

Fordham Urban Law Journal

Volume 40

Number 5 Symposium - "What is Urban Law Today?": A Symposium on the Field's Past, Present, and Future in Honor of the Urban Law Journal's Fortieth Anniversary

Article 3

March 2016

What is Urban Law Today? An Introductory Essay in Honor of the Fortieth Anniversary of the Fordham Urban Law Journal

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Recommended Citation

Nestor M. Davidson, *What is Urban Law Today? An Introductory Essay in Honor of the Fortieth Anniversary of the Fordham Urban Law Journal*, 40 Fordham Urb. L.J. 1579 (2013).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol40/iss5/3>

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**WHAT IS URBAN LAW TODAY? AN
INTRODUCTORY ESSAY IN HONOR OF THE
FORTIETH ANNIVERSARY OF THE
*FORDHAM URBAN LAW JOURNAL***

*Nestor M. Davidson**

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INTRODUCTION

In the spring of 2013, on the occasion of the fortieth anniversary of its founding, the *Fordham Urban Law Journal* convened a diverse group of leading scholars for a Symposium to reflect on four decades of urban legal scholarship. The *Journal* published its first issue in the fall of 1972 with a lead Article by then-New York State Attorney General Louis J. Lefkowitz on environmental concerns facing New York’s Jamaica Bay.¹ Reflecting the urban ferment of the era, other articles that first year of the *Journal* examined tenant rights and

* Professor, Fordham University School of Law and Director, Fordham Urban Law Center. This Essay is informed by a plenary panel discussion that I moderated at the conclusion of the *Urban Law Journal’s* Fortieth Anniversary Symposium with David Barron, Olatunde Johnson, Audrey McFarlane, and David Schleicher. I thank each of these panelists for their insights. I also thank the staff of the *Journal* for organizing the Anniversary Symposium and Urban Law Fellow Annie Decker for all of her help.

1. See Louis J. Lefkowitz, *Jamaica Bay: An Urban Marshland in Transition*, 1 FORDHAM URB. L.J. 1 (1972). This Article was not alone in focusing on urban environmental concerns that first year of the *Journal*. See Joyce P. Davis, *Taming the Technological Tyger—The Regulation of the Environmental Effects of Nuclear Power Plants—A Survey of Some Controversial Issues—Part One*, 1 FORDHAM URB. L.J. 19 (1972) [hereinafter Davis, *Part One*]; Joyce P. Davis, *Taming the Technological Tyger—The Regulation of the Environmental Effects of Nuclear Power Plants—A Survey of Some Controversial Issues—Part Two*, 1 FORDHAM URB. L.J. 149 (1972); Comment, *Constitutionality of Local Anti-Pollution Ordinances*, 1 FORDHAM URB. L.J. 208 (1972).

exclusionary zoning,² consumer protection,³ and criminal justice.⁴ The animating idea of the Anniversary Symposium was to use these early themes as a platform to assess the state of urban law today—how has the field progressed and what is its future?

The Symposium, however, sparked a more fundamental, conceptual question: what, exactly, *is* urban law today? Four decades ago, the field was sufficiently well-recognized to merit the founding of the *Journal* and, at the time, a number of law schools offered programs and classes in urban law.⁵ Today, however, the field is less prominent, with legal academics not often identifying themselves as scholars of urban law, despite researching and teaching subjects that are clearly related to any understanding of the boundaries of the discipline.⁶ This shift is a lost opportunity for interdisciplinary dialogue with the vibrant discourse that urban specialists are generating in a variety of cognate fields, such as urban economics, urban sociology, urban history, and urban studies. The current state of the field of urban law is also unfortunate—for legal scholars and society—because cities and their metropolitan regions are increasingly at the forefront of many of the most important challenges that define the contemporary policy landscape and urban law is an important lens through which to engage with that reality.

