

FIVE MYTHS ABOUT SPRAWL by Michael Lewyn*

REVIEW ESSAY

Sprawl: a compact history, by Robert Bruegmann (University of Chicago Press, \$27.50; 2005).

I. INTRODUCTION

Over the past several decades, metropolitan America has been transformed by “sprawl”: low-density, automobile-oriented, (usually) suburban development.¹ Many central cities have lost population,² while their suburbs have gained residents³ and jobs.⁴ And cities’ remaining residents are disproportionately poor: the average income of suburban households is nearly twice that of urban households,⁵ and the majority of America’s poor now live in central cities.⁶ Typically, new suburban development has

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¹ See ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* 18 (2005) (describing sprawl as “low-density, scattered, urban development”); OLIVER GILLHAM: *THE LIMITLESS CITY* 4 (2002) (listing variety of definitions, many of which emphasize development far from traditional regional cores as well as automobile-oriented nature of “sprawl” development). Bruegmann’s definition also describes sprawl as “unplanned.” See BRUEGMANN, *supra* at 18 (describing sprawl as development “without systematic large-scale or regional public land-use planning”). But if development is essentially sprawling in nature, it is sprawl regardless of whether it was “planned” by a regional government, a local government, or a real estate developer. Thus, the “planned” or “unplanned” nature of development should be irrelevant to its status as “sprawl”.

² See DAVID RUSK, *CITIES WITHOUT SUBURBS* 7, 14-20 (3d ed. 2003) (of the cities that were America’s twelve largest in 1950, ten lost population in later decades; generally, cities have gained population only when they have annexed suburbs). *But see infra* notes 50-52 and accompanying text (discussing recovery of some cities in 1990s).

³ See Mark Andrew Snider, *The Suburban Advantage: Are The Tax Benefits of Homeownership Defensible?*, 32 N. KY. L. REV. 157, 163 n. 43 (2005) (since 1970, suburban population has grown by 40 percent).

⁴ See Roberta F. Mann, *On The Road Again: How Tax Policy Drives Transportation Choice*, 24 VA. TAX REV. 587, 607 (2005) (two-thirds of new jobs located in suburbs).

⁵ See Snider, *supra* note 3, at 163 (average suburban household income in 1999 was \$76,000, while average urban income about \$40,816).

⁶ See GILLHAM, *supra* note 1, at 132 (“almost 55 percent of the nation’s citizens living in poverty dwelt in the inner city in 1998. In 1960, that number was less than one-third.”)

been highly automobile-dependent: the majority of suburban jobs are not accessible through public transit.⁷

A wide variety of commentators⁸ assert that sprawl immobilizes Americans too young, old or poor to drive,⁹ increases traffic congestion and pollution by increasing driving,¹⁰ makes Americans less healthy by discouraging walking,¹¹ reduces the supply of farmland and open space by consuming more land than more compact development,¹² and increases overall government spending, as governments spend money on roads and utilities for new suburbs while urban infrastructure becomes underutilized.¹³

In *Sprawl: a compact history*, Robert Bruegmann, an art historian, has painted a superficially convincing case for the status quo, asserting that sprawl is “a natural result of affluence that occurs in all urbanized societies.”¹⁴ Bruegmann’s book has generated glowing media publicity¹⁵ and some favorable scholarly attention.¹⁶

⁷ See Mann, *supra* note 4, at 607.

⁸ See GILLHAM, *supra* note 1, at 74 (critics of sprawl include environmental groups, urban mayors, historic preservation groups, transit advocates, and some urban planners and architects).

⁹ See, e.g., ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM 116 (2001) (inability to walk to most activities means that “a [suburban] child’s personal mobility extends no far than the edge of [his or her] subdivision”); *id.* at 123 (automobile dependency puts nondriving elderly “out of reach of their physical and social needs”); GILLHAM, *supra* note 1, at 137 (describing hardships of carless urban poor in their efforts to reach suburban jobs). Cf. Jeff Plungis & Nick Bunkley, *Innovations May Keep Seniors Safer on Road*, DETROIT NEWS, Mar. 14, 2005, available at <http://www.detnews.com/2005/specialreport/0503/14/A01-116287.htm> (“21 percent of Americans over 65 no longer drive. Within the non-driving population, 54 percent stay home on any given day because they don't have a viable transportation option.”).

¹⁰ See GILLHAM, *supra* note 1, at 93 (as a result of sprawl, roads are “overwhelmed” and “the hours spent driving and stuck in traffic arguably use increasing amounts of energy and generate more air pollution.”)

¹¹ See GILLHAM, *supra* note 1, at 76 (suggesting that “increase in driving and the decrease in walking are also contributing to obesity and ill health.”)

¹² See GILLHAM, *supra* note 1, at 75, 77.

¹³ *Id.* at 124-46, 142 (raising argument, but noting that evidence unclear).

¹⁴ Nicole Stelle Garnett, *Save The Cities, Stop The Suburbs? 5*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=908248 (visited June 26, 2006) (describing Bruegmann’s book). See also BRUEGMANN, *supra* note 1, at 10 (sprawl a result of “the democratization of society [as] citizens have obtained the ability to exercise the choices that once were the sole prerogative of the wealthy and powerful.”)

¹⁵ See Vincent J. Cannato, *The Way We Live Now*, THE WEEKLY STANDARD, March 20, 2006, at 33, 2006 WNL 4965810 (book “eminently readable and rational”); Glenn Harlan Reynolds, *Learning to Love Sprawl*, SATURDAY EVENING POST, March 1, 2006, at 90, 2006 WNL 4261933 (book “makes a

The purpose of this Review is to use Bruegmann’s defense of the status quo as a launching point for a broader discussion of the sprawl issue. In particular, this Review suggests that Bruegmann overestimates the universality of sprawl, by overlooking the differences between pedestrian-friendly cities with some sprawling development and cities in which automobile-dependent sprawl is the only choice available to most consumers. In addition, Bruegmann understates the harmful social effects of sprawl, especially the effect of automobile-dependent development upon nondrivers. Bruegmann also consistently underestimates the role of government spending and regulations in creating sprawl, and as a result fails to adequately discuss the possibility that sprawl can be reduced by limiting, rather than increasing, the size and intrusiveness of government.

II. Five Pro-Sprawl Myths

Bruegmann’s book claims that:

1. Sprawl has been going on for centuries, and is thus what most people naturally desire in the absence of government coercion;¹⁷
2. Sprawl is thus the result of the free market at work, and any seemingly pro-sprawl government policies were virtually irrelevant to the growth of automobile-dependent suburbia;¹⁸

strong case that a lot of the things we think we know about sprawl just ain’t so . . . I hope that it gets the attention it deserves”); Kevin Nance, *Learning to Sprawl: Think the suburbs are getting too crowded?*, CHICAGO SUN-TIMES, December 27, 2005, 2005 WLNR 20976009 at 39 (“the early critical response to Bruegmann’s book has been mostly positive”).

¹⁶ See Garnett, *supra* note 14, at 15 (criticizing some of Bruegmann’s arguments, but describing book as “a valuable addition to the voluminous land use literature – well-researched and well-written, thought provoking, and full of captivating history”).

¹⁷ See BRUEGMANN, *supra* note 1, at 10 (sprawl a “predictable result of increasing wealth”), 23-32 (describing premodern and 19th-century “sprawl”), 73-80 (describing trend towards sprawl in affluent countries).

¹⁸ *Id.* at 101-06.

3. Regardless of the origins of sprawl, the harmful side effects of sprawl are overrated by critics of the status quo;¹⁹
4. Sprawl cannot be limited without government regulations that artificially constrict the housing supply and thus raise housing prices;²⁰ and
5. The anti-sprawl movement is elitist.²¹

As will be shown below, each of these assertions is flawed. In fact, the status quo is in part a result of government intervention in the economy, has negative side effects ignored by Bruegmann, can be changed without making government more intrusive, and is opposed by Americans from a wide variety of backgrounds.

A. Myth One: The Status Quo is Eternal

One of the most widely praised elements of Bruegmann's book is his use of ancient history and comparative data to justify the status quo.²² Bruegmann tells a story of eternal sprawl, pointing out that aristocrats have purchased country estates in civilizations as diverse as ancient Rome and 18th-century London.²³ He goes on to show that in both Europe and in the United States, some central cities have declined, and auto use has risen in recent decades.²⁴ Based on these facts, Bruegmann concludes that sprawl is a "predictable result of increasing wealth"²⁵ that has given the middle class "the ability

¹⁹ *Id.* at 138-50.

²⁰ *Id.* at 169-219.

²¹ See *infra* notes 179-85 and accompanying text (describing quotes scattered throughout book).

²² See Garnett, *supra* note 14 (at 2 ("Bruegmann's most important contribution is to place the current debate . . . in historical perspective"); Cannato, *supra* note 15 ("Bruegmann also places the issue within the larger historical context . . . He attempts to show that dispersal from high-density core areas to low-density outer areas is a phenomenon common not just to modern America, but also ancient Rome and 19th-century England"); Reynolds, *supra* note 15 ("Rich people have always wanted to sprawl"); Nance, *supra* note 15 ("Overall, Bruegmann contends, sprawl is a natural, historic, worldwide process of decentralization that's been going on at least since ancient Rome and China, when the wealthy got away from the bustle and noise of city centers by building homes in outlying areas.")

²³ See BRUEGMANN, *supra* note 1, at 23-24.

²⁴ *Id.* at 73-80.

²⁵ *Id.* at 10.

to exercise the choices that once were the sole prerogative of the wealthy and powerful.²⁶ And if sprawl is what the middle class wants, any attempt to limit sprawl or its effects is doomed.²⁷

There is a grain of truth underlying Brugemann's version of history: given the wide variety of consumer tastes, **some** people will always prefer relatively scattered, low-density housing. But Bruegmann's story overlooks important differences of degree: every city may have **some** sprawling development, but not every city is equally dominated by sprawl. In the most sprawl-bound cities and metropolitan areas, most residents are unable to get to jobs or shops without driving, and carless residents are thus virtually helpless.²⁸ For example, in Oklahoma City, Oklahoma, a city with over 500,000 people,²⁹ buses do not run at night or on Sundays,³⁰ and thus the 8.2% of households without cars³¹ are essentially frozen out of jobs that require evening work and are not within walking or bicycling distance. In cities planned around the automobile, streets are often so wide, and traffic moves so fast, that the basic human act of walking outdoors becomes dangerous.³² Many streets lack sidewalks, and as a result pedestrians must share

²⁶ *Id.*

²⁷ *Id.* at 11 (remedies to sprawl have consistently been "ineffective and in some cases have led to unintended consequences arguably worse than the initial problem.")

