

# SUBURBAN SPRAWL, JEWISH LAW, AND JEWISH VALUES by Michael Lewyn<sup>1</sup>

## I. Introduction

In the second half of the 20<sup>th</sup> century, America's cities and suburbs were engulfed by suburban sprawl – “the movement of people (especially middle-class families) and jobs from older urban cores to newer, less densely populated, more automobile-dependent communities generally referred to as suburbs.”<sup>2</sup> Cities throughout America lost population to their outlying suburbs,<sup>3</sup> and cities that gained population did so only because they were able to annex those suburbs.<sup>4</sup>

America's suburban revolution has not left Jewish communities unscathed. For example, the city of Newark, New Jersey contained 58,000 Jews<sup>5</sup> and 34 synagogues in the 1940s,<sup>6</sup> but today has only a few hundred Jews<sup>7</sup> and only two synagogues.<sup>8</sup> Similarly, the City of St. Louis now has only one synagogue, although its suburbs have over 20.<sup>9</sup>

---

<sup>1</sup> Visiting Associate Professor, Rutgers/Camden Law School. I would like to thank Steven Friedell for his thoughtful comments on this article. Any errors of fact or logic are, of course, mine alone.

<sup>2</sup> Michael E. Lewyn, *Suburban Sprawl: Not just an Environmental Issue*, 84 *Marq. L. Rev.* 301, 301 (2000). See also Jeremy R. Meredith, *Sprawl and the New Urbanist Solution*, 89 *Va. L. Rev.* 447, 448 (2003) (sprawl characterized by low density, dominance of single family housing, segregation of different type of land uses, automobile dependence, and absence of regional land use planning); Lee R. Epstein, *Where Yards Are Wide: Where Have Land Use Planning and Law Gone Awry?*, 21 *Wm. & Mary Envtl. L. & Pol'y Rev.* 345, 347 (1997) (sprawl is “low-density, single-use development . . . at the very edges or beyond the fringe of existing urbanization”).

<sup>3</sup> See Lewyn, *supra* note 2, at 301-02; David Rusk, *Cities Without Suburbs* 5 (3d. ed 2003) (noting that at end of World War II, about 70% of metropolitan Americans lived in central cities, as opposed to less than 40% in 2000), 7 (of the cities that were America's twelve largest in 1950, ten lost population in later decades)

<sup>4</sup> *Id.* at 14-20.

<sup>5</sup> See Josh Margolin, *Suburbanites honor ancestors they left behind*, the *Star-Ledger*, August 21, 2000, at 11, 2000 WL 25184554 (Newark “once boasted 58,000 Jews, and was the seventh-largest urban Jewish community in America in 1948”).

<sup>6</sup> See Charles F. Cummings, *Jewish population rose and fell over 150 years*, *The Star-Ledger*, May 23, 2002 at 3, 2002 WL 21249503 (in 1945, 34 Jewish congregations based in Newark, and only 14 in suburbs).

<sup>7</sup> See Margolin, *supra* note \_\_\_\_.

<sup>8</sup> See Reginald Roberts, *Irvington seniors keep tradition alive*, *The Star-Ledger*, March 24, 2002, at 39, 2002 WL 17059906.

<sup>9</sup> Central Reform Congregation, at <http://www.uahc.org/congs/mo/mo004/> (visited May 7, 2003) (web page describing congregation as only one in city); Repps Hudson, *Kaplan oversimplifies St. Louis in His Quick*,

Even in more vibrant cities, significant “Jewish flight” has occurred. In 1990, 2/3 of metropolitan Chicago’s Jews lived in suburbs, up from 4% in 1950.<sup>10</sup> And flight to suburbia has dramatically affected Jews’ daily lives: suburban Jews, like other American suburbanites, are highly dependent on automobiles.<sup>11</sup>

This article discusses the tension between suburban sprawl and Jewish values. Specifically, Part II of the article argues that the automobile dependency and class division exacerbated by sprawl conflicts with Jewish ethical and environmental values and impedes observance of Jewish law. Part III sets out a program for action, both for Jews in their role as voters and lobbyists and for Jews in their role as private citizens deciding where to place Jewish schools and synagogues. Part IV rebuts libertarian objections to anti-sprawl policies by pointing out that Jewish law encourages public regulation of land use, and that in any event anti-sprawl policies need not conflict with libertarian norms.

## II. Sprawl and Jewish Values

The growth and form of suburbia has divided metropolitan areas into rich suburbs and poor cities, and has made Americans dependent on automobiles to fulfill every conceivable function. The implications of these realities for Jewish values and Jewish observance will be discussed below.

### A. The Ethical Problem: Justice and Charity

#### 1. What Tradition Requires

---

Scathing Analysis, August 30, 1998 at D5, 1998 WL 3349913 (region has more than 20 synagogues, and one in city of St. Louis).

<sup>10</sup> Evans Osnos, Jewish Groups Face Future Together, Chicago Tribune, Sept. 18, 2000, at 3, at 2000 WL 3709831.

<sup>11</sup> See *infra* notes \_\_\_ and accompanying notes (discussing auto-dependent nature of suburbia generally); Ira S. Youdovin, Jews forever divided- and united, Chicago Sun-Times, May 11, 1997, at 36, 1997 WL 6350024 (Conservative Judaism allows driving to synagogue on Sabbath “responding to the dispersion of American Jews from tight urban neighborhoods into sprawling suburbs”)

Jewish law is based primarily on the Torah<sup>12</sup> - that is, the first five books of the Hebrew Bible (Genesis, Exodus, Leviticus, Numbers, and Deuteronomy).<sup>13</sup> The Torah consistently urges Jews to aid, rather than impoverishing, the needy and disabled. For example, the Book of Leviticus states: “Thou shalt not curse the deaf, nor put a stumbling-block before the blind”<sup>14</sup> – words that, if read literally, appear to condemn mistreatment of the disabled.<sup>15</sup>

In the very next verse, the Torah urges government officials not to favor the rich over the poor, asserting: “Ye shall do no unrighteousness in judgment; thou shalt not respect the person of the poor, nor favor the person of the mighty.”<sup>16</sup> Although Leviticus uses the term “judgment,” that book contemplates no government officials other than judges (such as kings or legislators).<sup>17</sup> Thus, Leviticus 19:15 implicitly suggests that all government officials should deliver equal justice to rich and poor – and thus arguably condemns government policies that make the poor worse off than would an unfettered free market.

---

<sup>12</sup> See Sam Feldman, Reason and Analogy: A Comparison of Early Islamic and Jewish Legal Institutions, 2 U.C.L.A. Journal of Islamic and Near Eastern Law 129, 131 (2002/03) (“The focus of original Jewish law is the Torah” because other portions of Hebrew Bible contained few if any laws)

<sup>13</sup> See Elliot Klayman & Seth Klayman, Punitive Damages: Toward Torah-Based Tort Reform, 23 Cardozo L. Rev. 221, 224 n. 28 (2001) (listing books); Sinai Memorial Chapel v. Dudker, 282 Cal. Rptr. 263, 265 (1991) (“Sources of Jewish law include the legal portions of the ‘Torah’ which is the first five books of the Bible” as well as other legal writings).

<sup>14</sup> The Bible, Leviticus 19:14. For the purposes of this article, I use the 1917 Jewish Publication Society translation of the Hebrew Bible, because that translation is free online, and thus more easily accessible to readers than other Jewish translations. See Jewish Publication Society Bible, at <http://www.hareidi.org/bible/> (May 8, 2003).

<sup>15</sup> See Mary C. Scarlato and Lynne Marie Kohm, Integrating Religion, Faith and Morality in Traditional Law School Courses, 11 Regent U. L. Rev. 49, 58 n. 53 (1998-99) (interpreting verse literally to forbid “cruelty towards persons with disabilities [and to require] care of such individuals”). But cf. Thomas L. Shaffer, Christians, Lawyers and Money, 25 Vt. L. Rev. 451, 460 (2001) (verse often interpreted figuratively to bar any mistreatment of financially vulnerable who might be “blind” to such misconduct).

<sup>16</sup> The Bible, supra note x, Leviticus 19:15.

<sup>17</sup> The Bible does not contemplate the existence of Jewish kings until the book of Deuteronomy, which discusses events taking place some years after those addressed in Leviticus. *Id.*, Deuteronomy 19:14-20 (containing laws governing Jewish kings, and specifying that no Jewish king may be crowned until after Jews enter land of Israel).

In addition to prohibiting discrimination against the poor, the Torah affirmatively mandates support of the needy. One provision in Leviticus states: “thou shalt not glean thy vineyard, neither shalt thou gather the fallen fruit of thy vineyard; thou shalt leave them for the poor and the stranger.”<sup>18</sup> The book of Exodus similarly mandates that every seven years, landowners shall allow all their land to “lie fallow, that the poor of thy people may eat.”<sup>19</sup>

Later Jewish tradition not only requires Jews to support the poor in their midst, but privileges certain forms of charity over others. Moses ben Maimon (also known as “Rambam” or “Maimonides”), a 12<sup>th</sup>-century medieval philosopher and codifier of Jewish law,<sup>20</sup> explained that the duty to give charity is not merely a voluntary obligation, but should actually be legally enforceable in rabbinic courts.<sup>21</sup> Maimonides went on to specify the proper goals of charity, writing that the “summit of charity’s golden ladder”<sup>22</sup>

---

<sup>18</sup> Id., Leviticus 19:10. See also Lev. 23:22 (“when ye reap the harvest of your land, thou shalt not wholly reap the corner of thy field . . . thou shalt leave them for the poor and the stranger”); Numerous other Biblical provisions mandate benevolence to the poor without specifically defining what sort of charity should be provided, or condemn oppression of the poor in general terms. See, e.g., Deuteronomy 15:11 (“open thy hand unto thy poor and needy brother”); Isaiah 10:1-2 (“Woe unto them that . . . take away the right of the poor of My people”); Proverbs 14:31 (“He that oppresseth the poor blasphemeth his Maker, but he that is gracious unto the needy honoureth Him”); Psalms 72:4 (king should “save the children of the needy”).