The time is thus ripe for a renewed appreciation of urban law as a distinctive enterprise. This Essay sets out to trace some aspects of what that renewal might entail. To illustrate the creativity and insights of work that spans the breadth of urban law, the Essay first provides an overview of contributions to the Anniversary Symposium. It then argues for the necessity of urban law as a

2. See Stephen Sussna, *Residential Densities: A Patchwork Placebo*, 1 FORDHAM URB. L.J. 127 (1972); Comment, *Tenant Remedies for a Denial of Essential Services and for Harassment—The New York Approach*, 1 FORDHAM URB. L.J. 66 (1972). Another land-use concern addressed that first year was urban noise control. See Comment, *New York City Noise Control Code: Not with a Bang, but a Whisper*, 1 FORDHAM URB. L.J. 446 (1973).

3. See Gerald J. Thain, *Advertising Regulation: The Contemporary FTC Approach*, 1 FORDHAM URB. L.J. 350 (1972); Comment, *Consumerism's Forgotten Man*, 1 FORDHAM URB. L.J. 226 (1972); Comment, *An Analysis of the Fair Credit Reporting Act*, 1 FORDHAM URB. L.J. 48 (1972).

4. See Michael R. Diamond, *Criminal Responsibility of the Addict: Conviction by Force of Habit*, 1 FORDHAM URB. L.J. 395 (1972); Comment, *Crime Victims' Compensation—Title I of the Proposed Victims of Crime Act of 1973: An Analysis*, 1 FORDHAM URB. L.J. 421 (1972).

5. See *infra* text accompanying notes 42–44.

6. See *infra* text accompanying notes 49–51.

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discipline within the legal academy, even while recognizing that this raises difficult questions of definitional boundaries. The mission of the *Journal* has always been to promote excellence in urban legal scholarship and that mission is more critical now than at any time since its founding. The Anniversary Symposium was an important step in recognizing a revival of interest in urban law, and the next four decades of the *Journal's* future will hopefully be even more fruitful.

I. THE SYMPOSIUM AND ITS PERSPECTIVES

One way to understand the field of urban law today is to reflect on the breadth of contributions to the *Journal's* Anniversary Symposium. In organizing the Symposium, the editors of the *Journal* reviewed the articles that appeared in the *Journal's* first year to identify themes that marked urban law in 1972. The editors settled on the categories of housing and exclusionary zoning, urban environmental challenges, and local government as a source of consumer protection.⁷ They then asked scholars to reflect on how those themes had evolved in the intervening decades. The results illustrate the vibrancy of an approach to urban law that crosses individual legal topic areas to illuminate the intersection of law and urban life from a holistic perspective.

On the theme of exclusionary zoning and housing in urban planning, Professor J. Peter Byrne's Essay, *The Rebirth of the Neighborhood*, begins the Anniversary Symposium contributions on an optimistic note, addressing the current revival of cities across the country.⁸ As Professor Byrne notes, this revival has not touched all cities or all parts of even the most dynamic metropolitan areas, but is genuine and broad based nonetheless. The rebirth of cities, he argues, reflects a yearning by new urban residents for what cities, at least in their more Jane Jacobsian intimate quarters, have traditionally provided, which is collective space on a personal, pedestrian scale for casual interaction.⁹ Professor Byrne argues that this desire for "a type of community properly called a

7. A fourth theme from the *Journal's* founding volume was urban criminal policy. See generally *supra* note 4. This was not among the themes at the Anniversary Symposium, because the *Journal* had tackled the contemporary landscape of this important topic just a few months earlier in the 2012 Cooper-Walsh Colloquium. See generally Colloquium, *Legitimacy and Order: Analyzing Police-Citizen Interactions in the Urban Landscape*, 40 FORDHAM URB. L.J. 959 (2013).

8. See generally J. Peter Byrne, *The Rebirth of the Neighborhood*, 40 FORDHAM URB. L.J. 1595 (2013).

9. *Id.* at 1598–99.

neighborhood”¹⁰ has been fostered by several changes in land use law, most notably the rise of zoning for traditional urban forms, the spread of historic district preservation, and environmental laws that have made cities more livable in recent decades. If Professor Byrne is correct, there is cause for hope in contemplating the role of law in the built environment that would have been surprising in the urban crisis of the early 1970s, even as his Essay acknowledges that gentrification has created new challenges.