²⁸ See *infra* notes 134-40 and accompanying text (statistics on number of nondriving Americans; about one-third of all Americans, including 11.5% of adults, have no drivers' license, while 21% of senior citizens, about half of disabled, and majority of welfare recipients do not drive).

²⁹ Vincent G. Spadafora, ed., THE WORLD ALMANAC AND BOOK OF FACTS 2006 at 480 (Oklahoma City had 528,042 residents in 2004).

³⁰ See, e.g., GENERAL INFORMATION, METRO TRANSIT, available at www.gometro.org (visited Feb. 2, 2006) (in Oklahoma City, Oklahoma, buses do not run on Sundays or after 7:30 at night); Michael E. Lewyn, *Suburban Sprawl: Not Just An Environmental Issue*, 84 MARQ. L. REV. 301, 348-50 (2001) (citing other examples of inadequate transit service throughout the United States).

³¹ See BIKES AT WORK, THE CARFREE CENSUS DATABASE, available at <http://www.bikesatwork.com/carfree/carfree-census-database.html> (visited May 29, 2006). This site has a search engine that allows one to rank cities by transit ridership and other commuting-related variables.

³² See SURFACE TRANSPORTATION POLICY PROJECT, MEAN STREETS 2004, EXECUTIVE SUMMARY, available at http://www.transact.org/library/reports_html/ms2004/exec_sum.asp (visited Feb. 2, 2005) (over 4000 American pedestrians per year killed by automobile traffic, and "the most

streets with cars.³³ In such cities, automobile ownership is an “absolute necessity”³⁴ for most. Bruegmann treats sprawl as the democratization of the country squire lifestyle³⁵ but there is nothing democratic or egalitarian about a system that limits transportation to those who can participate in the suburban car culture.

By contrast, residents of less sprawling regions have a variety of transportation options. For example, the majority of New York City residents get to work via public transit (as opposed to 1% of Oklahoma City residents),³⁶ and the city has prosperous neighborhoods where most households do not even own cars.³⁷ In metropolitan New York, transportation choice is not limited to city residents: New York City has some highly automobile-dependent suburbs,³⁸ but also has two suburbs where a majority of commuters use public transit regularly.³⁹ In other words, New York accommodates a

dangerous places to walk are metropolitan areas marked by newer, low-density developments, where wide, high-speed arterial streets offer few sidewalks or crosswalks.”).

³³ See Nicole Stelle Garnett, *Ordering (And Order In) The City*, 57 STANFORD L. REV. 1, 35 (2004) (“wide residential streets without sidewalks” now common); Ann DeFrangé, *Reader stands ready to battle city’s lack of sidewalks*, OKLAHOMAN, June 9, 2004, at 19A, 2004 WLNR 21091635 (Many Oklahoma City streets lack sidewalks). For some examples of streets without sidewalks, see, e.g., MICHAEL LEWYN, BUCKHEAD- DON’T EVEN THINK OF WALKING HERE!, available at <http://atlantaphotos.fotopic.net/p14010314.html> (residential street without sidewalks) (visited July 4, 2006); MICHAEL LEWYN, BUFORD HIGHWAY- ANOTHER BAD BLOCK FOR PEDESTRIANS, available at <http://atlantaphotos.fotopic.net/p14010301.html> (visited July 4, 2006) (commercial street without sidewalks).

³⁴ Lawrence M. Friedman, *The Eye That Never Sleeps: Privacy and Law In The Internet Era*, 40 TULSA L. REV. 561, 563 (2005).

³⁵ See BRUEGMANN, *supra* note 1, at 10 (tying sprawl to “the democratization of society” as middle class now able “to exercise the choices that once were the sole prerogative of the wealthy and powerful.”)

³⁶ See CARFREE CENSUS DATABASE, *supra* note 31.

³⁷ See CITY DATA, 10162 ZIP CODE DETAILED PROFILE, available at <http://www.city-data.com/zips/10162.html> (visited Feb. 2, 2006) (in one New York City zip code with average household income of over \$100,000, 550 of area’s 943 households had no car).

³⁸ See *People v. Coutard*, 454 N.Y.S. 2d 639, 642 (Dist. Ct. 1982) (“in a suburban county such as [Nassau County], the use of an automobile by most of its citizens is often as necessary as placing bread upon their tables.”); David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1751 (2005) (describing Nassau County as New York City suburb).

³⁹ See CARFREE CENSUS DATABASE, *supra* note 31 (in Hoboken, New Jersey and Bronxville, New York, majority of residents get to work by using public transit); Doug Halonen, *Station Affiliates on Verge of Victory*, TELEVISION WEEK, Oct. 10, 2005, at 1, 2005 WLNR 16892609 (Bronxville a “swank New York suburb”); John Kelly, *Trade Center victims were mostly men with families*, HOUSTON

wide variety of consumer preferences: preferences for city living, preferences for sprawl, and preferences for transit-oriented suburbia.

Cities in some other affluent countries are similar to New York City. Over 70% of Tokyo residents walk, bicycle or ride transit to work, as do 69% of Stockholm residents and 62% of Munich residents.⁴⁰ If some affluent places are less “sprawling” than others, it logically follows that public policy can affect the degree of sprawl in affluent, democratic societies. In other words, some low-density development might be normal in an affluent, democratic society- but not the degree of sprawl that makes constant driving a necessity for most people.

Bruegmann implies that the differences between the United States and Europe are meaningless, because even compact European cities have become more suburbanized and more automobile-dependent.⁴¹ But in Europe, transit ridership has actually **increased** in recent years: in European Union countries, streetcar and subway ridership rose by 12.5% between 1995 and 2003,⁴² and despite massive highway construction by European governments,⁴³ the automobile’s share of European passenger transportation increased

CHRONICLE, Oct. 27, 2001, at A13, 2001 WLNR 11719685 (mentioning Hoboken on list of New York City suburbs).

⁴⁰ See PETER NEWMAN AND JEFFREY KENWORTHY, SUSTAINABILITY AND CITIES: OVERCOMING AUTOMOBILE DEPENDENCE 83 (1999).

⁴¹ See BRUEGMANN, *supra* note 1, at 52 (citing numerous examples, including Paris’s loss of jobs to its suburbs); *id.* at 203 (“Just as in America, European urban dwellers are using their cars more and public transportation less.”)

⁴² See EUROPEAN COMMISSION, ENERGY AND TRANSPORT IN FIGURES 2005, TABLE 3.3.2, available at http://ec.europa.eu/dgs/energy_transport/figures/pocketbook/doc/2005/etif_2005_whole_en.pdf (“EUROPEAN TRANSPORT”)(visited June 9, 2006) (“(listing growth rate for “Tram and Metro”, and adding that bus ridership grew by 3.7%). A “tram” is essentially what Americans would term a “streetcar”, and a “Metro” what Americans would describe as a subway. See European Union, Commission Regulation No. 1192/2003, July 3, 2003 (defining terms), available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_167/l_16720030704en00130016.pdf (visited June 9, 2006).

⁴³ EUROPEAN TRANSPORT, *supra* note 42, Table 3.5.1 (length of motorways more than tripled in European Union countries between 1970 and 2001).

only slightly between 1995 and 2003 (from 74.1% of all passenger miles to 74.4%).⁴⁴

And after losing population for decades, some European core cities have begun to regain population.⁴⁵

Even in the United States, there is some reason to believe that sprawl is not an unstoppable trend. American public transit ridership has risen by over 20% in the past decade,⁴⁶ and (as Bruegmann admits) some American cities are beginning to grow and retain middle-class residents,⁴⁷ while some American suburbs have become more densely populated.⁴⁸ While some cities have continued to lose population,⁴⁹ eight of America's ten largest cities gained population between 1990 and 2000,⁵⁰ including two (New York and Chicago) that had lost population in earlier decades.⁵¹ Similarly, several smaller cities gained population in the 1990s after having lost people in earlier decades.⁵² Thus,

⁴⁴ EUROPEAN TRANSPORT, *supra* note 42, Table 3.3.2.

⁴⁵ See ISRA, ON A THEORY OF URBAN SPRAWL AND SPRAWLING 18 *available at* http://www.pik-potsdam.de/urbs/projekt/vienna_theory.pdf (visited May 22, 2006) (about half of European core cities gained population in 1990s, after losing people in earlier decades); DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT, WHERE DO WE STAND?, *available at* <http://www.odpm.gov.uk/pub/106/p1130106.jpg> (same) (visited May 22, 2006). Moreover, central cities' population losses in prior decades may have been caused not by consumer demand for sprawl but by government-funded highway construction (which encouraged suburban growth) and by regionwide population losses that held depopulated city and suburb alike. See BRUEGMANN, *supra* note 1, at 42 (Europe did not experience baby boom after World War II, and as a result many regions suffered population decline); *supra* note 43 (noting growth of highway system in Europe), *infra* notes 62-63 and accompanying text (explaining how highways promote suburban growth).

⁴⁶ See U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE STATISTICAL ABSTRACT OF THE UNITED STATES: 2006 722 (125th ed. 2006) (after decreasing in early 1990s, transit ridership rose from 7.7 billion passengers in 1995 to over 9.4 billion in 2003) ("2006 ABSTRACT"); BRUEGMANN, *supra* note 1, at 269 n. 49 (admitting that "[t]ransit ridership, in the last few years, has risen faster than automobile travel" but claiming that this fact "has not been very meaningful" because transit ridership so low).

⁴⁷ *Id.* at 51-56.

⁴⁸ *Id.* at 67-69.

⁴⁹ See SPADAFORA, *supra* note 29, at 480 (listing gains and losses of various cities).

⁵⁰ *Id.*

⁵¹ *Id.* New York lost population between 1950 and 1980, and Chicago lost population between 1950 and 1990. *Id.*

⁵² *Id.* Indianapolis, San Francisco, Fort Worth, Seattle, Boston, Denver, Portland, Kansas City, Atlanta, Omaha, Oakland, Minneapolis, Tampa, Madison, and Fort Wayne all lost population in the 1970s but regained residents in at least one of the following two decades. *Id.* Ten of these fifteen cities apparently continued to gain population between 2000 and 2004. See 2006 ABSTRACT, *supra* note 46, at 32-35

Bruegmann's vision of sprawl as inevitable and natural is belied by the countertrends towards higher transit ridership and urban recovery.

In sum, some sprawling development may be universal- but the amount of automobile-dependent development in a city or region has varied tremendously between cities, and the trend towards sprawl is no longer one-sided. Thus, sprawl in its most extreme forms is by no means inevitable in free, affluent societies.