<sup>19</sup> Id., Exodus 23:11.

<sup>20</sup> See Chad Baruch & Karsten Lokken, *Research of Jewish Law Issues: A Basic Guide and Bibliography for Students and Practitioners*, 77 U. Detroit Mercy L. Rev. 303, 308 n. 39 (2000) (describing Maimonides); Alan M. Sokobin, *A Program in Comparative Jewish Law*, 33 U. Toledo L. Rev. 795, 807 (2002) (Maimonides “most probably the preeminent intellectual personage of the twelfth century” and “structured and extended the scope of Jewish law”).

<sup>21</sup> See Sheldon Nahmod, *The Duty to Rescue and the Exodus Meta-Narrative of Jewish Law*, 16 Ariz. J. Int’l & Comp. L. 751, 759 (1999) (citations omitted). In the Middle Ages, Jews often lived in self-governing communities where rabbinic courts had the authority to impose both financial and physical punishment. See Earl Schwartz, *Land, Liens and Ts’daqah*, 14 J. L. & Rel. 391, 401 (1999-2000) (citation omitted) (according to Shulhan Arukh, a 16<sup>th</sup>-century code of Jewish law, in self-governing Jewish communities one who gives an inadequate amount of charity can be compelled to do so by a Jewish religious court; methods of compulsion may include flogging and seizure of assets); Emil A. Kleinhaus, *History as Precedent: The Post-Originalist Problem in Constitutional Law*, 110 Yale L.J. 121, 151 (2000) (“many traditionalists maintain that the Shulhan Arukh, a sixteenth-century ode of Jewish law written by Rabbi Joseph Caro, is the final arbiter of Jewish law”).

<sup>22</sup> William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. Richmond L. Rev. 111, 111 n. 1 (1997) (citation omitted).

is to “assist the reduced fellow man . . . by putting him in the way of business, so that he may earn an honest livelihood, and not be forced to the dreadful alternative of holding out his hand for charity.”<sup>23</sup> In other words, Maimonides urges that Jews seek to make poor people self-supporting rather than promoting permanent welfare dependency.

In sum, Jewish tradition requires that: (1) at a minimum, government not discriminate against the poor and disabled; (2) that Jews in fact seek to affirmatively aid the poor, preferably by giving them access to employment. But the division of American metropolitan areas into poor cities and wealthier auto-oriented suburbs violates both principles, because of city/suburb inequality and because suburban jobs are often inaccessible to people without cars.

## 2. Sprawl vs. Jewish Justice

### a. Rich Suburbs, Poor Cities

In the first half of the 20<sup>th</sup> century, Americans of all social classes generally lived in the same municipality.<sup>24</sup> Thus, rich and poor shared the same government services – the same schools, the same transportation system, and the same city parks and libraries.<sup>25</sup> But in recent decades, the rich and middle class have moved to suburbia while the poor have been left behind in cities. By 2000, household income in American cities averaged less than three-fourth that of American suburbs,<sup>26</sup> and the average city had twice as many

---

<sup>23</sup> Id.

<sup>24</sup> See Rusk, *supra* note \_\_, at 5. Of course, this is still true in cities which have been able to annex newly developed areas. Id. at 76, 86-87, 101-110 (noting that cities which are able to annex suburban areas tend to be more prosperous, and discussing legal obstacles to such annexation). Thus, the discussion below is limited to cities which are unable to annex their suburbs and thus confined to their mid-century boundaries.

<sup>25</sup> Id.

<sup>26</sup> See Laurent Belsie, *Leaving the city for a better life?*, *Christian Science Monitor*, June 25, 2002, at 1, 2002 WL 6426550 (“By the end of the 1990s, household income averaged \$36,535 in cities versus \$50,175 in the suburbs”). By contrast, in 1960 cities were typically wealthier than their suburbs. See Meredith, *supra* note \_\_, at 456 n. 36.

residents with poverty-level incomes as its suburbs.<sup>27</sup> In some metropolitan areas, the economic gap between cities and suburbs is simply enormous: for example, the average per capita income for residents of Newark is only 42% of the average per capita income for Newark suburbanites.<sup>28</sup>

Because most cities are poorer than their suburbs, those cities' tax bases tend to be smaller,<sup>29</sup> which means that those cities either have (1) higher taxes than their suburbs or (2) worse municipal services.<sup>30</sup> Moreover, a poverty-packed city typically must spend **more** money than its suburbs to obtain the same quality of public services as those suburbs, because poor people need more money for public assistance, police services, and poverty-related health care than would the population of a more affluent municipality.<sup>31</sup> So the division of American metropolitan areas into rich suburbs and poor cities means that wealthy and middle-class Americans live in suburbs with superb tax bases and fine services, while the poor get penned up in cities where weak tax bases force municipal leaders to choose between high taxes and poor services.

---

<sup>27</sup> Id. (cities had 18.2% poverty rate, as opposed to 8.6% for suburbs). See also Nicole Stele Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 *Harv. J. on Legis.* 173, 179 (2001) (half of nation's welfare recipients live in central cities, and central cities of twelve largest metropolitan areas poorer than suburbs).

<sup>28</sup> See Jeffery C. Mays, *Newark failing to catch up to suburbs in public health*, *The Star-Ledger*, Feb. 28, 2003 at 21, available at 2003 WL 13235083 (Newark's per capita income \$13,009 as opposed to \$30,833 for its suburbs). See also Rusk, *supra* note \_\_, at 80-82 (listing similar statistics for numerous cities derived from 1990 Census).

<sup>29</sup> See Meredith, *supra* note \_\_, at 456 (flight of jobs and people from city caused tax bases to deteriorate).

<sup>30</sup> See Richard Briffault, *Our Localism: Part II- Localism and Legal Theory*, 90 *Colum. L Rev.* 346, 352 (1990).

<sup>31</sup> See Meredith, *supra* note \_\_, at 456 ("With the flight of jobs and people from urban areas, city tax bases have deteriorated . . . those residents who remain in the city often have higher relative demands for health care and social programs, but a decreased ability to pay for them.")

In sum, suburbanization means that the rich get better local government than the poor. By contrast, the Torah mandates that government not favor the rich over the poor.<sup>32</sup> Thus, the city/suburb division is arguably inconsistent with Torah values.

b. The Injustice of Automobile Dependency

As noted above, traditional Judaism mandates that the poor be given an opportunity to work rather than being forced to subsist on charity.<sup>33</sup> But American transportation policies do exactly the opposite, using highway spending to develop middle-class suburbs while refusing to provide enough public transit to enable the carless poor and disabled to reach jobs that the highway system has shifted to suburbia.<sup>34</sup> The majority of welfare recipients<sup>35</sup> and millions of disabled Americans<sup>36</sup> own no car – and thanks to America’s highway-dominated transportation policy, these Americans are often frozen out of jobs<sup>37</sup> and thus more likely to be dependent on private and public charity.

For decades, government at all levels has funneled money into highway construction. In the first half of the 20<sup>th</sup> century, public transportation was generally private and unsubsidized – yet as early as 1921, the federal government poured \$1.4

---

<sup>32</sup> See supra notes \_\_\_ and accompanying text. It could be argued that the rich deserve better government because they pay more in taxes. This argument lacks merit for two reasons. First, the Torah does not suggest that the rich are entitled to a higher quality of justice. Second, state and local tax systems typically tax the rich and poor almost equally. See U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 2003 at 306 (123d ed. 2003) (“2003 Abstract”) (in Houston, Memphis and Seattle, family earning \$25,000 pays higher percentage of income in taxes than family earning \$150,000; in some other cities, differences between income brackets slight).

<sup>33</sup> See supra notes \_\_\_ and accompanying text.

<sup>34</sup> See infra notes \_\_\_ and accompanying text.

<sup>35</sup> See Transportation Equity Act for the 21<sup>st</sup> Century, PL 105-178, 112 Stat. 107, sec. 3037(a)(5) (1998) (Congress finds that “94 percent of welfare recipients do not own cars”); Garnett, supra note x, at 183 n. 61 (although some studies question “94 percent” figure, all studies agree that a majority of welfare recipients do not own cars).

<sup>36</sup> William W. Millar, Testimony of the American Public Transit Association Before the Labor, Health and Human Services, Education and Related Agencies Subcommittee of the House Appropriations Committee, Feb. 5, 1998, available at 1998 WL 8991781.

