITY DEVELOPMENT IN NEW YORK CITY 53, 54-55 (Michael H. Schill ed., 1999) (blaming New York City's housing shortage in part on overly complex building regulations); Sara C. Galvan, Note, *Rehabilitating Rehab Through State Building Codes*, 115 YALE L.J. 1744 (2006) (arguing that traditional building codes impede rehabilitation efforts in center cities).

121. See Garnett, *supra* note 112, at 26-40.

122. See, e.g., MIRIAM EREZ & P. CHRISTOPHER EARLEY, CULTURE, SELF-IDENTITY, AND WORK 28-29 (1993) (describing the connection between self-efficacy, vicarious experience, and performance); WILSON, *supra* note 50, at 51-86 (discussing the effects of chronic joblessness in the inner city); Robert J. Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 AM. J. SOC. 348 (1987) (connecting male joblessness, family breakdown, and youth violence).

123. E.g., Sampson & Raudenbush, *supra* note 104, at 619-22.

suppress social disorder represent one promising alternative to growth controls, which seek to foster “busyness” by channeling new development into the urban core. These reforms would also be in keeping with Bruegmann’s views on land use policy: he obviously has a more robust faith in free market forces than many land use scholars. And his opposition to growth management is motivated in large part by a concern about the effects of development restrictions on the urban poor. Unfortunately, however, Bruegmann contents himself with criticizing growth-control proponents for manipulating the regulatory processes to their advantage.¹²⁴ The regulatory choices supported by these relatively wealthy insiders are not surprising, nor are city governments’ tendencies to respond to their demands. It is entirely predictable that city land use policies reflect the preferences of established interests, especially property owners who tend to favor single-use zoning and relatively low densities. Bruegmann misses an opportunity to better explain why these particular regulatory choices are suboptimal for cities and their residents. His case for unrestricted suburban growth could have been strengthened by a parallel case against cumbersome restrictions on urban land uses. By making city neighborhoods busier, the latter reforms could both improve the lives of the urban poor *and* enable cities to compete more effectively with suburbs.

C. *Busyness, Sacredness, and Beauty*

Currently the dominant alternative to use-based zoning is promoted by “new urbanist” planners who advocate replacing single-use zones with mixed land use environments. New urbanists argue that cities should regulate property based upon *building form*, not *building use*.¹²⁵ For example, architect Andrés Duany’s “SmartCode” proceeds upon the assumption that development naturally progresses from urban (most intense) to rural (least intense). Duany calls this progression the “transect” and urges cities to replace use zoning with the regulation of building form appropriate to the various “transect zones” along the progression.¹²⁶ Theoretically, the concept is relatively simple: buildings appropriate for the city center should go in the city center (regardless of what they are used for); suburban buildings should look suburban. New urbanists promise that their system of regulation promotes careful planning

124. See BRUEGMANN, *supra* note 1, at 57–58.

125. See, e.g., Peter Katz, *Form First: The New Urbanist Alternative to Conventional Zoning*, PLANNING, Nov. 2004, at 16, 18–20 (describing the merits of form-based coding).

126. ANDRÉS DUANY ET AL., SMARTCODE & MANUAL VERSION 8.0, at C2 (2006) (“A code, once adopted as law, stays in place, allowing urbanism to evolve and mature without losing its sense of order.”).

that balances the need for city busyness with the concern about urban disorder.¹²⁷

Bruegmann, it is fair to say, is disdainful of the new urbanism, which he dismisses as an aesthetic critique of suburbia.¹²⁸ Kotkin also expresses a cautious skepticism of the movement, worrying that new urbanists “rarely refer to the need for a powerful moral vision to hold cities together.”¹²⁹ Both critiques, in my view, discount the value of the new urbanists’ insights. The new urbanists are today’s positive environmentalists. They connect city busyness and architectural beauty to the shared sense of purpose that Kotkin equates with modern city “sacredness.”¹³⁰ While Progressive reformers linked the geographic segregation of the family home from commerce and industry to the cultivation of a correct moral constitution,¹³¹ new urbanists believe that single-use zoning corrupts our souls. New urbanists assert—among other things—that the heterogeneity of city life, not the homogeneity of suburbs, is conducive to true community life.¹³² Building on Jane Jacobs’s central insight, they reason that mixed-use environments foster healthy communities by providing opportunities for informal social interaction that are lacking in single-use, suburban-style development. Thus, while Kotkin is correct that the new urbanists do not necessarily promote the “powerful moral vision” that he equates with city sacredness, they claim that traditional urban design fosters a richer, more inclusive community life than the privatized suburban realm.¹³³ And while Bruegmann is right that the movement promotes a certain aesthetic, the heart of the new urbanists’ claim is that their urban aesthetic draws people together (and that the dominant suburban aesthetic pulls them apart).