Professor Roderick Hills addresses exclusionary zoning directly in his Essay *Saving Mount Laurel?*¹¹ With its mandate for local governments to provide a fair share of regional housing needs, the New Jersey Supreme Court’s *Mount Laurel* doctrine remains one of the best known examples of legal intervention to reorder the relationship between cities and suburbs.¹² As Professor Hills notes, however, *Mount Laurel* has been controversial from the outset, just a few years after the founding of the *Journal*, and remains highly contested today nearly forty years later. As to why, Professor Hills’ diagnosis is that *Mount Laurel* has evolved into a bureaucratic regime that emphasizes a formula for siting specific numbers of housing units based on contestable criteria that invite municipal intransigence and homeowner resistance. Professor Hills’ remedy—although I’m not sure he would characterize it quite this way—is to return *Mount Laurel* to its earliest roots as a doctrine that focuses on local-government distortions of the housing market rather than on specific outcomes. Professor Hills argues that the *Mount Laurel* obligation should become a mandate that every municipality provide a minimum level of residential density for “least-cost housing,” which is “housing that uses the smallest marketable amount of land and materials to construct.”¹³ This would, Professor Hills posits, transform *Mount Laurel* into a doctrine that ensures developers would have sufficient zoning entitlements to provide housing that the market demands, potentially muting opposition and reducing the information burden

10. *Id.* at 1596–97.

11. See generally Roderick M. Hills, Jr., *Saving Mount Laurel?*, 40 FORDHAM URB. L.J. 1611 (2013).

12. The initial *Mount Laurel* decision was *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975), and has been followed both by repeated iterations before the New Jersey Supreme Court as well as the legislative creation of a statewide administrative regime for the fair-share obligation. See generally Alan Mallach, *The Mount Laurel Doctrine and the Uncertainties of Social Policy in a Time of Retrenchment*, 63 RUTGERS L. REV. 849 (2011).

13. Hills, *supra* note 11, at 1613–14.

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now required for fair share determinations.¹⁴ Whether a ceiling on zoning restrictiveness would necessarily do any better than the current regime—and whether the market for housing would actually function to mitigate the discriminatory effects of exclusionary zoning if this kind of strategic lowering of zoning barriers were attempted—are important questions. Regardless, Professor Hills’ proposal offers significant insights into why *Mount Laurel* has not lived up to its promise.

Professor Matthew Parlow’s contribution, *Wither Workforce Housing?*, moves from one of the oldest challenges in urban housing and land use to one of its most recent responses.¹⁵ Workforce housing is a type of affordable housing that targets middle-income workers who have been priced out of many urban areas. This is a policy dilemma not only for economic (as well as racial and ethnic) integration, but also a significant problem for the economic development of growing regions that depend on economic diversity for a strong foundation. Professor Parlow argues that in the wake of the Great Recession, with its concomitant challenges to many formerly dynamic urban areas, workforce housing may have lost some of its rationale. Professor Parlow concludes, however, that legal tools such as inclusionary zoning, land trusts, housing trust funds, and employer-based housing will continue to play a vital role in trying to preserve a viable middle class for healthy and revitalizing cities.

Finally, with *Putting Exclusionary Zoning in its Place: Affordable Housing and Geographical Scale*, Professor Christopher Serkin and Leslie Wellington round out the Symposium’s contemporary perspectives on urban housing and land use with an intriguing examination of regulatory scale.¹⁶ Exclusionary zoning is often thought of as a problem primarily for suburban jurisdictions resisting the potential influx of urban residents, which in the traditional discourse has generally meant lower-income residents and communities of color. The traditional response by advocates and legal actors has been primarily to promote greater density in suburban communities to open up housing opportunities.¹⁷ Serkin

14. *Id.* at 1613.

15. Matthew J. Parlow, *Wither Workforce Housing?*, 40 *FORDHAM URB. L.J.* 1645 (2013).

16. See generally Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in its Place: Affordable Housing and Geographical Scale*, 40 *FORDHAM URB. L.J.* 1667 (2013).