<sup>37</sup> See infra notes \_ and accompanying text (many jobs not accessible via public transit).

billion into highways.<sup>38</sup> Government highway spending continued to grow in subsequent decades, and now exceeds \$100 billion yearly.<sup>39</sup>

Initially, highway spending generated suburban residential development by making it easier for commuters to drive to downtown jobs from once-distant suburbs.<sup>40</sup> But where highway-driven residential development went, jobs inevitably followed, as retail businesses and other businesses moved to suburbia in order to accommodate suburban customers and employees.<sup>41</sup> Even supporters of road construction admit that new highways encourage people to move to areas served by those roads. For example, in 1999 the National Association of Home Builders (which supports increased road construction)<sup>42</sup> conducted a poll asking respondents what amenities would encourage them to move to another neighborhood, and their top choice (endorsed by 55% of respondents) was “highway access.”<sup>43</sup>

If the suburbs created by highway-generated sprawl had adequate public transit service, government transportation policies might not implicate issues of fairness. Government could have served suburban employers with buses and rail lines, matching each highway spending spree with a parallel spending spree on public transit. But this was not to be. Instead, government chose to invest in roads for the middle class while

---

<sup>38</sup> Michael Lewyn, Campaign of Sabotage: Big Government’s War Against Public Transportation, 26 Colum. J. Envtl. L. 259, 268 (2001).

<sup>39</sup> See 2003 Abstract, supra note \_\_, at 694 (government spends just over \$129 billion on highways) (“Abstract”). See also Rusk, supra note \_\_, at 114 (from 1956 to 2001, federal government spent \$874 billion in 2001 dollars for highways, and only \$147 billion for public transit).

<sup>40</sup> See Penny Mintz, Transportation Alternatives Within the Clean Air Act: A History of Congressional Failure to Effectuate and Recommendations for the Future, 3 N.Y.U. Envtl. J. 156, 159 (1994) (“Highways made land outside cities accessible, which in turn made the land attractive for development”); infra note x and accompanying text.

<sup>41</sup> See Peter Gordon & Harry W. Richardson, Defending Suburban Sprawl, Pub. Int., Spring 2000, at 65, 70, 2000 WL 10456100 (firms “follow the labor force to the suburbs where their employees live”); Meredith, supra note \_\_, at 475 (“Once highways are constructed, commercial and residential centers quickly develop around them.”)

<sup>42</sup> See Lewyn, supra note x, at 272 & n. 91.

<sup>43</sup> Lewyn, supra note x, at 273.

ignoring transit for the poor. The federal government did not support public transit at all until the 1960s.<sup>44</sup> As a result, between 1950 and 1970 vehicle miles of transit service declined nationally by 37%.<sup>45</sup> Today, all levels of government spend far more on highways than on public transit.<sup>46</sup>

As a result, many suburban jobs are simply not accessible to the carless poor and disabled. For example, only 10% of all entry-level jobs in the Boston metropolitan area can be reached by public transit by sixty minutes from the Boston inner city, and 45% cannot be reached even after a two-hour transit commute.<sup>47</sup> In metropolitan Cleveland, residents of one poor Cleveland neighborhood can reach only 929 entry-level jobs via a public transit commute of average length, and only 8-15% of all job openings are similarly transit-accessible.<sup>48</sup> Similarly, one-third of all entry-level jobs in the Baltimore region cannot be reached at all without an automobile.<sup>49</sup> And Boston, Baltimore and Cleveland are all regions with relatively well-developed public transit systems: all four regions' transit systems are among the 30 largest in America.<sup>50</sup> In smaller cities, the nondriver's plight is more desperate still: for example, in Oklahoma City, Oklahoma, a

---

<sup>44</sup> Id. at 269.

<sup>45</sup> Id.

<sup>46</sup> Abstract, supra note x, at 287 (state and local highway spending, excluding intergovernmental grants, exceeds transit spending by over 3-1); 694 (federal grants to state and local governments for highways exceed transit-related grants by over 5-1).

<sup>47</sup> Garnett, supra note x, at 187.

<sup>48</sup> Id. at 188.

<sup>49</sup> Marcia Myers, Jobs Out of Reach for the Carless, Baltimore Sun, November 16, 1999, 1999 WL 5209857.

<sup>50</sup> See American Public Transit Association, 75 Largest Transit Agencies, Fiscal Year 2002, Ranked by Passenger Miles, <http://www.apta.com/research/stats/overview/75largest.cfm> (visited March 17, 2004).

city with over half a million residents,<sup>51</sup> bus service ceases after 7:30 PM and disappears altogether on Sundays and holidays.<sup>52</sup>

In sum, government has slashed job opportunities for transit-dependent Americans through (1) building highways that shifted jobs to suburbs and (2) refusing to provide transit service to those suburbs. It follows that American sprawl is essentially segregationist: jobs and civic opportunities are kept away from low-skilled workers who cannot afford cars, as well as from the young, the elderly and the disabled who are physically incapable of driving. Thus, sprawl systematically impoverishes the weakest members of our society. By contrast, Jewish tradition urges us to do our best to make every member of society employable. In other words, the automobile dependency produced by sprawl creates a head-on collision between American transportation policy and Jewish values.

#### B. Sprawl, The Environment, and Jewish Land Use Regulation

The Bible and later sources of Jewish law, such as the Mishna (a code of Jewish law and oral tradition compiled and put in writing in the second century of the Common Era)<sup>53</sup> and the Talmud (a set of books written in the fourth and fifth century C.E.

---

<sup>51</sup> Abstract, *supra* note x, at 36. Oklahoma City is America's 29<sup>th</sup> largest city, *id.*, and the Oklahoma City metropolitan area has over a million residents. *Id.*

<sup>52</sup> Metro Transit, General Information, [http://www.gometro.org/metro\\_transit%20folder/metro\\_transit/general\\_info.html](http://www.gometro.org/metro_transit%20folder/metro_transit/general_info.html) (visited March 19, 2004) (web site for regional bus system).

<sup>53</sup> Ora R. Sheinson, Lessons from the Jewish Law of Property Rights for the Modern Takings Debate, 26 Col. J. Envtl. L. 483, 491 (2001). The most traditional Jews assert that Mishna is part of an "oral tradition [that] was given [to Moses] at Mount Sinai that supplements and explains the written Jewish law." *Id.* Conservative and Reform Jews, by contrast, view the Mishna as primarily man-made. See Sam Feldman, Reason and Analogy: A Comparison of Early Islamic and Jewish Legal Institutions, 2 U.C.L.A. J. of Islamic and Near Eastern Law 129, 142 (2002-03) ("Today the divinity of the oral Torah is a major point of separation between the theologies of Orthodox and Conservative Judaism"); Canada & The World Backgrounder, Judaism, Dec. 1, 1999, 1999 WL 23047225 (Reform Judaism "rejects the divine revelation of the oral law."); Jewish Virtual Library, The Oral Law, [http://www.us-israel.org/jsource/Judaism/Oral\\_Law.html](http://www.us-israel.org/jsource/Judaism/Oral_Law.html) (visited May 5, 2004) (non-Orthodox Jews "more apt to see the Talmud and the Oral Law as an evolving system, in which successive generations of rabbis discussed and

discussing and interpreting the Mishna)<sup>54</sup> regulate land use in two ways: by restricting the right to develop rural land in Jewish communities, and by limiting Jews' ability to engage in polluting activities. By contrast, suburban sprawl leads to more development of rural land and to more pollution.

### 1. Protecting The Land: A Jewish Value

The Torah mandates an uncultivated green belt around cities dominated by the Levite tribe,<sup>55</sup> and the Talmud expanded this rule to all Jewish-dominated cities in Israel.<sup>56</sup> Rabbi Samson Raphael Hirsch, a 19<sup>th</sup>-century Jewish scholar,<sup>57</sup> asserts that these laws are designed to “maintain an urban population with a connection to agriculture . . . [and] prevent cities from growing into metropolises cut off from the fields.”<sup>58</sup>

While Jewish law discourages the expansion of urban areas into the countryside, sprawl by definition involves increased development of once-rural suburbia.<sup>59</sup> Although some suburban development may be a necessary result of increased population, in much of America land has been developed at a rate far exceeding the rate of population growth. In 1950, 69 million Americans lived in urbanized areas containing 12,715 square

---

debated how to incorporate the Torah into their lives. Thus, they feel more free than the Orthodox to ignore, modify, or change the Oral Law.”)

<sup>54</sup> Sheinson, *supra* note \_\_, at 491.

<sup>55</sup> See The Bible, Numbers 35:2-4 (stating that nation shall “give unto the Levites . . . cities to dwell in”, that cities should be surrounded by “open land [that] shall be for their cattle, for their substance, and for all their beasts”, and that such open land “shall be near the wall of the city and outward a thousand cubits round about”). While other tribes received large chunks of land for agriculture, the Levite tribe was supported by tithes and relegated to 48 cities. See Heschel Center, *The City's Life Lies Outside It*, [http://www.heschelcenter.org/text\\_files/city%20life.doc](http://www.heschelcenter.org/text_files/city%20life.doc) (visited May 18, 2004) (“City Life”). Each of these cities was to be surrounded by public open space. *Id.*

<sup>56</sup> See Sheinson, *supra* note \_\_, at 502 (citation omitted); City Life, *supra* note \_\_; Alain Attar, *Environmental Issues in Judaism*, <http://www.lookstein.org/articles/environment.htm> (visited May 18, 2004).