The new urbanists have made valuable contributions to thinking about urban development in recent decades. Nearly a century of single-use zoning has shaped our cities and suburbs—and our views about cities and suburbs—

127. See DUANY, PLATER-ZYBERK & CO., *THE LEXICON OF THE NEW URBANISM* C3.2 (2002); Andrés Duany & Emily Talen, *Transect Planning*, J. AM. PLAN. ASS’N, 245, 247-49 (2002); Chad D. Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, 71 MO. L. REV. 637 (2006).

128. See BRUEGMANN, *supra* note 1, at 150-53.

129. KOTKIN, *supra* note 1, at 158.

130. See, e.g., GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 149-54 (1999) (describing the goals and principles of the new urbanism).

131. See, e.g., Martha A. Lees, *Preserving Property Values? Preserving Proper Homes? Preserving Privilege?: The Pre-Euclid Debate over Zoning for Exclusively Private Residential Areas, 1916-1926*, 56 U. PITT. L. REV. 367, 415-33 (1994).

132. See FRUG, *supra* note 130, at 125-29, 138-42, 149-54.

133. See *id.* at 149-64.

and new urbanists mount a serious challenge to these longstanding practices and assumptions. In many ways, the new urbanism parallels the broken windows hypothesis: it runs contrary to prevailing wisdom, is intuitively attractive, and is difficult to test empirically.¹³⁴ Even Bruegmann grudgingly recognizes that the new urbanists have “struck a chord with many people.”¹³⁵ Indeed, even those who remain unconvinced by the new urbanists’ grandiose claims that more “urban” community design will make us better, more complete people,¹³⁶ cannot help but be moved by Jacobs’s classic description of the good urban life.¹³⁷ And, while Bruegmann is correct to observe that the new urbanists have done more to remake the face of suburbia than to turn around the fate of major cities, he likely underestimates the extent to which new urbanism is influencing urban infill efforts in many cities—or the connections between the nostalgia for the “old neighborhood” and the market for new neighborhoods that look old.

Unfortunately, as the saying goes, the devil is in the details. And the new urbanists’ alternative to zoning is detailed indeed. The movement is dominated by architects, and new urbanist coding consequently relies heavily on detailed architectural design standards. Moreover, political resistance to scrapping traditional zoning usually guarantees that these standards tend to supplement, rather than supplant, traditional zoning tools when they are adopted.¹³⁸ New urbanists have specific ideas about how buildings should look: ugly, unwelcoming buildings, in their view, can be just as detrimental to community as sterile, single-use planning. For example, the regulatory code for the Park East redevelopment district in Milwaukee—a project initiated by the city’s former mayor, John Norquist, who is now president of the Congress for the New Urbanism—includes hundreds of pages of architectural renderings and photographs of “appropriate” building types.¹³⁹ New urbanist coding promises to make some city projects—including infill efforts and mixed-income public housing developments—look very nice. But complying with these design

134. See, e.g., Harcourt & Ludwig, *supra* note 104, at 315 (recounting James Q. Wilson’s observation that the broken windows hypothesis was based upon “speculation”).

135. BRUEGMANN, *supra* note 1, at 151.

136. See, e.g., Philip Bess, *The Polis and Natural Law: The Moral Authority of the Urban Transect*, in *TILL WE HAVE BUILT JERUSALEM* (forthcoming 2006) (manuscript on file with author).

137. See JACOBS, *supra* note 114; see also Douglas Martin, *Jane Jacobs, 89, Who Saw Future in Cities, Is Dead*, N.Y. TIMES, Apr. 26, 2006, at A1 (describing Jacobs’s influence).

138. See Emerson, *supra* note 127, at 671-75.

139. See City of Milwaukee, Dep’t of City Dev., Park East, <http://www.mkedcd.org/parkeast/index.html> (last visited Nov. 11, 2006).

standards may prove daunting and expensive, especially for those without financial means or formal education.¹⁴⁰

Just as it is important to rethink how land use rules mediate the relationship between busyness and safety, city leaders must also consider the tensions and intersections between busyness, beauty, and “sacredness”—especially before endorsing new urbanist coding as an alternative to zoning. Here, Kotkin’s conception of city “sacredness” is instructive. Kotkin describes a cultural, not an aesthetic, phenomenon. His “sacredness” is an expression of the kind of social capital that correlates with, and is promoted by, healthy city life.¹⁴¹ Architectural beauty may indeed help build such social capital. Certainly the claim that we are inspired and drawn together by beautiful places and beautiful buildings rings true. Architecture historically served to emphasize the “sacredness” of cities: the beauty of the cathedral, the mosque, or the temple reminded citizens of their common bonds and responsibilities.¹⁴² Perhaps new urbanist coding also will help cities capitalize on urban distinctiveness while preventing physical disorder, thereby promoting urban competitiveness. On the other hand, the goals of busyness and beauty may sometimes conflict, with complex architectural standards standing as yet another impediment to urban reinvestment. By seeking to dictate the details of what a busy and “sacred” neighborhood should look like, new urbanists’ proposals may backfire, further depressing urban development hopes, especially in the poorest communities.