17. *Id.* at 1669.

and Wellington argue, however, that from the perspective of vulnerable urban residents, the appropriate scale of exclusion may not be city versus suburb at all; those residents may need regional employment opportunities as well as individual municipalities to supply services and housing in specific, smaller neighborhoods.¹⁸ Exclusion can operate at each one of these scales and, to Serkin and Wellington, responses to exclusion should correspondingly focus on the inter-regional and sublocal scale as much as such responses have long contested municipal exclusion.¹⁹ As a result, for example, we might need to be concerned about overly dense urban cores, if they exacerbate housing price distortions and push urban residents to the periphery. This would essentially flip the traditional concern of exclusionary zoning on the perils of low density. Whether courts and legislatures can adequately address multiple scales of exclusion, the Article points the way toward innovative advocacy for a seemingly intractable problem.

The second theme in the Symposium—urban environmental challenges—underscored that problems confronting urban legal scholars forty years ago remain highly salient albeit while taking on novel aspects, most notably involving climate change. This theme is well illustrated in Professor John Nolon's *Changes Spark Interest in Sustainable Urban Places: But How Do We Identify and Support Them?*²⁰ This Article argues that the combination of the effects of climate change, increasing demand for compact mixed-use neighborhoods, and state policies that seek to reduce communities' carbon footprint together provide an impetus for a certification system that would quantify and reward municipal policies that foster sustainability.²¹ Sustainability is a contested concept, but for practical purposes, Professor Nolon defines it as policies that focus on "shaping land and economic development to impose a lighter impact on the environment, including, but not limited to, climate change mitigation and adaptation."²² Professor Nolon's certification system would standardize criteria for sustainability, which would provide focal points for municipal action and, in turn, allow state and federal

18. *Id.*

19. *Id.*

20. See generally John R. Nolon, *Changes Spark Interest in Sustainable Urban Places: But How Do We Identify and Support Them?*, 40 FORDHAM URB. L.J. 1697 (2013).

21. *Id.* at 1698.

22. *Id.* at 1703.

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policymakers to recognize meaningful progress. Professor Nolon surveys a number of model programs, but argues it is critical that municipal governments shift their focus from greening their own operations to using their regulatory authority to transform communities as a whole.²³ While certification programs are no panacea, Professor Nolon highlights a pragmatic tool that, by providing clear metrics that can operate within existing legal structures, has great potential to change urban landscapes throughout the country.

If Professor Nolon highlights the need to promote sustainability, Debbie Chizewer and Professor Dan Tarlock tackle one of the more urgent aspects of the effects of climate change in their Article *New Challenges for Urban Areas Facing Flood Risks*.²⁴ Chizewer and Tarlock note that floods are the costliest natural disasters in the United States, and local governments are increasingly at the forefront of responding. As federal and state governments retreat from comprehensive flood protection, local governments are realizing that risk mitigation is the new normal. The Article advocates for integrated flood-plain management, a strategy that combines investments in new infrastructure, regulations that lessen the intensity of flood plain development, and reconnecting rivers to their flood plains to dissipate the spread of flooding more naturally.²⁵ More than anything, the Article concludes, planners need to acknowledge climate change and base their strategies on the flood patterns it is ushering in, rather than historic trends. This clarion call for new climate realism has been heeded by some urban governments, in flood management and a host of related challenges, but is long overdue for all too many cities.

In *Urban Energy*, Professor Hannah Wiseman shifts from climate adaptation to the growing reality that, as part of climate mitigation and for other practical reasons, cities are becoming the locus of energy generation as much as they have always been consumers of energy.²⁶ From natural gas wells in Fort Worth to massive solar projects in San Diego to energy generation possible at the household level with the emerging Smart Grid, contemporary energy technologies are bringing new legal challenges to urban governance.

23. *Id.* at 1716.

24. Debbie M. Chizewer & A. Dan Tarlock, *New Challenges for Urban Areas Facing Flood Risks*, 40 *FORDHAM URB. L.J.* 1739 (2013).

25. *Id.* at 1740–41.

26. Hannah J. Wiseman, *Urban Energy*, 40 *FORDHAM URB. L.J.* 1793 (2013).

Professor Wiseman advocates for a comprehensive, proactive approach to resolving the conflicts this new energy landscape is generating, with local planning and uniform state standards. Professor Wiseman also highlights a theme that reflects long-standing environmental justice concerns, namely the inequality of impacts in the new world of distributed urban energy generation. Just as nuclear power was a central aspect of urban energy forty years ago,²⁷ siting energy sources in and among population centers today suggests a new “urban energy” paradigm that will only increase in urgency as the climate impacts of traditional techniques to generate energy become more apparent.