<sup>57</sup> See Sheinson, *supra* note \_\_, at 494 n. 56 (Hirsch a “major Rabbinic philosopher and decisor of 19<sup>th</sup>-century Germany” who “advocated the integration of traditional Jewish thought with modern science, while at the same time upholding Orthodox Jewish practices”); City Life, *supra* note \_\_ (Hirsch the “founder and prime expositor of modern Orthodoxy”).

<sup>58</sup> *Id.*

<sup>59</sup> See *supra* notes \_\_ and accompanying text.

miles.<sup>60</sup> By 2000, those same urbanized areas contained 155 million residents in 52,388 square miles of developed land.<sup>61</sup> Thus, America's urban and suburban population doubled, but Americans occupied more than four times as much urban and suburban land.<sup>62</sup> Of course, America's exploding population makes literal application of the Torah impractical. Nevertheless, the Torah's greenbelt law suggests that Jews should support redevelopment of land within existing neighborhoods, rather than supporting policies that shift development to rural areas on the outskirts of metropolitan areas.

## 2. Judaism, Pollution and Sprawl

Jewish law regulates land use not only to further aesthetic goals, but to limit pollution as well. For example, the Talmud rules that carcasses, graves, tanneries and furnaces be distanced from a town because they are sources of smoke and smell that can blow into a city.<sup>63</sup> Jewish law even bars such seemingly innocuous activities such as commercial bakeries if those activities create intolerable levels of smoke.<sup>64</sup> Domestic activities that cannot be placed outside of cities are nevertheless subject to regulation; for example, an oven located on the second floor of a building must be placed upon plaster, so that any fire caused by the oven does not spread upstairs.<sup>65</sup>

---

<sup>60</sup>See Rusk, *supra* note \_\_, at 8. An "urbanized area" is a "central city and its contiguous, built-up suburbs." *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* Of course, land lost to development is only a small proportion of all American land. See Oliver Gillham, *The Limitless City* 84 (2002) (only about 5% of American land developed). But the land closest to major population centers, and thus "most precious", *id.* at 85, to urbanites, is the land most likely to be developed over the next few decades. *Id.* at 85-86.

<sup>63</sup> Sheinson, *supra* note \_\_, at 503, citing Babylonian Talmud *Baba Batra* 2:9.

<sup>64</sup> *Id.* at 503-04.

<sup>65</sup> *Id.* at 505 (citation omitted), citing Mishna *Baba Batra* 2:2.

American sprawl has increased air pollution<sup>66</sup> by increasing auto use. As early as 1977, the Supreme Court noted that “driving an automobile [is] a virtual necessity for most Americans.”<sup>67</sup> And as people and jobs have moved to suburbia,<sup>68</sup> Americans have been forced to drive more and more miles to do the business of everyday life. Between 1980 and 1997, the number of miles driven in the United States increased by 63% -- over three times the rate of the population increase during that period.<sup>69</sup> In turn, motor vehicles are a primary source of pollutants such as carbon monoxide and ozone smog – and these pollutants in turn cause asthma and lung disease.<sup>70</sup>

The link between air pollution and automobiles was decisively demonstrated during the 1996 Olympics (held in Atlanta, Ga.) when a restrictive citywide traffic plan forced Atlanta motorists to drive less.<sup>71</sup> As traffic on Atlanta roads fell by 23%, smog levels fell by 28%, and emergency room visits for asthma dropped by 42%.<sup>72</sup>

Sprawl may also increase water pollution. Suburban growth means more roads, parking lots and buildings in once-rural areas. When rain falls on such “impervious”

---

<sup>66</sup> Or more accurately, prevented pollution from decreasing as fast as it otherwise might have decreased. Cf. Richard J. Lazarus, *Highways and Bi-Ways for Environmental Justice*, 31 *Cumb. L. Rev.* 569, 593 (2001) (because of tighter environmental regulation, emissions of several major pollutants have decreased in recent decades); Meghan E. O’Neill, *Corporate Welfare: State Tax Incentives for Air Pollution Control*, 35 *Conn. L. Rev.* 1717, 1729 & n. 80 (2003) (same).

<sup>67</sup> *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). See also *supra* notes \_\_ and accompanying text (describing automobile dependency in American suburbs).

<sup>68</sup> See *supra* notes \_\_ and accompanying text.

<sup>69</sup> See Oliver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 *Fordham Urb. L.J.* 1529, 1535 (2002).

<sup>70</sup> *Id.* at 1537. See also Meredith, *supra* note \_\_, at 465 (“One study estimates that health costs resulting from air pollution exceed \$56 billion each year within the United States”).

<sup>71</sup> See Lyle Harris, *Sprawl is Unhealthy, CDC Researchers Find*, *Atlanta Journal-Constitution*, Nov. 2, 2001, 2001 WL 3698172.

<sup>72</sup> *Id.* See also Pollard, *supra* note \_\_, at 1556. Some commentators also assert that by emitting carbon dioxide into the world’s air, America’s cars and trucks contribute to global warming. See Gillham, *supra* note \_\_, at 113-14. But cf. Todd J. Zywicki, *Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform*, 73 *Tul. L. Rev.* 845, 889 (1999) (asserting that human contribution to global warming “unproven”).

land,<sup>73</sup> it runs off into nearby water, rather than being absorbed by soil.<sup>74</sup> Such “runoff” contains not only rainwater, but pollutants contained in suburban lawns and impervious surfaces, such as pesticides used for lawns, salt used to protect roads from snow, and other materials in roads, parking lots and other structures.<sup>75</sup> According to the U.S. Environmental Protection Agency, such runoff is the third leading cause of pollution in America’s rivers and lakes.<sup>76</sup>

### C. Sprawl vs. Jewish Observance

The Torah prohibits work on the Sabbath (traditionally understood by Jews to include Friday night and most of Saturday)<sup>77</sup> and on religious holidays.<sup>78</sup> Jewish law has traditionally understood this restriction to prohibit not only labor for compensation,<sup>79</sup> but a wide variety of other activities.<sup>80</sup> In addition, the Torah independently prohibits the kindling of fire on the Sabbath.<sup>81</sup>

Tradition-minded Jews interpret these laws to prohibit the use of automobiles or other mechanized vehicles<sup>82</sup> on the Sabbath, for a variety of reasons. First, driving

---

<sup>73</sup> Id. at 116 (describing roads, parking lots and buildings as “impervious surfaces”).

<sup>74</sup> Id. at 115-16 (describing harm caused by “runoff” of rain from impervious surfaces).

<sup>75</sup> Id. at 116-17.

<sup>76</sup> Id. at 116-17. See also Meredith, *supra* note \_\_\_, at 466 (suggesting that auto emissions themselves pollute nearby waters).

<sup>77</sup> See *Getz v. Commonwealth of Pa., Dept. of Public Welfare*, 644 F. Supp. 26, 27 (E.D. Pa. 1985), affirmed, 802 F.2d 72 (3<sup>rd</sup> Cir. 1986) (Saturday is “Jewish Sabbath”, and begins at sunset of preceding Friday night); Alan H. Greenberg, *A Misguided Analysis of a Free Exercise Claim*, 55 Brooklyn L. Rev. 653, 656 n. 8 (1989) (Jewish “Sabbath begins at sundown on Friday and ends at sundown on Saturday”).

<sup>78</sup> See *The Bible*, *supra* note x, at Exodus 35:2 (prohibiting work on Sabbath day), Numbers 28:18, 25, 29:1, 29:7, 29:12, 29:35 (prohibiting work during various religious festivals).

<sup>79</sup> Which of course, is also prohibited. See *Getz*, 644 F. Supp. at 27 (Orthodox Jews may not work on holy days or Sabbath); Rachel F. Calbaro, *Correction Through Coercion: Do State Mandated Alcohol and Drug Treatment Programs In Prisons Violate The Establishment Clause?*, 47 DePaul L. Rev. 565, 575 (1998) (Jews do not work on Sabbath)..

<sup>80</sup> Orthodox Union, *The Thirty-Nine Melachot*, <http://www.ou.org/chagim/shabbat/thirtynine.htm> (visited March 24, 2004) (“Thirty-Nine”).

<sup>81</sup> See *The Bible*, *supra* note x, Exodus 35:3.

<sup>82</sup> See David Bloom, *Rocky Road For Valley Rail Line*, L.A. Daily News, Dec. 15, 1996, at N1, 1996 WL 6586363 (Orthodox Jews do not use “cars or other mechanized vehicles on Saturday, the Sabbath day of rest, forcing walking to religious services”).

violates the Torah's prohibition against the use of fire on the Sabbath, because automobile engines work by burning gasoline.<sup>83</sup> Second, driving may lead to other forms of work prohibited on the Sabbath: for example, if a car breaks down, its owner must repair it, thus violating the rule that repairing is also prohibited Sabbath "work" under Jewish law.<sup>84</sup> Similarly, drivers must often handle and use money in order to purchase gas, thus violating the rule that money should not be spent or handled on the Sabbath.<sup>85</sup> Accordingly, Orthodox Jews<sup>86</sup> and even some members of more permissive Jewish denominations<sup>87</sup> do not use automobiles or other vehicles<sup>88</sup> on the Sabbath or on Jewish holy days.