In my view, when beauty conflicts with busyness, cities must prioritize busyness, for at least two related reasons. First, busyness is an important element of city-suburb competition: higher density, mixed-use urban environments are increasingly rare, even countercultural in our culture of sprawl. Our cities’ best hope is that some subset of Americans continues to prefer density and busyness to tranquility and openness. Second, city busyness is critical to building Kotkin’s urban “sacredness.” Busy streets encourage the

140. See, e.g., Joseph E. Gyourko & Witold Rybczynski, *Financing New Urbanism Projects: Obstacles and Solutions*, 11 HOUSING POL’Y DEBATE 733, 739-40 (2000) (concluding, based on an extensive survey of builders and developers, that new urbanist projects are more expensive); Philip Langdon, *The Not-So-Secret Code: Across the U.S., Form-Based Codes Are Putting New Urbanist Ideas into Practice*, PLANNING, Jan. 2006, at 24, 28 (asserting that the cost of form-based codes “exceeds that of a conventional land-use plan” making citywide form-based coding “prohibitively expensive”); see also NEW URBANISM: COMPREHENSIVE REPORT AND BEST PRACTICES GUIDE § 14-8 (Robert Stenteville ed., 2d ed. 2001) (describing new urbanist developments in which design costs were \$4000 per house, compared to approximately \$40 per house in conventional developments).

141. See, e.g., RAE, *supra* note 22, at 181-82 (describing how urban life generates social capital).

142. See KOTKIN, *supra* note 1, at 28-29 (describing ancient Rome); *id.* at 45-46 (describing the medieval Islamic city); *id.* at 53-55 (describing the great capitals of the Chinese Middle Kingdom as the “astral center of the universal order”).

informal social interactions that, to borrow from Robert Putnam, bind similar people together and bridge groups of different people.¹⁴³ And, of course, few would challenge the suggestion that a lack of busyness in the poorest neighborhoods impedes the development of social capital, encourages lawlessness, and promotes hopelessness. In these places, city leaders should not neglect the possibility that the incremental deregulation of certain land uses might prove more advisable than substituting a new kind of mandated order for the more familiar one imposed by zoning.

CONCLUSION

For the better part of the past century, land use laws sought to impose suburban land use patterns in our cities. Today, growth-control proponents seek to renew our cities by restricting suburban growth in order to promote denser urban land use patterns. Robert Bruegmann challenges the conventional wisdom supporting the latter course of action. His case against growth restrictions is a powerful one, and he convincingly argues that suburbs are neither bad nor out of control. But Bruegmann's effort to change the terms of the debate by urging readers to reconsider city exceptionality fails. It is possible to agree with Bruegmann's descriptive account of the pace, scale, and benefits of suburban development and also to believe that cities, by virtue of their density and busyness, foster a kind of social capital—what Kotkin would call “sacredness”—that is worth preserving and fostering. Moreover, even those who agree with Bruegmann that cities and suburbs are simply part of the same economic continuum likely harbor concerns about the fate of the urban poor.

Neither view requires the endorsement of suburban growth restrictions, especially in light of their possible distributional consequences. Given the risks attendant to growth management, advocates of urban life might first ask whether changing city land use policies to embrace this urban distinctiveness could do more to save our cities than limiting the choices of those who prefer to live in the suburbs. To accomplish this goal, city leaders must carefully consider how land use regulations might be amended to encourage land use patterns appropriate for an urban environment. Possible reforms range from the sweeping—the widespread adoption of mixed-use zoning, for example—to the incremental—eliminating off-street parking requirements, permitting shallower setbacks from streets, and relaxing restrictions on home businesses.

143. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 18-24 (2000) (defining social capital).

In the end, however, competition between cities and suburbs cannot turn on land use strategies alone. Suburbs thrive not simply because Americans prefer suburban land use patterns (although that is undoubtedly an important factor), but also because they offer many amenities that cities do not. If cities are to compete for residents, other reforms—especially to education, public works, and the delivery of city services—also may prove necessary.¹⁴⁴ More Americans have lived in the suburbs than in central cities since 1970,¹⁴⁵ and many of them would never consider living anywhere else. But Kotkin's book serves as a reminder—contra Bruegmann—that the city/suburb distinction turns on more than population densities and aesthetic preferences. The path to urban success may be to demonstrate to our suburban nation that cities offer something suburbs cannot—the complex web of social and economic relationships and the genuine love of, and commitment to, urban life that characterizes great cities.

144. Local government reforms, including business improvement districts, tax increment financing, and other “sublocal” governance innovations, have achieved some success in many cities. See Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503 (1997).

145. See MULLER, *supra* note 84, at 4.