B. Myth Two: The Market, Not Government, Created Sprawl

Bruegmann's theory that sprawl is "natural"⁵³ implicitly rests upon the assumption that sprawl is almost entirely a result of consumer preferences as expressed in the free market. If sprawl has been caused by government regulations and programs, sprawl is hardly inevitable or natural, because there would be less sprawl in a more libertarian society. To his credit, Bruegmann (unlike some other pro-sprawl commentators)⁵⁴ is at least willing to respond to arguments that sprawl has been partially caused by government policies rather than by the free market.⁵⁵ In particular, he admits that numerous commentators attribute sprawl to government highway spending,⁵⁶ federal mortgage subsidies targeted towards suburban homeowners,⁵⁷ and pro-sprawl zoning regulations.⁵⁸ Bruegmann's responses to these arguments, however, are based on

(Census Department estimates that Fort Worth, Indianapolis, Denver, Omaha, Seattle, Portland, Atlanta, Tampa, Kansas City, and Madison gained population, while Boston, San Francisco, Oakland, Minneapolis and Fort Wayne did not).

⁵³ *Id.*

⁵⁴ See, e.g., THOMAS SOWELL, "URBAN SPRAWL" AND LIBERAL GALL, available at <http://www.jewishworldreview.com/cols/sowell062999.asp> (visited June 9, 2006) (attacking "a government-sponsored crusade against urban sprawl" without acknowledging the possibility of pro-sprawl government policies, and asserting that "The real objection [to sprawl] may be that all this is going on without the guiding hand of Big Brother.")

⁵⁵ For discussions of how government policies have accelerated sprawl, see, e.g., Lewyn, *supra* note 30, at 304-35; GILLHAM, *supra* note 1, at 15-16, 32-38, 42-45, 134-36.

⁵⁶ BRUEGMANN, *supra* note 1, at 101-02.

⁵⁷ *Id.* at 102-04.

⁵⁸ *Id.* at 105-06.

questionable logic.

1. Do Highways Matter?

Throughout the 20th century, government at all levels favored highways over public transit.⁵⁹ Government highway spending began early in the 20th century,⁶⁰ but accelerated after 1956 when the federal government enacted the Interstate Highway Act, which committed the federal government to paying 90 percent of the cost of America's interstate highway network.⁶¹ In the decades immediately after the passage of the Highway Act, central cities lost population faster than ever before or afterwards.⁶²

Highway spending almost certainly accelerated suburbanization: when government builds a superhighway from downtown X to suburb Y, people who work downtown can commute more quickly from suburb Y to downtown, and thus are more likely to move to suburb Y. By contrast, when suburb Y was served by dirt roads, it was far less appealing to commuters.⁶³

In addition to making suburbs more attractive to commuters, highways made cities less attractive by destroying urban neighborhoods. Millions of houses in cities

⁵⁹ See Lewyn, *supra* note 30, at 312-15 (giving brief history of government support for highways).

⁶⁰ *Id.* at 312-13. See also BRUEGMANN, *supra* note 1, at 101 (“Most cities and urban areas had extensive plans for superhighways already in the 1930s; many of them had allocated large sums of county and state money to begin construction of these roads long before the federal interstate highway program of the 1950s.”)

⁶¹ See GILLHAM, *supra* note 1, at 35 (describing Interstate Highway Act in more detail).

⁶² See Patrick A. Simmons and Robert A. Lang, *The Urban Turnaround*, in REDEFINING URBAN & SUBURBAN AMERICA 51, 54 (Bruce Katz & Robert E. Lang, eds.) (2003) (older cities lost more population in 1960s and 1970s than in earlier or later decades); U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1952 18-21 (73rd ed. 1952) (of eighteen cities with population over 500,000, all but four gained population during 1930s, and all but one actually gained population during 1940s).

⁶³ See GILLHAM, *supra* note 1, at 36 (highways “improved access between city and suburb, making it easier to commute to ever more distant outlying areas.”); Lewyn, *supra* note 30, at 321 (citation omitted) (when National Association of Home Builders asked what amenity would encourage them to move to a new area, 55% of respondents picked highway access, more than any alternative).

were bulldozed in order to create space for highways and other redevelopment schemes.⁶⁴ For example, nearly 20% of Baltimore's African-Americans were displaced by I-95 and I-83,⁶⁵ 20,000 families in Miami were displaced by highway construction,⁶⁶ and 19,000 Clevelanders were displaced by one downtown freeway.⁶⁷ Even neighborhoods not destroyed by highways were damaged by expressway construction. For example, before the enactment of the Highway Act, Claiborne Avenue was the main street of the Treme section of New Orleans, with 200 businesses and a 6100-foot median.⁶⁸ Highway bureaucrats built I-10 on Claiborne Avenue, thus cutting the neighborhood in half and turning the median into a strip of dirt.⁶⁹ After the destruction of Claiborne Avenue, Treme deteriorated: a more recent survey of area businesses showed that 63% of business owners would not invest in another business in the neighborhood due to the neighborhood's physical unattractiveness and high crime.⁷⁰

Because government did not always replace housing units that were destroyed in order to make room for highways, highway construction reduced the urban housing supply and thus reduced city population. For example, in Cincinnati the construction of I-75 displaced residents of the city's African-American West End, and the displaced West Enders flooded nearby neighborhoods (causing massive racial transition and "white

⁶⁴ See *Tullock v. State Highway Commission of Mo.*, 507 F.2d 712, 714 n. 1 (8th Cir. 1974) (between 1950 and 1968, over two million dwellings destroyed due to highway construction and urban renewal, and 62,000 individuals and families were displaced by federal highway programs in 1968 alone). Cf. GILLHAM, *supra* note 1, at 42-43 (describing "urban renewal" program mentioned in *Tullock*).

⁶⁵ See Lee R. Epstein, *Where Yards Are Wide: Have Land Use Planning and Law Gone Astray?*, 21 WM. & MARY ENVTL. L. & POL'Y REVIEW 345, 370 (1997)

⁶⁶ See Andrea Eaton, *Impact of Urban Renewal or Land Development Initiatives on African-American Neighborhoods in Dade County, Florida*, 3 HOW. SCROLL 49, 55 (1995).

⁶⁷ See Lewyn, *supra* note 30, at 316 (citation omitted).

⁶⁸ Beverly H. Wright, *New Orleans Neighborhoods Under Siege*, in JUST TRANSPORTATION 121, 132-33 (Robert D. Bullard & Glenn S. Johnston eds., 1997).

⁶⁹ *Id.* at 133-34.

⁷⁰ *Id.* at 135.

flight” from those neighborhoods).⁷¹ One such neighborhood, Mount Auburn, changed from 84% white in 1960 to 74% black in 1970;⁷² presumably, at least some of the whites who left Mount Auburn moved to Cincinnati’s suburbs.

And when a city loses population to its suburbs, it may become less attractive in a variety of other ways. For example, the city’s tax base might decline, thus forcing the city to raise taxes to pay for city services.⁷³ And if the people who leave the city are disproportionately middle-and upper-class, the remaining, relatively low-income city residents might support redistributionist policies that increase taxes and thus drive away even more middle-class voters.⁷⁴

Nevertheless, Bruegmann speculates that highways may have actually helped cities, noting that roads “were heavily supported by central-city interests because these individuals believed that these roads, like the railroads before them, would reinforce the centrality of the downtown and make it easier for people from throughout the region to get to it.”⁷⁵ However, Bruegmann does not explain why he thinks this view was

⁷¹ See *Clarke v. City of Cincinnati*, 1993 WL 761489, at *7 (S.D. Ohio July 8, 1993) (noting that in Cincinnati, “African American citizens were being forced to move into previously white neighborhoods as a result of being displaced by the construction of the Interstate Highway through their neighborhood”, thus implying that government did not provide replacement housing to people whose homes were destroyed due to highway construction); Dan Hurley, *New Y, old vision for the West End*, CINCINNATI POST, May 26, 2006, available at <http://news.cincypost.com/apps/pbcs.dll/article?AID=/20060526/LIFE/605260340/-1/BACK01> (West End was an African-African neighborhood in which many homes destroyed by I-75); Lewyn, *supra* note 30, at 316 (displaced West End residents flooded nearby neighborhoods).

⁷² *Id.* at 316 n. 128 (citation omitted).

⁷³ See Katharine J. Jackson, *The Need For Regional Management of Growth: Boulder, Colorado As A Case Study*, 37 URB. LAW. 299, 303 (2005) (as a city’s population shrinks, property values and property tax bases decrease, “forcing [the city] to raise taxes to pay for basic city services.”); *Ybarra v. Town of Los Altos Hills*, 370 F. Supp. 742, 750 n. 10 (N.D. Cal. 1973) (cities “are trying to reverse the population movements that have left them with concentrations of the poor, high service demands, and a stagnant tax base”).

⁷⁴ See Lewyn, *supra* note 30, at 336-38 (discussing Washington, DC under Marion Barry as case study of high-tax government caused by flight of middle-class voters from city electorate).

⁷⁵ BRUEGMANN, *supra* note 1, at 108.

correct.⁷⁶ Similarly, he asserts that “Given the strong rebound of many of these cities in recent years, it is altogether possible that, at some point in the near future, most people will conclude that [expressways] were actually largely beneficial for central cities.”⁷⁷ Again, Bruegmann does not explain why “most people” would so conclude. And his conclusion seems highly implausible, given the rapid decline of cities during the years immediately after the passage of the Highway Act.⁷⁸ If cities rebound, their success is likely to be despite, not because of, the highways that fed suburban growth.

Bruegmann’s weakest argument is that suburb-oriented government spending merely compensates for urban-oriented government spending. For example, he argues that “federal spending today goes more heavily per capita to central cities than to suburbs, primarily because of the enormous price tag of social security payments, which go primarily to an older population that remains disproportionately in the central cities.”⁷⁹ Even if it was true that senior citizens mostly lived in central cities,⁸⁰ Social Security payments do not compensate for highway spending, because Social Security spending goes to a retiree whether she lives in a city or a suburb. By contrast, highways going from a city to a suburb benefit suburbanites by shortening their commutes, but arguably harm city residents both by destroying city neighborhoods and by encouraging

⁷⁶ If he in fact thinks so: he also writes that highways “made leaving town easier”, *id.*, and then writes that “both [highways and railroads] caused some dispersal and both caused some centralization”. *Id.* The first remark suggests that highways did cause sprawl after all, while the second statement is more equivocal.

⁷⁷ BRUEGMANN, *supra* note 1, at 101-02.

⁷⁸ See *supra* note 62 and accompanying text.

⁷⁹ BRUEGMANN, *supra* note 1, at 105.