---

<sup>83</sup> Thirty-Nine, supra note x ("An automobile engine works by burning gasoline. Turning on the ignition and stepping on the accelerator causes it to burn."); Haym Donin, *To be a Jew* 93 (1972), quoted in *Driving on Shabbat* from WUJS, [http://www.wujs.org.il/activist/programmes/lifestyle/driving\\_on\\_shabbat.shtml](http://www.wujs.org.il/activist/programmes/lifestyle/driving_on_shabbat.shtml) (visited March 24, 2004) ("the prohibition of driving is an extension of the Biblical prohibition of kindling fire and burning" on Sabbath) ("Driving"). A wide variety of other activities are also off-limits for Sabbath-observant Jews. See Thirty-Nine, supra. (listing a wide range of forbidden activities); Greenberg, supra note x, at 656 n. 8 (other prohibited activities include "writing, engaging in sports or music [and] using electricity")

<sup>84</sup> See Thirty-Nine, supra. (repairing prohibited on Sabbath); Conservative Responsa in Israel, [www.responsafortoday.com/engsums/4\\_3.htm](http://www.responsafortoday.com/engsums/4_3.htm) (visited March 11, 2004) (driving prohibited "lest the car break down and [the motorist] be forced to fix it").

<sup>85</sup> Id.

<sup>86</sup> See *Orthodox Minyan of Elkins Park v. Cheltenham Township Zoning Hearing Board*, 552 A.2d 772, 773 (Com. Ct. Pa. 1989) ("Orthodox Jews do not drive on their Sabbath day of worship or on Jewish religious holidays"); *Landau v. Township of Teaneck*, 555 A.2d 1195, 1199 (Sup. Ct. N.J. 1989) ("Orthodox Jews do not drive on the Sabbath and accordingly must walk to services").

<sup>87</sup> Conservative legal authorities have ruled that Jews may generally drive on the Sabbath only if they live far away from a synagogue and make no stops along the way. Conservative Responsa in Israel, supra note x. Thus, Conservative Jews should avoid driving on Friday nights and Saturdays if at all possible. See Alex Ginsberg, *Jews Rip Church Parking Proposal*, *New York Post*, March 18, 2004, at 24, 2004 WL 70985861 (proposal to require off-street parking for synagogues opposed by "Orthodox Jews, who are forbidden to drive on the Sabbath, and Conservative Jews, many of whom observe the rule as well"); Sherry Jacobson, *No one brought baggage*, *The Dallas Morning News*, March 27, 1999, at 1G 1999 WL 4110632 ("Some Conservative Jews shun the use of cars and home appliances and spending money from sundown Friday to sundown Saturday"). The most liberal Jewish denominations, Reform and Reconstructionist Judaism, generally allow driving on Saturdays. See J. Romain, *Faith and Practice: A Guide to Reform Judaism Today* (1991), quoted in *Driving*, supra note x (although Reform Judaism does not prohibit driving, "[c]hoosing to walk might also be a way of differentiating the Sabbath from other days of the week, and so for these reasons . . . walking should be considered as an option"). See generally Youdovin, supra note \_\_ (discussing differences between Jewish denominations with regard to Sabbath observance and other issues); Outlook, *There's Jewish and There's Jewish*, *The Washington Post*, April 20, 1997, at C2, 1997 WL 10689080 (describing denominational differences generally).

<sup>88</sup> See supra note \_\_.

But two features of suburban sprawl make it very difficult for Jews to walk to synagogue or anywhere else. First, many American neighborhoods and suburbs are so thinly populated that hardly anyone lives within walking distance of a synagogue. Modern suburbia is characterized by low density<sup>89</sup> - a practice enforced not only by consumer demand, but by zoning rules that heavily restrict density.<sup>90</sup> In 1950, American's urbanized areas contained 5391 persons per square mile.<sup>91</sup> By contrast, the average density of post-1960 American development (most of which has been located in suburbs)<sup>92</sup> is only 1469 persons per square mile.<sup>93</sup> Such low densities mean that very few people live within walking distance of a synagogue. For example, if a neighborhood has only 1500 people per square mile, and most people will walk no more than a quarter-mile to a synagogue,<sup>94</sup> only 375 people will live within walking distance of the synagogue.

---

<sup>89</sup> See, e.g., Timothy J. Dowling, Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment, 148 U. Pa. 873, 874 (2000) (sprawl is "low-density, land-consuming, automobile-dependent development").

<sup>90</sup> See Julian Conrad Juergensmeyer and Thomas E. Roberts, Land Use Planning and Development Regulation Law, sec. 4.13 at 90 (2003 ed.) (minimum lot size laws common means of reducing density); Richard Briffault, Our Localism- Part I, The Structure of Local Government Law 1, 41 (1990) (in Connecticut's Fairfield County near New York City, 89% of all lots once zoned for one acre per lot or fewer); Bernard H. Siegan, Non-Zoning in Houston, 13 Journal of Law & Econ. 71, 102 (1970) (Houston's minimum lot size of 5000 square feet per dwelling "not unusual in a large city"). In addition, other zoning restrictions indirectly reduce density. For example, cities commonly require houses to be surrounded by front, side and rear yards, thus reducing the amount of buildings that can be placed on an acre. Juergensmeyer & Roberts, supra. at 90-91.

<sup>91</sup> See Rusk, supra note \_\_, at 8.

<sup>92</sup> See Rusk, supra note \_\_, at 8 (between 1950 and 2000, "more than 75 percent of the newly developed land and more than 80 percent of the added population were located in suburbs outside central cities").

<sup>93</sup> See F. Kaid Benfield, Once There Were Greenfields 12 (1999).

<sup>94</sup> Numerous commentators have suggested that normal "walking distance" to a place is ¼ mile, or about a five-minute walk. See, e.g., Brian W. Ohm & Robert J. Sitkowski, The Influence of New Urbanism on Local Ordinances: The Twilight of Zoning?, 35 Urb. Law. 783, 784 (2003) (ordinances authorizing pedestrian-friendly "new urbanist" style of development typically provide that neighborhood "focal points" be "within a five-minute walking distance (or one-quarter mile) of the majority of residents"); Andrews Duany & Emily Talen, Making the Good Easy: The Smart Code Alternative, 29 Fordham Urb. L. J. 1445, 1448 (2002) ("If urban areas were oriented around the mobility pattern of the pedestrian, the neighborhood unit would be organized within a quarter mile radius").

Even heavily Jewish neighborhoods are predominantly non-Jewish,<sup>95</sup> and only about a quarter of American Jews attend synagogues regularly.<sup>96</sup> So even in a heavily Jewish suburb, no more than a few dozen synagogue patrons can conveniently walk to a synagogue. And in some regions, there are no heavily Jewish neighborhoods;<sup>97</sup> in those cities, almost no Jews have the opportunity to walk to synagogues. Thus, the low density of suburban America impedes observance of the Sabbath and of holy days.<sup>98</sup>

A second characteristic of American land use patterns that impedes walking to synagogue is separation of land uses – that is, the division of neighborhoods into residential areas and recreational or commercial areas.<sup>99</sup> In most American cities and suburbs,<sup>100</sup> zoning laws require that residences be separated from every other form of

---

<sup>95</sup> See Donovan Slack, *Synagogue Sues Newton After Standoff*, *Boston Globe*, Jan. 6, 2004, at B1, 2004 WL 59765177 (Newton, Mass. “has long been known as a heavily Jewish suburb” because 33 percent of its residents are Jewish).

<sup>96</sup> See Jim Hinch, *The Orange County Register*, Sept. 26, 2003, 2003 WL 7010553 (“Only 27 percent of American Jews attend religious services at least monthly”).

<sup>97</sup> See Sandi Dolbee, *Study finds most local Jews don’t belong to synagogue*, *San Diego Union-Tribune*, Sept. 11, 2003, at E4, 2003 WL 63101672 (Even though San Diego has 89,000 Jews, it has no “Jewish capital neighborhood”).

<sup>98</sup> In addition, the low density of American suburbs may also lead to intermarriage by scattering the Jewish community. See Jonathan Tobin, *Are The Suburbs Bad For The Jews?*, <http://www.jewishworldreview.com/cols/tobin121701.asp> (visited June 7, 2004) (“because it takes a critical mass of Jewish people to build the sort of infrastructure that a thriving community needs, such as synagogues, schools, kosher food stores and community centers . . . Rates of assimilation and intermarriage are always exponentially higher outside of the city limits”); Marian Morton, *Seeking a unifying identity for Jews*, *Baltimore Sun*, April 30, 2001 at 1B, 2001 WL 6158236 (in “suburban Jewish communities across the country . . . intermarriage between Jews and non-Jews are higher than in cities”); Greer Fay Cashman, *Jerusalem Post*, July 10, 2000 at 6, 2000 WL 8260090 (American Jews often “move away from areas of (Jewish) concentration to new suburbs, away from each other and from Jewish affiliation” leading to “assimilation and intermarriage”). However, no empirical data is on point; thus, the link between suburbanization and intermarriage is still largely conjecture.

<sup>99</sup> See Juergensmeyer and Roberts, *supra* note \_\_, sec. 4.2 at 69 (division of land by allowed use is “the primary tool that local governments use to regulate land use.”) See also *infra* note \_\_.

<sup>100</sup> See Jerry L. Anderson, *The Environmental Revolution at Twenty-Five*, 26 *Rutgers L.J.* 395, 426 (1995) (suburban zoning separates land uses “to the greatest degree possible” placing “concentrations of residences at substantial distances from jobs, shopping centers, and places of recreation”); Philip Weinberg, *Public Transportation and Clean Air: Natural Allies*, 21 *Env’tl. L.* 1527, 1530 (1991) (due to restrictive zoning laws, “a large share of U.S. suburban residences and workplaces have been developed in large, homogenous neighborhoods, beyond walking distance of convenience retail and services”). Zoning codes mandating separation of uses often govern cities as well as suburbs. Cf. Lee Anne Fennel, *Homes Rule*, 112 *Yale L.J.* 617, 624 n. 29 (2002) (Houston only major American city without zoning).

land use.<sup>101</sup> This system of “single use zoning”<sup>102</sup> effectively prohibits many Americans from living within walking distance of any nonresidential structure.<sup>103</sup> Municipalities sometimes consider synagogues to be “nonresidential” structures and therefore hold that they may not be established in residential zones.<sup>104</sup>

In sum, sprawl typically involves low-density land use and separation of residences from other land uses- both of which impede Jewish observance by making it difficult for Jews to avoid driving on Sabbaths and holy days.

### III. What Is To Be Done?

#### A. Should Jews Do Anything?

It could be argued that sprawl is a basically secular issue, and thus not an appropriate

---

<sup>101</sup> See Jerry Frug, *The Geography of Community*, 48 *Stan. L. Rev.* 1047, 1091 (1996) (“virtually all” current zoning laws “mandate the separation of different areas by function”).

<sup>102</sup> See Terry J. Tondro, *Sprawl and its Enemies: An Introductory Discussion of Two Cities’ Efforts to Control Sprawl*, 34 *Conn. L. Rev.* 511, 514 (2001) (using term to describe “the designation of separate land areas for different uses.”). Lewyn, *supra* note 2, at 331 (in most suburbs, “every activity demands a separate zone of its own; people cannot live within walking distance of shopping, and offices cannot be within walking distance of either”) (citation omitted).

<sup>103</sup> See Anderson, *supra* note \_\_, at 426 (because of single use zoning, “the typical suburbanite must drive everywhere – to work, to the store, or to a baseball game).

<sup>104</sup> See, e.g., *Cong. Of Jehovah’s Witnesses v. City of Lakewood*, 699 F. 2d 303, 309 (6<sup>th</sup> Cir. 1983) (upholding municipality’s right to exclude houses of worship from “exclusive residential districts”); *Congregation Kol Ami v. Abington Twp.*, 309 F. 3d 120, 139 (3d Cir. 2002) (noting split of case law on issue). It could be argued that such ordinances are now illegal under the Religious Land Use and Institutionalized Persons Act (RLIUPA), 42 U.S.C. sec. 2000cc et. seq., which prohibits land use regulations that impose “a substantial burden on the religious exercise of a person, including a religious assembly or institution” unless the burden is “the least restrictive means of furthering [a] compelling governmental interest.” *Id.*, sec. 2000cc(a)(1). But the scope and constitutionality of RLIUPA are unclear. See, e.g., *Elsinore Christian Center v. City of Lake Elsinore*, 291 F. Supp. 1083, 1096-1104 (C.D. Cal. 2003) (holding that RLUIPA violated Fourteenth Amendment and Commerce Clause); *Midrash Sephardi, Inc. v. Town of Surfside*, 2004 WL 842527 (11<sup>th</sup> Cir. April 21, 2004) (holding that exclusion of synagogue from neighborhood did not exact “substantial” burden on congregants’ religious exercise, despite their need to walk to synagogue, and declining to reach constitutionality of RLUIPA; court went on to hold that such exclusion nevertheless illegal where synagogues treated less favorably than other nonresidential land uses). But see *United States v. Maui*, 298 F. Supp. 2d 1010, 1016-17 (D. Haw. 2003) (upholding constitutionality of RLUIPA); *Beckett Fund For Religious Liberty, RLIUPA*, [www.rliupa.com](http://www.rliupa.com) (visited April 30, 2004) (listing RLIUPA decisions with varying results, as well as pro-and anti-RLIUPA commentary);

subject for lobbying by Jewish organizations. This argument lacks merit because, as noted above, low-density, single-use land use patterns affect not just Jewish values but Jewish observance.<sup>105</sup>

Moreover, Jewish groups are already engaged in lobbying over land use and environmental issues. For example, Jewish groups supported<sup>106</sup> the 2000 enactment<sup>107</sup> of the Religious Land Use and Institutionalized Persons Act (RLUIPA),<sup>108</sup> which prohibits land use regulations that unfairly burden synagogues, churches, and other forms of religious practice.<sup>109</sup> Jewish groups are also involved in environmental lobbying: the Coalition on the Enforcement and Jewish Life (COEJL), an environmental advocacy group,<sup>110</sup> is sponsored by 29 organizations representing all major Jewish denominations.<sup>111</sup> COEJL's 2004 Environmental Policy Platform includes opposition to oil and gas drilling in environmentally sensitive areas, phasing out of reliance on fossil fuel technologies, government-mandated reductions in emissions of greenhouses gases, abolition of subsidies for logging and mining on public lands, increases in vehicle fuel economy standards, and reauthorization of the Endangered Species Act.<sup>112</sup> COEJL even supports "land-use and transportation policies which would contain urban sprawl,

---

<sup>105</sup> See supra notes \_ and accompanying text.

<sup>106</sup> See Kris Barvard, *Exercise in Frustration? A New Attempt by Congress to Restore Strict Scrutiny to Governmental Burdens on Religious Practice*, 31 *Cap. U. L. Rev.* 279, 310 (2003) (noting that Jewish groups "hailed" passage in RLUIPA). See also U.S. Newswire, *Nation's Largest Jewish Organization Celebrates President Clinton's Signing of Religious Liberty Bill*, Sept. 22, 2000, 2000 WL 26848394 (quoting endorsement of bill by Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, which represents 900 Reform congregations throughout North America).

<sup>107</sup> *Id.* at 286 (RLUIPA enacted in 2000).

<sup>108</sup> 42 U.S.C. 2000cc et. seq.

<sup>109</sup> See supra note \_\_ (describing RLUIPA in detail).

<sup>110</sup> See About COEJL, [www.coejl.org/about/](http://www.coejl.org/about/) (June 1, 2004).

<sup>111</sup> See About COEJL, *Participating Organizations*, [www.coejl.org/about/partorg.shtml](http://www.coejl.org/about/partorg.shtml) (visited June 1, 2004) (sponsoring groups include United of Orthodox Jewish Congregations of America, United Synagogue of Conservative Judaism, Religious Action Center of Reform Judaism, and Reconstructionist Rabbinical Association).

<sup>112</sup> COEJL's Environmental Policy Platform, March 2003, [www.coejl.org/action/ep\\_epp0303.shtml](http://www.coejl.org/action/ep_epp0303.shtml) (visited June 1, 2003).

promote the redevelopment of cities, and protect open spaces.”<sup>113</sup> However, COEJL’s involvement in land use issues is minor: its 4 page, 32 paragraph “Platform” includes just one paragraph on “Urban and Community Planning.”<sup>114</sup>

B. If So, What?

Given that sprawl is to some extent a Jewish issue, Jewish groups (and politically active Jews) should support solutions targeted to the problems created by sprawl.

Specifically:

\*As noted above,<sup>115</sup> the division of metropolitan areas into rich cities and poor suburbs means that the poor get less from government than the middle class and the rich. To combat this inequity, Jewish groups should support state legislation making it easier for cities to merge with counties or to annex their suburbs. Today, most states allow municipal annexation,<sup>116</sup> but most do so only under very limited circumstances.<sup>117</sup> For example, some states allow annexation only with the consent of the voters of the area to be annexed,<sup>118</sup> or with the consent of county governments, thus ensuring that wealthy suburbs can refuse to be annexed by their poorer cities.<sup>119</sup> Only 14 states authorize city-county consolidation, thus causing poor cities to be encircled by wealthier suburbs in the

---

<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> See Part \_\_ supra.

<sup>116</sup> See Rusk, supra note \_\_, at 109 (44 states authorize municipal annexation).

<sup>117</sup> Id. at 108-110 (describing variety of hurdles that deter annexation).

<sup>118</sup> Id. at 109.

<sup>119</sup> Id. Giving a county veto power over annexation sometimes gives suburbs effective veto power over annexation because within counties, cities are often outvoted by their suburbs. For example, Minneapolis contains just over 382,000 of Hennepin County’s 1 million-plus inhabitants, Buffalo has less than 300,000 of Erie County’s 944,000 inhabitants, and Newark contains only about 273,000 of Essex County’s 793,000 inhabitants. See William A. McGeeveran Jr., *The World Almanac and Book of Facts 2003* at 403, 444-62 (listing population for cities and counties, as well as the latter’s county seats).

same county.<sup>120</sup> Jewish groups should lobby for the abolition of these anti-annexation laws, so that cities can encompass their entire community instead of just the poor.<sup>121</sup>

A less radical solution, municipal tax-base sharing, has been implemented in the Minneapolis/St. Paul region: under Minnesota law, 40% of the increase in all communities' commercial property values goes into a common pool and is distributed among all local government entities, thus narrowing the gap between the region's wealthiest suburbs and its poorer communities.<sup>122</sup> Without tax base sharing, the disparity between the tax bases of the richest area communities and the poorest would be 17-1; the state's tax base sharing law narrows the gap to 4-1.<sup>123</sup>

\*As noted above, the automobile dependency caused by suburban sprawl isolates the young, the needy and the disabled from jobs and other civic opportunities. Jewish groups can urge state and federal legislators to combat this problem in several ways. First, Jewish groups should lobby for additional public transit service,<sup>124</sup> and in particular should support focusing public transit spending on areas that today have minimal or

---

<sup>120</sup> Id. at 101-07.