⁸⁰ In fact, this is not always the case. For example, in New York, Los Angeles, and Chicago, the percentage of central city population over 65 is actually lower than the percentage of metropolitan area population over 65. See U.S. CENSUS BUREAU, CITIES WITH 100,000 OR MORE POPULATION IN 2000 RANKED BY PERCENT POPULATION 65 YEARS AND OVER, 2000 IN ALPHABETIC ORDER <http://www.census.gov/statab/ccdb/cit2061a.txt> (In New York City, Los Angeles, and Chicago, percentages of urban population over 65 were 11.7%, 9.7% and 10.3% respectively); U.S. Census BUREAU, METROPOLITAN AREA RANKINGS OF PERSONS 65 YEARS OF AGE AND OVER, *available at* <http://www.census.gov/Press-Release/metro09.prn> (visited June 9, 2006) (comparable percentages for New York, Los Angeles and Chicago metropolitan areas were 13.4%, 10.2% and 11.3% respectively).

outmigration from cities (thus reducing urban tax bases, thus leading to higher taxes).⁸¹

In other words, Social Security spending is place-neutral – but highway spending is not.

2. Housing Subsidies

Since the 1930s, the Federal Housing Administration (FHA) has insured home construction loans in order to stimulate the housing industry.⁸² Specifically, the FHA guaranteed over 90% of the value of collateral for home loans, so that down payments of only 10% of home value became the norm (as opposed to the 33% down payments common before FHA's creation).⁸³ For the first few decades of its existence, the FHA refused to guarantee home loans in racially integrated areas.⁸⁴ Because suburban areas were usually whiter than cities,⁸⁵ this policy encouraged Americans to purchase FHA-insured homes in suburbs.⁸⁶

Bruegmann apparently defends the FHA's racist policies, asserting that "there was, in fact, a great deal of evidence over many years indicating that property values did

⁸¹ See *supra* notes 62-74 and accompanying text (describing impact of highways upon cities). Bruegmann also asserts that in any city/suburb accounting, "the spending by the federal government since the eighteenth century for ports and railroads, bridges and highways, universities and hospitals located primarily in the central cities would have to be factored in." *Id.* This argument lacks merit for two reasons. First, because government was far smaller prior to the 1950s than it is today, such expenses were not always government-financed. See Eric A. Cesnik, *The American Street*, 33 URB. LAW. 147, 167 (2001) (streets often privately financed until 20th century); U.S. OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: HISTORICAL TABLES, FISCAL YEAR 2007 23 available at <http://www.whitehouse.gov/omb/budget/fy2007/pdf/hist.pdf> (visited June 9, 2006) (federal spending was only 3.4% of GNP in 1930, grew to 11.6% of GNP in 1948, and is now about 20% of GNP), 312-13 (state and local government spending grew from 5.6% of GNP in 1948 to over 11% of GNP today). Second, highway spending, as noted above, was often not beneficial for cities. See *supra* notes 62-74 and accompanying text.

⁸² See GILLHAM, *supra* note 1, at 37; Lewyn, *supra* note 30, at 305.

⁸³ See Victor A. Bolden, *Where Does New York City Go From Here: Chaos or Community*, 23 FORDHAM URB. L.J. 1031, 1052 n. 26 (1996).

⁸⁴ See KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 207-08 (1985); GILLHAM, *supra* note 1, at 135.

⁸⁵ And the racial difference between cities and suburbs may itself have been due to suburban governments' zoning policies that excluded inexpensive housing, thus keeping African-Americans out of those suburbs. See John Powell, *Segregation and Educational Inadequacy in Twin Cities Public Schools*, 17 HAMLIN J. L. & PUB. POL'Y 337, 352 (1996) (because blacks poorer than whites, suburban exclusion of inexpensive housing excludes African-Americans from suburbs).

⁸⁶ GILLHAM, *supra* note 1, at 134-35.

tend to drop as neighborhoods got older and experienced ethnic or racial turnover.⁸⁷ Even if Bruegmann's claim is factually correct,⁸⁸ he overlooks the possibility that subsidies such as FHA loan insurance might make moving to suburbia cheaper at the margin: that is, some people might be willing to leave a low-value urban neighborhood if they could make a 10% down payment on a suburban home, but would not be willing to move if they had to make a 33% down payment on a suburban home. To the extent that would-be homeowners fell into this category, FHA mortgage insurance encouraged suburban growth.

Moreover, the FHA's tilt towards suburbia included a variety of policies unrelated to racial turnover. The FHA defined "low-risk" areas appropriate for FHA loans not just as lily-white neighborhoods, but also as neighborhoods that were newer and less compact – policies which favored suburbia because suburbs tended to be newer and less densely populated.⁸⁹ FHA also set minimum standards for new housing construction that mandated low-density, automobile-dependent design.⁹⁰ Thus, FHA policies both

⁸⁷ BRUEGMANN, *supra* note 1, at 102. He also states that "No amount of regulatory control would have altered this fact of life." *Id.* But the FHA was not trying to "control" private racism, but to subsidize such racism- a very different issue.

⁸⁸ Bruegmann provides no evidence for this assertion. Although he does footnote this statement, his footnote relates to an entirely different issue: the anti-urban bias of an entirely different government agency, the Home Owners' Loan Corporation (HOLC). HOLC "redlined" urban neighborhoods by issuing maps that graded neighborhoods and colored the riskiest areas red. AMY HILLIER, REDLINING IN PHILADELPHIA, available at <http://cml.upenn.edu/redlining/intro.html> (visited July 1, 2006) Bruegmann writes that HOLC's influence was limited because it did not make its maps available to private lenders. *Id.* at 248 n. 12. However, Amy Hillier, the researcher cited by Bruegmann, has pointed out that HOLC was far less influential than FHA. See HILLIER, *supra*. (FHA manuals "established highly racialized neighborhood standards that lenders were encouraged to consider if they wanted to receive FHA insurance. FHA's neighborhood appraisal standards ultimately had a much greater impact on lending patterns in urban communities than HOLC's maps.") Thus, Bruegmann's footnote does not support either his broad claim that FHA's anti-urban bias was unimportant or his narrower claim that racial integration lowers property values.

⁸⁹ See JACKSON, *supra* note 84, at 207-08 (describing FHA policies and quoting FHA manuals asserting that "crowded neighborhoods lessen desirability" as do "older properties in a neighborhood").

⁹⁰ See MICHAEL SOUTHWORTH & ERAN BEN-JOSEPH, REGULATED STREETS: THE EVOLUTION OF STANDARDS FOR SUBURBAN RESIDENTIAL STREETS 34-36 (1993) (FHA favored cul-de-sacs over grid streets, houses sitting on at least 6000 square feet of land, and blocks at least 600 feet long). *Compare*

subsidized migration to suburbs and mandated that those suburbs be designed in a “sprawling” manner.

As a result of these policies, the overwhelming majority of FHA-insured homes were in suburbs, even where nearby central cities were predominantly white. For example, in metropolitan St. Louis, 91 percent of new homes insured by the FHA during the 1930s were in suburban locations,⁹¹ even though the city of St. Louis was less than 12 percent black in 1930.⁹²

More plausibly, Bruegmann points out that the federal income tax deduction for interest on mortgages does not favor suburbs, because this deduction can be used for “any kind of single-family unit, whether a house in the suburbs or a condominium in a high-rise downtown.”⁹³ But even here, Bruegmann oversimplifies. Condominiums were not common (or even authorized by most states’ statutes) until the 1960s.⁹⁴ Before that time, Americans could not easily purchase apartments,⁹⁵ and thus had to buy a house in order to qualify for the home mortgage deduction. Because houses tend to be

REID EWING, PEDESTRIAN- AND TRANSIT-FRIENDLY DESIGN: A PRIMER FOR SMART GROWTH 2-4, *available at* http://www.epa.gov/smartgrowth/pdf/ptfd_primer.pdf (visited June 1, 2006) (arguing pedestrian-friendly, transit-friendly development requires higher densities than are common in many suburbs and blocks no longer than 300 feet; higher density means more people can walk to transit stops, and short blocks mean pedestrians can cross street more frequently); DUANY ET. AL., *supra* note 9, at 23 (cul-de-sac street pattern discourages walking because residential streets not connected to each other, which means pedestrians must go out of their way to visit nearby residential streets).

⁹¹ See GILLHAM, *supra* note 1, at 135 (citing data for St. Louis, and citing similar results for other metropolitan areas).

⁹² See U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1935 25 (57th ed. 1935), *available at* <http://www2.census.gov/prod2/statcomp/documents/1935-02.pdf> (visited June 11, 2006) (city of St. Louis 11.6 percent black). (“1935 ABSTRACT”)

⁹³ BRUEGMANN, *supra* note 1, at 103.

⁹⁴ See GILLHAM, *supra* note 1, at 59 (“it wasn’t until the 1960s that the condominium was introduced here.”); Aaron M. Schreiber, *The Lateral Housing Development: Condominium or Home Owners Association?*, 117 U. PA. L. REV. 1104, 1109-10 (1969) (first state statute dealing with condominiums was in 1958, and federal mortgage insurance for condominiums not available until 1961).

⁹⁵ GILLHAM, *supra* note 1, at 59 (condominium form of ownership “made it possible for city dwellers to own rather than rent their apartments”).

disproportionately located in suburbs,⁹⁶ the home mortgage deduction tended to favor migration to suburbia until the 1960s.

2. Zoning

As Bruegmann admits, municipal zoning codes often mandate segregation of housing from other land uses and require low population density.⁹⁷ These policies, by increasing the distance between housing and other land uses, ensure that many Americans cannot live within walking distance of shops or offices, thus effectively forcing Americans into their cars.⁹⁸ Nevertheless, Bruegmann asserts that “zoning itself cannot be blamed for most of the sprawl that has occurred because sprawl was well underway long before zoning became common in American cities, which only started to happen in the 1920s.”⁹⁹ Bruegmann’s suggestion that “most of the sprawl that has occurred” preceded zoning is misleading. As of 2003, there were 120.7 million occupied housing units in the United States.¹⁰⁰ Only 9.6 million of these units (or about 8 percent) were built before 1920.¹⁰¹ Thus, most of America’s housing was created after zoning became common.

Bruegmann also suggests that because some suburbs have become more densely populated in recent years, “zoning has changed as necessary to accommodate market

⁹⁶ See Robert H. Nelson, *Privatizing The Neighborhood: A Proposal to Replace Zoning with Private Collective Rights to Individual Neighborhoods*, 7 GEO. MASON L REV. 827, 839 (1999) (suburbs often exclude or restrict construction of apartments through zoning).

⁹⁷ See BRUEGMANN, *supra* note 1, at 105.

⁹⁸ Cf. Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L.J. 1445, 1448 (2002) (explaining that in neighborhoods organized around “the mobility pattern of the pedestrian,” most residents should live no more than a quarter of a mile from stores and schools).

⁹⁹ See BRUEGMANN, *supra* note 1, at 105.

¹⁰⁰ U.S. Census Bureau, American Housing Survey for the United States, 2003, *available at* <http://www.census.gov/hhes/www/housing/ahs/ahs03/tab1a1.htm> (visited June 11, 2006).

¹⁰¹ *Id.* About 11.8 million units were built between 1920 and 1940, 21.5 million between 1940 and 1960, 40 million between 1960 and 1980, and 38.7 million after 1980. *Id.*

realities”¹⁰² – in other words, that zoning merely mimics the market, mandating sprawl when the market wants sprawl and changing when the market wants change.

But a few lines later, Bruegmann concedes that zoning occasionally frustrates the market, asserting that low-density zoning designed to prevent rural areas from turning into suburbs “almost certainly forced many landowners to buy more land than they otherwise would have wanted, leading to lower densities than would have been the case without the regulations.”¹⁰³ Bruegmann’s treatment of zoning seems to be governed by a double standard: conventional pro-sprawl zoning merely tracks the market- but zoning designed to limit sprawl successfully frustrates consumer demand.

Moreover, surveys of developers suggest that pro-sprawl land use regulation really **does** impede, rather than following, market pressures for more compact housing. In 2001, the Urban Land Institute (ULI) (a developers’ trade association)¹⁰⁴ conducted a survey asking developers about the impact of zoning upon “alternatives to conventional, low-density, automobile-oriented, suburban development”.¹⁰⁵ 85.4% of developers surveyed agreed that the supply of such development was inadequate to meet market demand,¹⁰⁶ and 78.2% of developers identified government regulation as a significant barrier to such development.¹⁰⁷ The ULI survey also revealed that over 60 percent of

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND-USE 125 (2006 (describing ULI as “national organization of land developers”).

¹⁰⁵ *Id.* at 126.

¹⁰⁶ *Id.* at 128. This group was divided between 66.8% who believed that there was generally not enough compact development to meet consumer demand, and an additional 18.6% who responded that the supply of such development was high enough to meet consumer demand- but not in the “right locations” (presumably meaning the neighborhoods where consumer demand for compact development was highest). *Id.*

¹⁰⁷ *Id.* at 129. By contrast, only 35.3% invoked financing as an obstacle to more compact development, and only 26.3% listed inadequate consumer demand. *Id.* Thus, it cannot plausibly be argued that pedestrian-friendly development is rare solely because of lack of market demand.

developers in both cities and inner suburbs stated that they wished to build more compact development than was generally allowed by government regulation.¹⁰⁸

For example, in California's Silicon Valley, exploding housing prices might, in the absence of government regulation, cause landowners to build smaller houses and more multifamily developments in order to meet consumer demand for affordable housing.¹⁰⁹ But in Silicon Valley communities such as Santa Clara and Cupertino, almost every property zoned as single-family in the 1960s remains single-family today.¹¹⁰ Similarly, in Massachusetts only 3/10 of 1% of single-family parcels were rezoned between 1970 and 1999,¹¹¹ despite the fact that housing prices near Boston have exploded.¹¹² Thus, zoning does not always respond to consumer demand for more compact development.¹¹³

C. Myth Three: Sprawl Is Harmless

Even if government spending and government zoning policies have depopulated cities and made suburbia automobile-dependent, sprawl is hardly a serious social problem if its overall effects are harmless or beneficial. And so Bruegmann attacks a wide variety

¹⁰⁸ *Id.* at 131. In particular, about 80 percent of developers indicated that they would develop more compactly in inner suburbs if zoning was less burdensome, and over 60 percent similarly indicated that relaxed regulations would lead them to develop more densely in central cities. *Id.* By contrast, developers in outer suburbs and rural areas were less interested in more compact development. *Id.*

¹⁰⁹ *Id.* at 77.

¹¹⁰ *Id.* at 204 n. 1.

¹¹¹ *Id.* at 78.

¹¹² See EDWARD L. GLAESER, JENNY SCHUETZ AND BRYCE WARD, REGULATION AND THE RISE OF HOUSING PRICES IN GREATER BOSTON 1, 7 available at http://www.ksg.harvard.edu/rappaport/downloads/housing_regulations/regulation_housingprices.pdf (visited June 11, 2006) (housing prices grew by 210% in metro Boston between 1980 and 2004, while number of permits decreased)

¹¹³ Indeed, local governments have a strong political incentive to ignore consumer demand for new housing of any type: the homeowners who often dominate local electorates may wish to preserve the status quo in order to keep housing scarce and thus keep property values high. See Audrey G. McFarlane, *Regulation and the Four Dimensions of Class in Land Use*, 22 J. L. AND POLITICS 33, 39-40 (2006) (explaining local government incentives behind rigid zoning laws); BRUEGMANN, *supra* note 1, at 162 (homeowners are part of "incumbents' club" which benefits from restrictions on housing supply).

of claims about the evil effects of sprawl. Bruegemann’s rebuttal of some anti-sprawl claims is fairly persuasive, given the difficulty of establishing cause and effect relationships between sprawl and other social problems. For example, Bruegemann correctly suggests that there is no way of knowing whether limiting sprawl will reduce energy consumption enough to reduce global warming.¹¹⁴ Similarly, it is not clear whether sprawl costs suburban taxpayers significantly more than compact development,¹¹⁵ or whether sprawl will ever reduce food supply by creating a shortage of farmland.¹¹⁶

But Bruegemann’s handling of other issues is far less supple. For example, he attempts to deny the link between air pollution¹¹⁷ and sprawl by writing that the “cause of the pollution was neither sprawl nor the automobile itself, but, rather, the inefficient fuel source it used.”¹¹⁸ But as long as automobiles are **using** those inefficient fuel sources

¹¹⁴ See BRUEGMANN, *supra* note 1, at 149 (“Even if everyone in the world came to live in the same way as the inhabitants of European central cities, this would not, certainly by itself, solve the global warming problem.”) Of course, if sprawl increases pollution, it probably contributes in some degree to global warming. See *infra* notes 116-22 and accompanying text (describing relationship between sprawl and pollution). However, there is no way of knowing how significant that contribution is.

¹¹⁵ *Id.* at 125. I note, however, that even if sprawl does not affect suburban or statewide tax burdens, sprawl may increase the taxes of urban taxpayers under certain circumstances. See Lewyn, *supra* note 30, at 336-37 (where new development is outside city limits, city taxes may increase because “if a city’s middle class migrates en masse to suburbia, its tax base will be smaller and it, therefore, will, other things being equal, have to raise taxes or reduce services” and because a poorer city electorate is more likely to favor redistributive fiscal policies).

¹¹⁶ See BRUEGMANN, *supra* note 1, at 142 (sprawl does not endanger food supplies because so far, “agricultural yields are going up and agricultural prices going down worldwide despite a reduction in the amount of land devoted to agriculture”).

¹¹⁷ I discuss air pollution separately from global warming because even if global warming never becomes a significant social problem, air pollution creates day-to-day health hazards such as lung damage. See GILLHAM, *supra* note 1, at 121 (pollution causes damage to lung tissue as well as “reproductive and neurological problems”).

¹¹⁸ BRUEGMANN, *supra* note 1, at 127. Bruegemann inexplicably adds: “For many of those in the anti-suburban camp, however, developing new and cleaner fuel sources was the last thing they wanted. It would only lead to more driving and to more sprawl.” *Id.* This unverifiable claim exemplifies the *ad hominem* fallacy: Bruegemann is trying to “shift his argument from the point being discussed (*ad rem*) to irrelevant personal characteristics of an opponent (*ad hominem*). Instead of addressing the issue presented by an opponent, this argument makes the opponent the issue.” Paul E. Salmanca, *Constitutional Protection for Conversations Between Therapists and Clients*, 64 MO. L.REV. 77, 97 n. 106 (1999)

they are creating pollution. It logically follows that by increasing driving, sprawl increases pollution. Perhaps some day automobiles will use more efficient fuel sources: but until that day comes,¹¹⁹ more sprawl (other factors being equal) means more driving means more pollution.

Bruegmann even tries to blame pollution on city-dwellers by asserting that “the higher density of automobile use in the city meant that pollution was almost invariably worse in dense areas.”¹²⁰ Even if this statement is factually correct,¹²¹ the “higher density of automobile use” in the city is caused in part by suburbanites driving in from automobile-dependent suburbs and by urbanites driving to jobs in those suburbs.¹²² If these drivers lived and worked in places where they could get to work without driving (rather than in sprawling, automobile-dependent suburbs), dense areas might have fewer cars on their streets, and thus less automobile-induced air pollution.¹²³ Thus, sprawl (other factors being equal) increases automobile-induced pollution even in central cities.

His treatment of the relationship between sprawl and obesity is similarly illogical.

(citation omitted). The sentence quoted seeks to persuade readers by attacking the alleged “anti-suburban camp” rather than focusing on the relationship between sprawl and pollution.

¹¹⁹ And maybe even after that day comes, if auto travel increases faster than fuel efficiency. See GILLHAM, *supra* note 1, at 114 (Environmental Protection Agency projects that even though cars are less toxic than they were in 1970, “growth in VMT [vehicle miles traveled] will offset progress in reducing air toxics by early this century, causing air pollution from highway vehicles to actually increase within the next twenty years”).

¹²⁰ *Id.* at 127.

¹²¹ In fact, it is by no means clear that compact places are more polluted. See Michael Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 UTAH L. REV. 1, 47 (2002) (showing pollution figures for various metropolitan areas, and concluding that “[m]etropolitan areas with high levels of public transit use tend to have relatively clean air.”)

¹²² For example, in metropolitan Baltimore 10% of all workers commute from city to suburb, and 11% commute from suburb to city. See BALTIMORE METROPOLITAN COUNCIL, TSC NOTES, available at <http://www.baltometro.org/mambo/content/view/611/0/#household> (visited June 12, 2006). Many of these suburbs are extremely automobile-dependent. See JOB OPPORTUNITIES TASK FORCE, BALTIMORE’S CHOICE: WORKERS AND JOBS FOR A THRIVING ECONOMY 22, available at <http://www.jotf.org/pdf/baltimoreschoice.pdf> (visited July 4, 2006) (mass transit service minimal in Baltimore’s growing outer suburbs).

¹²³ Even in a city where all commuters drove to work, commuting to and from distant suburbs may increase urban pollution, if a commuter driving to or from suburbia drives more miles within the city than she would have driven if she lived in the city and drove to a job in the city.

He writes that “ethnic and racial characteristics and low income are much more closely associated with obesity than any particular land-use pattern.”¹²⁴ This claim presents a false dichotomy: **either** poverty causes obesity **or** sprawl causes obesity. But both may be causes: poor people may be more likely to be obese than rich people, but poor people (or for that matter, not-so-poor people) living in a neighborhood that discourages walking may also be even **more** likely to be obese than other people with similar incomes.