<sup>121</sup> It could be argued that allow cities to engulf their suburbs would merely export urban problems to suburbs. But cities with ample annexation powers have in fact prospered. Metropolitan areas where cities have been able to annex large chunks of the region's land are in fact wealthier and have experienced higher income growth than metropolitan areas surrounding less elastic cities. Id. at 77, 86-87. This is not to say, of course, that urban annexation has caused the prosperity of these regions - merely that annexation has not been a drag on regional prosperity.

<sup>122</sup> Id. at 99.

<sup>123</sup> Id. Finally, Jews could support a variety of policies designed to encourage middle-class Americans to repopulate cities. I have fully discussed this question elsewhere, and accordingly decline to do so in this article. See Lewyn, supra note \_\_, at 371-77 (discussing possible reforms of urban schools that would make such schools more attractive to middle-class families).

<sup>124</sup> COEJL already supports "increased development and use of mass transit." Platform, supra note \_\_. However, there is little evidence that mass transit is a priority item for COEJL or other Jewish groups. For example, I ran a WESTLAW search for COEJL in WESTLAW'S ALLNEWS data base (COEJL /20 (mass public) /1 (transit transportation)) and found no matches. However, local Jewish groups have occasionally been active on this issue. See Melissa Kruse, Prayer vigil backs transit millage, Grand Rapids Press, October 15, 2003, at D3, 2003 WL 64612793 (Jewish leaders joined interfaith coalition supporting maintenance of city's bus service); Rusk, supra note \_\_, at 126-27 (describing similar interfaith activity in Gary, Indiana region).

nonexistent transit service.<sup>125</sup> Second, Jewish groups should oppose the construction of new and widened roads in areas with minimal or nonexistent public transit, because such highway spending encourages development in those areas, thus encouraging the migration of jobs to areas without transit service.<sup>126</sup> A less automobile-oriented transportation policy would also be consistent with Jewish environmental values: lowered highway spending means less transformation of countryside into auto-dominated suburbia,<sup>127</sup> which means fewer auto-dominated neighborhoods,<sup>128</sup> which means less driving, which means less pollution.<sup>129</sup>

\*Support regional land use policies which encourage development of older areas and discourage transformation of rural areas into auto-dependent suburbs. Perhaps the most extreme example<sup>130</sup> of such a policy is Oregon's urban growth boundary system, which (like the greenbelts mandated by the Torah)<sup>131</sup> draws a boundary ring around the city of Portland and its older suburbs and reserves areas outside the ring for farming,

---

<sup>125</sup> See Michael Lewyn, "Thou Shalt Not Put A Stumbling Block Before the Blind": The Americans with Disabilities Act and Public Transit for the Disabled, 52 *Hastings L.J.* 1037, 1095, 1096 (2001) (suggesting that ideally, government could require that "most or all jobs [be] transit-accessible" – for example, by requiring that "every urban or suburban employer [of significant size] . . . be reachable by regular bus or train service"; proposal based on assumption that "hourly bus service to every employer with over 15 employees would cost only \$1 billion – less than 1% of total government transportation spending").

<sup>126</sup> See supra notes \_\_ and accompanying text; Lewyn, supra note \_\_, at 1093-94 (proposing "no roads without transit" state or federal statute which would "condition all road expansions in metropolitan areas upon transit improvements in commercial areas served by (and thus likely to develop because of) road improvements.")

<sup>127</sup> Itself inconsistent with Jewish law. See supra notes \_\_ and accompanying text.

<sup>128</sup> Newer areas tend to be automobile-oriented for two reasons. First, many suburbs have minimal or nonexistent public transit service. See supra notes \_\_ and accompanying text. Second, newer areas tend to be more thinly populated, which means their residents can reach fewer destinations by walking. See supra notes \_\_ and accompanying text.

<sup>129</sup> See supra notes \_\_ and accompanying text (noting link between auto use and pollution).

<sup>130</sup> Perhaps too extreme: some commentators assert that the growth boundary has increased housing costs. Michael Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 *Utah L. Rev.* 1, 35-42 (2002) (discussing controversy over Portland's housing costs).

<sup>131</sup> See supra notes \_\_ and accompanying text.

forestry, wilderness and recreation.<sup>132</sup> The growth boundary has led to a revitalization of the city of Portland: after the growth boundary's creation in 1980, the city's poverty rate decreased,<sup>133</sup> and the city's population grew as fast as its suburbs, while city growth in other nearby regions lagged far behind suburban growth.<sup>134</sup> A more moderate policy was adopted in Maryland, which declined to prohibit outer-suburb growth, but instead shifted state infrastructure funding to "designated growth areas"<sup>135</sup> (that is, areas that are already urbanized to a significant extent, as opposed to countryside).<sup>136</sup>

\*As noted above, suburban single-use, anti-density zoning prevents significant numbers of Americans (and thus significant numbers of Jews) from living within walking distance of houses of worship (or for that matter, anything else).<sup>137</sup> In addition to fighting zoning laws that directly limit placement of religious facilities in residential neighborhoods,<sup>138</sup> Jewish groups should also oppose zoning laws that preclude medium<sup>139</sup> - and higher-density, pedestrian-friendly neighborhood design. For example, Jews should support loosening or elimination of minimum lot size ordinances that

---

<sup>132</sup> See Rusk, *supra* note \_\_, at 96-97 (describing system briefly); Lewyn, *supra* note \_ at 5-8 (discussing system in detail).

<sup>133</sup> *Id.* at 29 (Portland poverty rate decreased while poverty rates in Seattle, Denver and Salt Lake City rose).

<sup>134</sup> *Id.* at 25-26 (both city and regional population grew by 40-50%; by contrast, in Denver, Seattle and Salt Lake City, city population grew by 5-19% despite similar regional growth).

<sup>135</sup> J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 *J. Land Use & Envtl. L.* 377, 411 (2004) (discussing state manipulation of funding); *id.* at 415 (noting that state does not prohibit "sprawling development" funded by local governments or private sector).

<sup>136</sup> *Id.* at 413. Maryland's growth policies were implemented in the late 1990s; thus, it is too early to judge their success or lack of same. *Id.* at 417.

<sup>137</sup> See *supra* notes \_\_ and accompanying text.

<sup>138</sup> See *supra* notes \_ and accompanying text (discussing Jewish support for RLUIPA).

<sup>139</sup> I emphasize that appropriate densities can be "medium" because vibrant Jewish communities need not have urban-style densities. For example, Pikesville, Maryland, a heavily Orthodox suburb of Baltimore, has 2348 people per square mile, less than one-third the density of Baltimore. See Hillary Leila Krieger et al., *Hoop Dreams*, *Jerusalem Post*, May 9, 2003 at 12, 2003 WL 4519409 (Pikesville "a largely Orthodox suburb of Baltimore"); *Encyclopedia: Pikesville, Maryland*, <http://www.nationmaster.com/encyclopedia/Pikesville,-Maryland> (visited July 6, 2004) (listing Pikesville density); 2003 Abstract, *supra* note \_\_, at 35 (Baltimore includes 639,000 people in about 80 square miles, or just under 8000 people per square mile).

artificially limit density by limiting the number of houses per acre,<sup>140</sup> and should support developers who seek to build walkable neighborhoods near Jewish facilities.

Density alone is not enough to make a neighborhood walkable: for example, people may be unwilling to walk through even a fairly dense area if streets are not connected to each other, or if there are no nonresidential land uses within walking distance of residences.<sup>141</sup> The New Urbanists, a movement of planners, architects and developers<sup>142</sup> devoted to designing communities “for the pedestrian and transit as well as the car”,<sup>143</sup> have proposed a variety of other steps to make neighborhoods walkable, including: (1) narrower lanes to slow traffic,<sup>144</sup> (2) wider and more frequent sidewalks to encourage pedestrian activity,<sup>145</sup> (3) on-street parking to create a buffer between auto and pedestrian traffic,<sup>146</sup> (4) a grid-like network of streets, so that pedestrians have multiple routes to every destination,<sup>147</sup> (5) allowing non-residential land uses within neighborhoods, so that neighborhood residents can walk to civic uses (such as, for example, synagogues).<sup>148</sup> Jews should favor state and local land use laws that codify

---

<sup>140</sup> See supra note \_\_ (describing such ordinances).