Bruegmann’s attempt to break the link between sprawl and traffic congestion rests on a slender factual base. At first glance, it might seem obvious that suburban life might increase driving which in turn increases congestion. But Bruegmann defends sprawl on the ground that “congestion and commuting times tend to rise, not fall, with density.”¹²⁵ For example, Bruegmann cites Kansas City and Oklahoma City as role models of low-density places with little traffic congestion- and like most smaller cities, they do have less congestion than bigger cities.¹²⁶ But Bruegmann’s own examples rebut his claim. If Bruegmann’s theory was correct, these low-density cities would experience reduced traffic congestion if their densities fell over time. This was not the case in Kansas City, where regionwide population density decreased by over 20% (from 1982 persons per square mile to 1435) – yet the annual congestion-related delay per rush-hour traveler rose from 2 hours per year to 17 hours per year.¹²⁷ In Oklahoma City, population density did

¹²⁴ BRUEGMANN, *supra* note 1, at 256 n. 14.

¹²⁵ BRUEGMANN, *supra* note 1, at 141.

¹²⁶ See TEXAS TRANSPORTATION INSTITUTE, 2005 URBAN MOBILITY STUDY, NATIONAL CONGESTION TABLES, TABLE 1, *available at* http://mobility.tamu.edu/ums/congestion_data/tables/national/table_1.pdf (visited June 11, 2006) (listing congestion for various regions, and noting that largest regions had most congestion, and smaller regions had the least). The Texas Transportation Institute (TTI) is a state research agency affiliated with Texas A&M University, which regularly conducts “urban mobility studies” addressing traffic congestion. See Lewyn, *supra* note 121, at 43 (describing TTI); BRUEGMANN, *supra* note 1, at 255 n. 8 (citing TTI data)

¹²⁷ TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR KANSAS CITY, MO-KS, *available at* http://mobility.tamu.edu/ums/congestion_data/tables/kansas_city.pdf (visited June 11, 2006).

not change significantly (increasing slightly from 1542 persons per square mile to 1568) - and congestion nevertheless increased from 3 hours per year to 12 hours per year.¹²⁸

Thus, sprawl has failed to reduce congestion, even in low-density, low-congestion regions.

Bruegmann also claims that commuting times have not increased due to sprawl, because jobs have followed population to the suburbs.¹²⁹ But in fact, the percentage of workers with 90-minute round-trip commutes has increased by 95% since 1990.¹³⁰ And as a matter of common sense, such long-distance commutes may be an inevitable result of sprawl: if Employer X moves from downtown to northern suburb Y, its employees who live in northern suburb Y may have shorter commutes, but its urban employees and its employees in southern suburbs may have even longer commutes.¹³¹

More important than the anti-sprawl arguments Bruegmann mishandles are the arguments he simply ignores. His chapter discussing the social costs of sprawl contains a subheading for “Social Concerns and Equity Problems,”¹³² but his discussion under that

It could be argued, of course, that places such as Kansas City failed to build enough roads to accommodate traffic. See *infra* notes 159-68 and accompanying text (discussing relationship between road construction and congestion). This argument is weak because if lower density reduces congestion, Kansas City’s decreased density should have reduced traffic without any need for massive road construction.

¹²⁸ TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR OKLAHOMA CITY, OK, available at http://mobility.tamu.edu/ums/congestion_data/tables/oklahoma_city.pdf (visited June 11, 2006).

¹²⁹ BRUEGMANN, *supra* note 1, at 141 (“the notion that sprawl causes congestion or longer commuting trips is difficult to sustain in the face of data that show that commuting times in the United States did not increase very much . . . The reason was that the decentralization of residences was accompanied by the decentralization of jobs and other activities”). I note that despite the decentralization of employment, suburbanites continue to have longer commutes than city residents. See SURFACE TRANSPORTATION POLICY PROJECT, TRANSPORTATION DATA FROM THE 2000 CENSUS, available at http://www.osc.state.ny.us/localgov/pubs/research/pop_trends.pdf (visited June 13, 2006) (average suburbanite spends 26.9 minutes traveling to work as opposed to 24.9 for central city residents) (“TRANSPORTATION DATA”).

¹³⁰ Michelle Conlin et. al., EXTREME COMMUTING, available at http://www.businessweek.com/magazine/content/05_08/b3921127.htm (visited June 12, 2006).

¹³¹ See STEVE BELMONT, CITIES IN FULL 149 (2002) (explaining point in more detail).

¹³² BRUEGMANN, *supra* note 1, at 143. Instead of focusing upon the effects of sprawl upon nondrivers generally, he focuses on the question of whether cities should annex suburbs in order to improve urban tax

subheading completely overlooks a major “equity problem” with sprawl- the plight of the carless young, old, poor and disabled who lack access to jobs and shopping when streets are unfit for pedestrians and transit service is inadequate.¹³³ Almost one-third of all Americans have no drivers’ license,¹³⁴ including about 11.5% of Americans over 18.¹³⁵ This figure almost certainly understates the number of nondrivers, since some Americans acquired a drivers’ license at one time but do not own a car.¹³⁶ Nondrivers tend to be among the most physically and economically disadvantaged members of American society: 21% of Americans over 65 do not drive,¹³⁷ most children obviously do not drive,¹³⁸ almost half of disabled Americans have no car,¹³⁹ and the majority of welfare recipients do not own cars.¹⁴⁰

Nondrivers, however, are not characters in Bruegmann’s story of suburban triumph.¹⁴¹ In fact, Bruegmann is an aggressive defender of government-funded road

bases, *id.* at 143-45- an important but not nationwide problem, since in many regions, cities have been able to annex a significant portion of their suburbs. See GILLHAM, *supra* note 1, at 141 (of twenty largest U.S. cities, seven were able to annex over 100 miles of suburban territory between 1950 and 1990).

¹³³ See *supra* notes 9, 30-34 and accompanying text (noting difficulty of life for American nondrivers, and pointing out that young, old and poor are especially likely to suffer from such problems).

¹³⁴ See 2006 ABSTRACT, *supra* note 46, at 8 (there were 290.7 residents of the United States in 2003), 712 (196.1 million licensed drivers, or about 67% of resident population).

¹³⁵ Of the 217.7 million persons over 18 in the United States, 25 million have no drivers’ license. *Id.* at 13 (217.7 million persons over 18 lived in United States in 2003); SPADAFORA, *supra* note 29, at 117 (after subtraction of 3.4 million under-18 drivers, table shows 192.7 million licensed drivers in 2003).

¹³⁶ In seven states, the number of licensed drivers actually exceeds the number of registered motor vehicles, a fact which suggests that some license holders do not in fact possess a motor vehicle. *Id.* at 118. For example, some people with drivers’ licenses may have given up cars after moving to a neighborhood where auto ownership is not necessary, or may live in a household with a family member who owns a car.

¹³⁷ See Plungis & Bunkley, *supra* note 9.

¹³⁸ SPADAFORA, *supra* note 29, at 118 (in most states, the minimum age for a learner’s permit is 15 or over).

¹³⁹ See Julie Mason, *Bush unveils program for disabled*, HOUSTON CHRONICLE, June 29, 2000 at A11, 2000 WNL 9368643 (according to Karen Hughes, spokeswoman for then-Governor Bush, 25 million of 54 million disabled Americans dependent on public transportation).

¹⁴⁰ See Nicole Stelle Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 HARV. J. ON LEGIS. 173, 183 n. 61 (2001)

¹⁴¹ Bruegmann does mention that “[t]here are probably good reasons to provide more subsidies to some forms of public transportation in the United States today”, BRUEGMANN, *supra* note 1, at 147, but he fails to state what those “good reasons” are and what “forms” are most deserving.

construction,¹⁴² apparently ignoring the possibility that by moving jobs to suburbia, expressways move jobs to areas far from public transit and thus inaccessible to people without cars.¹⁴³ Despite Bruegmann's attempts to tie sprawl to freedom,¹⁴⁴ he is all for Big Government if it supports suburbia – even if Big Government's decisions reduce the mobility of nondrivers.

Instead of discussing the impact of sprawl upon the carless poor and disabled, Bruegmann uses class war tactics to defend sprawl by characterizing the public debate over sprawl as a conflict between the middle class (which allegedly benefits from the opportunity to move to suburbia) and the upper class (which wants suburbia all to itself).¹⁴⁵ But Bruegmann's tale of class war is incomplete, because it overlooks the impact of sprawl upon the poor who cannot afford cars¹⁴⁶ or suburban homes.¹⁴⁷

Bruegmann also overlooks the fiscal impact of compulsory motoring upon the vehicle-owning majority. The average American household spends \$6,960 on vehicle purchases, gasoline, vehicle maintenance and repair, and vehicle insurance.¹⁴⁸ To the

¹⁴² *Id.* at 192-94. *Cf. supra* notes 62-74 and accompanying text (discussing suburbanizing impact of highways).

¹⁴³ *See* Garnett, *supra* note 140, at 183 (“while most suburban jobs are readily accessible by car, only a small percentage are accessible by public transit.”)

¹⁴⁴ *See* BRUEGMANN, *supra* note 1, at 17 (sprawl is “the preferred settlement pattern everywhere in the world where there is a certain measure of affluence and where citizens have some choice in where they live.”)

¹⁴⁵ *Id.* at 115 (“As long as only a small number of the wealthiest and most powerful families occupied the most land in the most attractive locations, there was very little sustained or organized protest”); 125 (“middle-class suburbia” under attack by “upper-middle class citizen[s]”), 135 (describing one popular song's lyrics about “ticky tacky” suburban housing as “criticism of working-class and middle-class culture”)

¹⁴⁶ *See* Garnett, *supra* note 140, at 183 & n. 61 (most welfare recipients do not own cars).

¹⁴⁷ *See* Georgette Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 616 n. 31 (1997) (poor often cannot afford to live in suburbs); GILLHAM, *supra* note 1, at 132 (noting that majority of America's poor live in central cities).

¹⁴⁸ *See* 2006 ABSTRACT, *supra* note 46, at 457 (calculations made by author based on list of expenditures for each individual item).

extent that vehicle ownership is a virtually compulsory result of government policy,¹⁴⁹ these expenditures are essentially a government-imposed tax, just like the income tax or property taxes.¹⁵⁰

Bruegmann writes that sprawl creates “mobility, privacy and choice.”¹⁵¹ But where (as in large chunks of the United States) sprawl is so all-encompassing that automobiles are necessities rather than luxuries, sprawl actually limits the mobility of nondrivers and impairs consumer choice for drivers.

D. Myth Four: Sprawl Cannot Be Limited Without Suffocating Government Interference

Bruegmann’s discussion of the effects of anti-sprawl measures, although sometimes flawed, is more balanced than the rest of his book. He discusses numerous policies designed to limit sprawl, and correctly points out that some attempts to limit sprawl through land use regulation have been ineffective¹⁵² or have raised land prices by constricting the supply of land.¹⁵³

It is unclear, however, whether Bruegmann thinks these negative effects are inevitable. In discussing Oregon’s planning system (which limits suburban development around Portland and other Oregon cities by prohibiting large-scale development outside

¹⁴⁹ See *supra* notes 30-34 and accompanying text (automobile ownership almost compulsory in much of America), 60-113 and accompanying text (showing how government policy has facilitated sprawl).

¹⁵⁰ Of course, public transit has costs- but those costs are far smaller. The total expense of public transit in the United States was \$30 billion in 2001. See 2006 ABSTRACT, *supra* note 46, at 449. By contrast, Americans spent over \$800 billion on auto-related expenses. *Id.*

¹⁵¹ BRUEGMANN, *supra* note 1, at 220.

¹⁵² *Id.* at 180-91. For example, some municipalities have sought to deter suburban development by requiring five or ten acres per lot, thus causing suburban densities to be even lower than they might otherwise have been. *Id.* at 190.

¹⁵³ *Id.* at 188-89 (using growth controls in Boulder, Colorado as example of regulation that “[b]y reducing the supply of developable land . . . drove up the price of land and the cost of new housing.”)

governmentally designated “urban growth boundaries”),¹⁵⁴ Bruegmann goes back and forth between condemning the Oregon system and acknowledging that the effects of growth boundaries upon housing prices are unclear. At one point, Bruegmann writes that the losers from the growth boundary include “all of the potential future inhabitants of the city [who] will pay sharply higher prices for their houses than those who arrived before the growth management measures started to have an effect.”¹⁵⁵ But a few pages earlier, he characterizes studies of the Oregon system’s effects upon prices as a “bewildering duel of statistics”¹⁵⁶ with “inconclusive”¹⁵⁷ results.

Bruegmann’s relatively balanced treatment of growth controls, however, conceals an error of omission: regardless of the effects of Oregon’s policies, it is certainly possible in theory to limit development in outer suburbs without reducing the overall amount of buildable land. Suppose, for example, that a state implements a system similar to Oregon’s, but deregulates development inside the boundary. In such a situation, it is at least possible that the amount of overall developable land in the region might stay the same, thus avoiding massive increases in housing prices.¹⁵⁸

Bruegmann also fails to adequately discuss the possibility of limiting sprawl through more market-oriented, libertarian policies. The only such policy that Bruegmann discusses in detail is the option of cutting government spending on sprawl-creating expressways – an option Bruegmann vigorously rejects. He asserts that inadequate road

¹⁵⁴ *Id.* at 205 (describing Oregon planning scheme).

¹⁵⁵ *Id.* at 216.

¹⁵⁶ *Id.* at 210.

¹⁵⁷ *Id.*

¹⁵⁸ See LEVINE, *supra* note 104, at 195-96 (suggesting that this may have happened in Oregon to some extent). *Cf.* Garnett, *supra* note 14, at 10 (admitting that growth controls combined with selective deregulation may reduce housing prices in theory, but adding that policymakers “may lack the political will to implement these tools on a large enough scale to counter the regressive effects of growth management”).

construction “has led to a marked increase in congestion”¹⁵⁹ while regions such as Phoenix, Atlanta and Houston are “building [their way] out of congestion.”¹⁶⁰ But in fact, congestion increased in all three areas between 1982 and 2003: from 17 hours per rush-hour traveler to 67 in Atlanta,¹⁶¹ from 39 hours to 63 in Houston,¹⁶² and from 18 hours to 49 in Phoenix.¹⁶³ Bruegmann asserts that Chicago has not built enough freeways to accommodate traffic-¹⁶⁴ but two of the three regions he praises (Atlanta and Houston) have **more** hours of delay per traveler than Chicago!¹⁶⁵

In fact, the effects of road-building upon congestion are anything but certain. Perversely, road-building may make some places more congested because of the phenomenon of “induced traffic.”¹⁶⁶ If a road makes suburb X more popular with

¹⁵⁹ BRUEGMANN, *supra* note 1, at 193 (“new road construction has lagged dramatically behind roadway use, and this has led to a marked increase in congestion.”) I note in passing that Bruegmann’s reliance upon “roadway use” (as opposed to population growth) as a measure of “adequate” road construction leads to absurd results. For example, suppose Sprawl City has no public transit or sidewalks, experiences 5% population growth per decade, and increases its road network by 200% per decade. The new roads create additional sprawl, causing people to live further from work and other amenities, causing vehicle miles traveled to increase by 300%. Although Sprawl City has embarked on a gigantic road-building program and has refused to support alternatives to driving, by Bruegmann’s logic Sprawl City policymakers are “anti-automobile.” BRUEGMANN, *supra* note 1, at 192 (asserting that “anti-automobile reformers” blocked some urban freeways).

¹⁶⁰ *Id.* at 253 n. 25.

¹⁶¹ See TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR ATLANTA, GA, available at http://mobility.tamu.edu/ums/congestion_data/tables/atlanta.pdf (visited June 11, 2006).

¹⁶² See TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR HOUSTON, TX, available at http://mobility.tamu.edu/ums/congestion_data/tables/houston.pdf (visited June 11, 2006).

¹⁶³ See TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR PHOENIX, AZ, available at http://mobility.tamu.edu/ums/congestion_data/tables/phoenix.pdf (visited June 11, 2006).

¹⁶⁴ See BRUEGMANN, *supra* note 1, at 193.

¹⁶⁵ See TEXAS TRANSPORTATION INSTITUTE, THE MOBILITY DATA FOR CHICAGO, IL-IN, available at http://mobility.tamu.edu/ums/congestion_data/tables/chicago.pdf (visited June 13, 2006) (Chicago has 58 hours of delay per traveler); *supra* notes 161-62 and accompanying text (Atlanta has 67 hours of delay per traveler, Houston has 63).

¹⁶⁶ Public debate over this proposition has led to “a bewildering duel of statistics [with] inconclusive [results.]” BRUEGMANN, *supra* note 1, at 210 (using these phrases to describe debate over effects of Oregon planning policies upon housing prices). See SURFACE TRANSPORTATION POLICY PROJECT, ROAD BUILDING HAS LITTLE EFFECT ON CONGESTION, available at <http://transact.org/report.asp?id=88> (visited June 28, 2006) (regions that most rapidly expanded road network experienced increased congestion to same extent as regions that had built fewer roads). *But see contra* BRUEGMANN, *supra* note 1, at 284 n. 29 (citing studies to contrary).

commuters and employers,¹⁶⁷ that suburb will attract more development, which means roads going to and from suburb X will inevitably be more crowded.¹⁶⁸

Moreover, Bruegmann's focus on regulation and transportation overlooks the possibility that sprawl can be limited by reducing rather than by increasing land use regulation – in particular, by thinning out the web of zoning, parking and street design regulations that make American suburbs so automobile-dependent. An libertarian anti-sprawl legal reform package would:

- *Allow landowners to mix commercial and residential uses more frequently, so that more Americans could live within walking distance of shops and jobs.¹⁶⁹

- *Allow the market, rather than zoning laws, to govern population density.¹⁷⁰ If landowners could build compact neighborhoods without government interference, more people could live within walking distance of commercial areas or transit stops.¹⁷¹

- *Abolish setback and minimum parking requirements that require owners of apartment buildings, offices and stores to place buildings far from streets and to surround

¹⁶⁷ As it often does. See *supra* note 63.

¹⁶⁸ Bruegmann asserts that “induced traffic” is comprised of people “switching from one route or means of transportation to a faster and more direct one” and thus does not increase overall travel. BRUEGMANN, *supra* note 1, at 131. This may be true where the highway does not affect where people live- for example, a road between two already-developed areas that merely duplicates an existing road. But not all roads necessarily meet these narrow criteria. Cf. Neal Peirce, *Highway Builders Rev Up For New Wave of Beltways*, NEW ORLEANS TIMES-PICAYUNE, Oct. 9, 1995, at B7, 1995 WNL 1001416 (suggesting that new road near Chicago “will open up large new areas of inexpensive farmland for development”).

¹⁶⁹ See Garnett, *supra* note 33, at 21 (existing zoning creates “spatial separation of land uses”, 32 (zoning laws could be amended to allow mixed-use neighborhoods “where homes are situated within walking distance of stores, restaurants and parks.”)

¹⁷⁰ See Richard Briffault, *Smart Growth and American Land Use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 253 (2002) (“[H]allmarks of American land use law [include] reducing population density and dispersing residents over wider areas”)

¹⁷¹ See Robert H. Freilich, *The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 552 n. 18 (1998) (explaining that in low-density areas, transit use is rare because “commuters are required to travel too far to transit stations”); Duany & Talen, *supra* note 98, at 1448 (in pedestrian-oriented neighborhood, residences should be within ¼ mile of other destinations); EWING, *supra* note 90, at 2-3 (discussing positive effects of higher density in more detail).

those buildings with parking lots.¹⁷² If landowners had the right to substitute houses and shops for parking lots and to bring buildings closer to streets, they could create more compact, pedestrian-friendly places by placing more buildings on a parcel, and could make pedestrian commutes shorter and more pleasant by eliminating the seas of parking that separate shops, offices and other destinations from each other.¹⁷³

*Amend municipal subdivision regulations that require the construction of wide streets.¹⁷⁴ Wide streets take more time for pedestrians to cross, and thus discourage walking both by lengthening a pedestrian's commute and by increasing the amount of time the pedestrian is exposed to traffic.¹⁷⁵

*Allowing more on-street parking.¹⁷⁶ On-street parking creates a buffer between pedestrians and fast-moving cars, thus making walking more appealing.¹⁷⁷

Unlike growth controls, some of these reforms might actually expand housing supply; land that is today used for parking or streets could be used for additional housing. And unlike regulation-oriented policies, these reforms would actually expand consumer choice by reducing government regulation of land use. Thus, it is possible to increase the

¹⁷² See DONALD C. SHOUP, *THE HIGH COST OF FREE PARKING* 22, 25 (2005) (off-street parking requirements so common as to be one of "three basic sets of regulations" that are virtually universal); Duany & Talen, *supra* note 98, at 1449 (setback requirements also common); JAMES HOWARD KUNSTLER, *HOME FROM NOWHERE* 138 (1996) (setback laws generally "keep buildings far away from the street in order to create parking lots all around the building").

¹⁷³ See Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 VA. ENVTL. L.J. 247, 261 n. 49 (2000) (minimum parking requirements reduce density by "lead[ing] to the consumption of enormous amounts of land" for parking); Oliver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 FORDHAM URB. L.J. 1529, 1534 (2002) (minimum parking requirements make stores and office buildings less accessible to pedestrians and bicyclists by creating "huge expanses of asphalt" between those buildings in the form of parking lots, thus increasing distance between buildings and lengthening commutes).

¹⁷⁴ See Robert C. Ellickson, *Taming Leviathan: Will The Centralizing Tide of the Twentieth Century Continue Into The Twenty-First?*, 74 S.CAL. L.REV. 101, 111 (2000) ("municipal subdivision regulations commonly require overly wide streets").