<sup>141</sup> See Brian E. Saelens, James F. Sallis, Jennifer B. Black, and Diana Chen, Neighborhood-based differences in physical activity, *American Journal of Public Health*, Sept. 1, 2003, at 1552, 2003 WL 12986694 (high-walkability area is not only more compact, but also has nonresidential uses within walking distance of residences, gridlike street pattern creating high degree of connection between streets)

<sup>142</sup> See Meredith, supra note \_\_, at 451

<sup>143</sup> See Ohm & Sitkowski, supra note \_\_, at 784 (quoting charter of Congress of New Urbanism, “the main advocacy organization for new urbanism”).

<sup>144</sup> See Meredith, supra note \_\_, at 481; Martha A. Lees, *Expanding Metropolitan Solutions Through Interdisciplinarity*, 8 N.Y.U. Rev. L. & Soc. Change 347, 363 (2000-01) (New Urbanists urge “narrowing streets and adding sidewalks”). Cf. *Donovan v. Jones*, 658 So. 2d 755, 765 (La. Ct. App. 1995) (noting that “a wider roadway takes longer to cross thus increasing the amount of time a pedestrian is exposed to traffic”).

<sup>145</sup> *Id.* See also Ohm & Sitkowski, supra note \_\_, at 792 (emphasizing importance of “independent network of sidewalks”).

<sup>146</sup> See Meredith, supra note \_\_, at 481.

<sup>147</sup> See Ohm & Sitkowski, supra note \_\_, at 787.

<sup>148</sup> *Id.* Ohm and Sitkowski do not specifically mention synagogues; however, the same goal of pedestrian-friendliness that justifies placing “employment centers and open space areas”, *id.*, or “public spaces such as squares or plazas”, *id.* within walking distance of residences also justify placing synagogues within walking distance of residences.

developers' rights to build walkable neighborhoods that include these elements, because such neighborhoods will be places where synagogues and other Jewish facilities can easily be reached on foot.

\*In their private conduct, Jews should seek<sup>149</sup> to place their synagogues, community centers, schools, and other institutions in areas that can be reached without a car: on streets with sidewalks and significant clusters of residences (so a significant number of Jews can walk to them), and near public transit service (so users and employees can reach those facilities by bus or train as well as by car).

#### IV. The Libertarian Objection

Even commentators who admit that sprawl impairs Jewish observance sometimes assert that sprawl is insoluble. For example, one Jewish journalist writes that despite the problems caused by sprawl, sprawl is an inevitable result of “freedom [because] . . . American Jews will continue, like their neighbors, to range far from downtowns . . . Though we would like them to stay in the city or at least the inner suburbs, we must make our peace with the fact that they have the right to make this choice.”<sup>150</sup> This argument is based on two assumptions: (1) that sprawl is the result of the unregulated free market (or, in the commentator’s words, “freedom”) and (2) that what the free market has put together, government may not tear asunder. The first assumption is factually incorrect, and the second ignores Jewish law and tradition.

##### A. Sprawl vs. Freedom

American-style sprawl is the result not solely of the free market, but also of massive

---

<sup>149</sup> Consistent with the limits imposed by Jewish settlement patterns; obviously it makes no sense to site a new synagogue in an urban neighborhood miles from the nearest Jewish neighborhood.

<sup>150</sup> See Tobin, *supra* note \_\_.

governmental intervention on behalf of suburban expansion. Government has encouraged migration from city to suburb in a variety of ways, including:

\*Massive highway spending. As noted above, government at all levels spends over \$100 billion annually on highways,<sup>151</sup> and new highways facilitate sprawl by making it easier for people to live “further from where they work, shop and engage in other activities, which spurs development on the fringes of existing communities and necessitates increased driving distances and frequency . . . [as well as] opening previously inaccessible areas to development.”<sup>152</sup>

\*Federal Housing Administration (FHA) mortgage insurance. Since 1934, the FHA has insured mortgages against default.<sup>153</sup> For many years, FHA guaranteed home loans only in “low-risk” areas.<sup>154</sup> FHA guidelines defined “low-risk areas” as areas that were thinly populated, dominated by newer homes, and lily-white: in short, suburbs.<sup>155</sup>

\*Federal public housing policies. Public housing for the poor has generally been concentrated in cities, thanks to federal laws that (a) gave suburbs veto power over public housing within their boundaries,<sup>156</sup> and (b) mandated that only areas with substandard existing housing could build new housing,<sup>157</sup> thus ensuring that even those suburbs who wished to participate in the public housing program were excluded therefrom if they were

---

<sup>151</sup> See supra note \_\_\_ and accompanying text.

<sup>152</sup> See Pollard, supra note \_\_, at 1533. See also supra notes \_\_\_ and accompanying text.

<sup>153</sup> See Lewyn, supra note \_\_, at 278.

<sup>154</sup> Id.

<sup>155</sup> Id. Although FHA’s pro-suburb policies no longer exist, their effects continue to the present day. By encouraging middle-class migration to suburbia, FHA policies ensured that suburbs were dominated by the middle class and cities by the poor, which meant that city neighborhoods and schools continue to be less desirable. See infra notes \_\_\_ (noting adverse effects of concentrated poverty upon neighborhood safety and schools).

<sup>156</sup> Id. at 279.

<sup>157</sup> Id.

new enough not to have a significant supply of dilapidated housing.<sup>158</sup> Because public housing tends to be poverty-packed<sup>159</sup> and crime-ridden,<sup>160</sup> federal public housing policy effectively guarantees that cities will have more public housing, more poverty, and more crime than suburbs, thus making cities less attractive to middle-class families.

\*State and local educational policies. Under most states' laws, students are assigned to public schools based on their home addresses: urban students must attend school within an urban school district, while suburban children must attend school in suburbia.<sup>161</sup> Because children from low-income households tend to achieve less in school, other factors being equal,<sup>162</sup> than students from high-income households, and urban school districts tend to have more low-income students, urban school districts will always be less prestigious than suburban school districts as long as school assignments are based solely on jurisdictional lines.<sup>163</sup>

In addition to encouraging Americans to move to suburbs, government also makes those suburbs as automobile-dependent as possible through local zoning regulations. As noted above, local zoning ordinances typically require land uses to be segregated, preventing residences from being located within walking distance of offices or stores.<sup>164</sup>

---

<sup>158</sup> Id.

<sup>159</sup> Id. at 280 (most public housing residents must earn less than 30% of regional median income) (citation omitted).

<sup>160</sup> Id. This is so for two reasons: first, poor neighborhoods tend to have more crime. Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. Pa. L. Rev. 1203, 1215 (1995) (other factors being equal, crime higher in areas with high poverty). Second, public housing is sometimes more disorderly than privately owned housing in poor neighborhoods, because public housing authorities, as government agencies, must comply with due process protections that limit their ability to evict "problem" tenants. See Lewyn, *supra* note 2 at 309.

<sup>161</sup> Lewyn, *supra* note \_\_, at 281.

<sup>162</sup> See *Reed v. Rhodes*, 1 F. Supp. 2d 705, 738, 739 (N.D. Ohio 1998) ("socioeconomic status (SES) and family background influence a student's achievement in school" because children in low-SES households "tend to be less intellectually stimulated and, consequently, tend to be less prepared for school" than other students).

<sup>163</sup> See Lewyn, *supra* note \_\_, at 282.

<sup>164</sup> See *supra* notes \_\_ and accompanying text.

And because zoning laws often dictate low population density,<sup>165</sup> houses are so far apart from each other and from shops and jobs that many Americans must “drive everywhere for everything.”<sup>166</sup>

In sum, government spending and government regulation have encouraged suburban migration, discouraged urban living, and made city and suburb alike far more sprawling and auto-oriented than a free market would require.

#### B. Judaism Is About More Than Just Property Rights

Even if suburbia in its present form **was** purely a result of the free market, this alleged condition would not place sprawl outside the realm of Jewish concern. Judaism does not enthrone unfettered individual choice as the supreme good. Instead, Jewish law mandates that individuals’ property rights be balanced against community needs.

As noted above, the Torah directly prohibits unfettered urbanization of rural land, by mandating that cities be surrounded by undeveloped greenbelts.<sup>167</sup> The Torah also limits private use of land in a variety of other ways- for example, by requiring Jews to let land lay fallow every seventh year,<sup>168</sup> and by requiring land to be returned to its original owners every fifty years.<sup>169</sup> And as noted above, later Jewish legal codes intricately regulate land use in order to restrict pollution.<sup>170</sup>

Of course, the laws of the Torah, Mishnah and Talmud cannot be applied chapter and verse to a secularized, industrial society. But they do suggest that Jews need not give

---

<sup>165</sup> See Lewyn, supra note \_\_, at 284-85.

<sup>166</sup> See Pollard, supra note \_\_, at 1534.

<sup>167</sup> See supra notes \_\_ and accompanying text.

<sup>168</sup> The Bible, Leviticus 25:1-6.

<sup>169</sup> Id., Leviticus 25:10.

<sup>170</sup> See supra notes \_\_ and accompanying text.

total obedience to laissez-faire theories of land use regulation, for the simple reason that the notion of unfettered property rights is completely alien to Jewish tradition.

#### V. Conclusion

In sum, Jews have both idealistic and practical reasons to worry about sprawl: reasons based on Jewish ideals of charity and social justice, and reasons based on concerns about the survival of Jewish observance. Rather than dismissing sprawl as inevitable, Jewish organizations should support anti-sprawl policies in their roles as political actors, and should seek to locate their facilities in areas accessible by foot, bus and train as well as by automobile.