¹⁷⁵ See *Donovan v. Jones*, 658 So. 2d 755, 765 (La. Ct. App. 1995) ("a wider roadway takes longer to cross thus increasing the time the pedestrian is exposed to traffic"); Freilich, *supra* note 171, at 557.

¹⁷⁶ Cf. Lewyn, *supra* note 30, at 334 (cities often limit on-street parking).

¹⁷⁷ See Jeremy Meredith, *Sprawl And The New Urbanist Solution*, 89 VA. L. REV. 447, 481 (2003).

number of compact, pedestrian-friendly neighborhoods without making government more intrusive or increasing housing prices. It follows that because Bruegmann gives short shift to such deregulatory anti-sprawl reforms,¹⁷⁸ his analysis of remedies for sprawl is incomplete.

E. Myth Five: Only Elitists Oppose Sprawl

Bruegmann repeatedly asserts that sprawl is what ordinary middle-class people want, while “elites” dare to question this trend. For example, he claims that in the 1920s, the creation of suburbs in Britain “led to a violent reaction among members of Britain’s literary and artistic elite.”¹⁷⁹ He asserts that in recent decades, “upper-middle-class residents of central cities”¹⁸⁰ engaged in an “assault on urban freeways”¹⁸¹ only when “the automobile ceased to be a luxury item for the affluent and came into the hands of a large middle class.”¹⁸² Bruegmann similarly writes that today, “the anti-sprawl movement has been heavily supported by individuals drawn from an upper-middle class professional population . . . an elite group of academics, central-city business leaders, and employees of not-for-profit organizations.”¹⁸³ This “elite” believes that “[s]prawl is where other people live, particularly people with less taste and good sense than themselves. Much anti-sprawl activism is based on a desire to reform these other people’s lives.”¹⁸⁴ And Bruegmann suggests that New Urbanism (a movement of architects who seek to design

¹⁷⁸ With the exception of his assertion early in his book that because some places have become more dense, zoning may have “changed as necessary to accommodate market realities.” BRUEGMANN, *supra* note 1, at 106. This statement, as noted above, overlooks the possibility that not every attempt to rezone property is successful. *See supra* notes 104-113 and accompanying text.

¹⁷⁹ BRUEGMANN, *supra* note 1, at 117.

¹⁸⁰ *Id.* at 130.

¹⁸¹ *Id.* His discussion of people who were actually “assaulted” by freeways is far more clinical. He admits that freeways “displaced vast numbers of families”, *id.*, but treats these displacements as mere “bad side effects” of policies that “clearly did help enormously with urban congestion.” *Id.* *See supra* notes 64-72 and accompanying text (discussing freeway-related displacement in more detail).

¹⁸² BRUEGMANN, *supra* note 1, at 130.

¹⁸³ *Id.* at 163.

¹⁸⁴ *Id.* at 161.

more mixed-use neighborhoods) is “only the latest version of a long-standing desire by cultural elites to manage middle-class urban life.”¹⁸⁵

All of these remarks are basically “ad hominem” attacks – that is, they target people making anti-sprawl arguments, rather than the arguments themselves.¹⁸⁶ This sort of argument is logically fallacious, because even “elites” are sometimes right.

Moreover, it is simply not the case that only “elites” are concerned about sprawl. This theory is implicitly rebutted by Bruegmann’s own statement that “[w]hen asked, most Americans familiar with the term declare themselves against sprawl just as they say they are against pollution or the destruction of historic buildings.”¹⁸⁷ If “most Americans” are in some sense against sprawl, opponents of sprawl are hardly an “elite.”

Bruegmann also writes that “stopping or slowing the growth of new development and sprawl often provides great material advantage to existing residents”¹⁸⁸ by reducing the number of new cars on the roads that suburbanites use, and increasing home values by limiting the supply of developable land.¹⁸⁹ Since most Americans drive cars¹⁹⁰ (and thus may want less traffic near their homes) and own homes¹⁹¹ (and thus may want housing prices to increase), it logically follows that most Americans have excellent selfish reasons

¹⁸⁵ *Id.* at 259 n. 40 (asserting that another author “persuasively argues” as much).

¹⁸⁶ *See supra* note 117 (describing fallacy).

¹⁸⁷ BRUEGMANN, *supra* note 1, at 161. *See also* Jennifer Frericks, *A Regional Government For Fragmented St. Louis: Even The “Favored Quarter” Would Benefit*, 83 WASH. U. L.Q. 361, 362 n. 9 (2005) (citing poll data; for example, one survey found that 78% of Americans favored policies to curb sprawl); Anonymous, *Community designs deter physical activity*, NATION’S HEALTH, June 1, 2003, at 18, 2003 WLNR 6757240 (most American adults favor a variety of policies designed to make streets more walkable; for example, 70% favored increasing federal spending on pedestrian facilities, 55% would rather walk more than drive more, and almost half favored designing communities so that houses and shops were closer together, even if houses would be closer together).

¹⁸⁸ BRUEGMANN, *supra* note 1, at 162.

¹⁸⁹ *Id.*

¹⁹⁰ *See* 2006 ABSTRACT, *supra* note 46 at 637 (only 9 million of nation’s 105.8 million occupied housing units had no car).

¹⁹¹ *See* Alphonso R. Jackson, *Rising Housing Costs Are A National Concern*, 12-FALL J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 1 (2002) (about 68% of Americans own homes).

to oppose new suburban development. And Americans who do not own cars have even stronger motives to oppose sprawl: where jobs move to automobile-dependent suburbs, carless Americans are frozen out of those jobs.¹⁹² So if both Americans with cars and Americans without cars have reason to be concerned about sprawl, nearly all Americans are part of Bruegmann's so-called "anti-sprawl elite."

Indeed, Bruegmann's populist rhetoric could just as easily be turned against sprawl, because the United States has a powerful pro-sprawl "elite": the road-building lobby.¹⁹³ A wide variety of corporate interests, including automobile manufacturers, tire manufacturers, cement manufacturers, car dealers, truckers,¹⁹⁴ general contractors, and homebuilders,¹⁹⁵ lobby Congress to spend more money on highways,¹⁹⁶ even though federal spending on highways already exceeds transit spending by about a 5-1 margin.¹⁹⁷ This elite gives vast amounts of money to politicians. For example, general contractors

¹⁹² See Mann, *supra* note 4, at 607 (most suburban jobs not accessible through public transit.) Indeed, it could be argued that because carless Americans are disproportionately poor, Bruegmann's support of automobile-oriented development could itself be described as "elitist." See Garnett, *supra* note 140, at 183 & n. 61 (most welfare recipients do not own cars).

¹⁹³ As well as the less powerful aesthetic elite that Bruegmann cites in favor of his views. He devotes two pages of his book (in a section headed "The Avant-Garde Discovers Sprawl") to a listing of the avant-garde architects who, in his words, seek "to describe and understand the aesthetics of sprawl." BRUEGMANN, *supra* note 1, at 153-54.

¹⁹⁴ See AMERICAN HIGHWAY USERS ALLIANCE, THE OPEN ROAD 9, available at <http://www.highways.org/pdfs/2006action-plan.pdf> (visited June 13, 2006) (all of these industries represented on board of American Highway Users Alliance, a group that lobbies for increased road funding).

¹⁹⁵ See U.S. PIRG, DRIVEN BY DOLLARS 6, available at <http://www.uspirg.org/reports/DrivenbyDollars.pdf> (visited June 13, 2006) (noting that general contractors and homebuilders also part of road lobby).

¹⁹⁶ *Id.* at 10-11.

¹⁹⁷ 2006 ABSTRACT, *supra* note 46, at 709 (in 2003, federal budget included just over \$97 billion in outlays for highway trust fund and just under \$20 billion for Federal Transit Administration grants). Bruegmann argues that this gap is hardly inequitable, because highway ridership is much higher than transit ridership. See BRUEGMANN, *supra* note 1, at 146. But this argument creates a self-fulfilling prophecy: if government provides lots of highways and not very much transit service, of course more people will use the highways. See TRANSPORTATION DATA, *supra* note 129 ("Only 4 percent of the nation's 4 million miles of roads are now served by transit"). By contrast, if government shifted resources to transit, transit ridership might continue to rise. *Cf. supra* notes 46 and accompanying text (transit ridership rose in recent years).

gave over \$10 million to 81 Senators and 401 Congresspeople in 2004,¹⁹⁸ car dealers gave \$4.6 million,¹⁹⁹ and automobile manufacturers gave \$1.5 million.²⁰⁰ But Bruegmann does not describe automobile manufacturers or general contractors as “elites”, even though these corporations may well have more money and power than the academics, downtown businesses, and not-for-profit employees who Bruegmann describes as “elites.”²⁰¹

If Bruegmann is trying to argue that *only* elites oppose sprawl, he is wrong because most Americans favor some limits on suburban sprawl. If Bruegmann is trying to argue that *all* elites oppose sprawl, he is equally wrong because the United States has pro-sprawl elites aplenty. Either way, Bruegmann’s populist posing adds more heat than light to debate over suburban development.

III. Conclusion

Bruegmann’s book is less important in itself than as an example of some common misconceptions about sprawl: the notion that the status quo is inevitable, the denial of government complicity, and the denial of sprawl’s more unpleasant consequences.

Bruegmann claims that sprawl exists in every affluent society- but there is a world of difference between a region like New York City where an automobile-centered life is one lifestyle choice among many, and a city like Oklahoma City in which almost every

¹⁹⁸ CENTER FOR RESPONSIVE POLITICS, GENERAL CONTRACTORS: MONEY TO CONGRESS, available at <http://opensecrets.org/industries/summary.asp?Ind=C01&cycle=2004> (visited June 14, 2006).

¹⁹⁹ CENTER FOR RESPONSIVE POLITICS, CAR DEALERS: MONEY TO CONGRESS, available at <http://opensecrets.org/industries/summary.asp?Ind=T2300&recipdetail=A&sortorder=U&Cycle=2004> (visited June 13, 2006).

²⁰⁰ CENTER FOR RESPONSIVE POLITICS, AUTO MANUFACTURERS: MONEY TO CONGRESS, available at <http://opensecrets.org/industries/summary.asp?cycle=2004&ind=T2100> (visited June 14, 2006).

²⁰¹ See Bruegmann, *supra* note 1, at 163 (describing these groups as components of anti-sprawl “elite.”)

adult needs a car to live a normal life. Bruegmann claims that sprawl is a result of the free market at work- but in fact, government-built highways fragment development across the landscape, and government-enforced zoning, parking and street design regulations impede the creation of alternatives to sprawl. Bruegmann claims that sprawl expands consumer choice- but in its most extreme forms, sprawl actually limits consumer choices by making the automobile the only feasible mode of transportation in many places.