The Symposium’s final environmental contribution, Professor Michael Wolf’s *The Brooding Omnipresence of Regulatory Takings: Urban Origins and Effects*, aptly summarizes the development of urban environmental law through the lens of regulatory takings doctrine.²⁸ As Professor Wolf notes, two of the Supreme Court’s most important regulatory takings cases, *Penn Central Transportation Co. v. City of New York*,²⁹ and *Loretto v. Teleprompter Manhattan CATV Corp.*,³⁰ came out of New York City, and the resulting doctrine has been as much an urban phenomenon as it is often described as grounded in conflicts about coastal zones or wetlands. And much the worse for it, Professor Wolf argues, as these “Gotham takings twins” distorted an already murky doctrine and spawned a generation of contested jurisprudence.³¹ Cities have continued to be the locus of many of the most important regulatory takings cases, including, as Professor Wolf notes, challenges to “historic preservation, rent control, condominium and co-op conversion, rezoning, airspace restrictions, redevelopment, amortization of nonconforming uses, exactions, and inclusionary zoning.”³² Most of these challenges have failed, which is to say that courts, when pressed, have generally validated the authority of urban governments to respond to the exigencies of urban life. Professor Wolf notes, however, that as cities continue to be at the forefront of land use and environmental law, they will continue to generate takings challenges

27. See Davis, *Part One*, *supra* note 1, at 21.

28. See generally Michael Allan Wolf, *The Brooding Omnipresence of Regulatory Takings: Urban Origins and Effects*, 40 FORDHAM URB. L.J. 1835 (2013).

29. 438 U.S. 104 (1978).

30. 458 U.S. 419 (1982).

31. See Wolf, *supra* note 28, at 20.

32. *Id.* at 1857.

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and the *Journal* will no doubt continue to host commentary that grapples thoughtfully with those developments.³³

The final theme of the Symposium, consumer protection by local governments, was addressed in a pair of timely articles that highlight the increasingly creative approaches that urban jurisdictions are taking to advance the welfare of their citizens. Thus, Professor Paul Diller argues in his Article, *Local Health Agencies, the Bloomberg Soda Rule, and the Ghost of Woodrow Wilson*, that local governments have in recent years been turning to administrative law to advance the forefront of their regulatory agendas.³⁴ Taking the New York City Board of Health's controversial proposal under the Bloomberg Administration to limit the portion sizes of sugar-sweetened beverages as an apt case study, Professor Diller notes that regulation by agencies that are themselves part of an arm of the state—local governments—raises challenging (and largely unexplored) doctrinal questions about the source and limits of their authority.³⁵ Courts have taken inconsistent positions on whether local health agencies are primarily agents of the state or of local governments. In the most recent New York Appellate Division decision in the soda portion case, it was the limits of local authority, specifically the non-delegation doctrine in the context of the New York City Council, that proved decisive in upholding the challenge.³⁶ As Professor Diller points out, with its approach to non-delegation, the Appellate Division imported federal administrative law doctrine into New York state constitutional law in ways that distorted its deferential origins, a kind of mistranslation that is a perennial challenge in judicial review of local administrative law. From a theoretical perspective, Professor Diller argues that local public health agencies embody a technical or scientific regulatory frame (associated with Woodrow Wilson), which offers more explanatory heft than the predominant public choice narrative. Professor Diller's study of local public health agencies makes clear that as local governments continue to experiment with the bounds of their authority, this aspect of local institutional design will surely gain increased scholarly attention.

33. *Id.* at 1857–58.

34. Paul A. Diller, *Local Health Agencies, the Bloomberg Soda Rule, and the Ghost of Woodrow Wilson*, 40 *FORDHAM URB. L.J.* 1859, 1860–61 (2013).

35. *Id.* at 1861.

36. *New York Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep't of Health and Mental Hygiene*, 970 *N.Y.S.2d* 200, 210 (N.Y. App. Div. 2013).

Finally, with *Expanding Local Enforcement of State and Federal Consumer Protection Laws*, Professor Kathleen Morris argues for a creative regulatory strategy for local governments through direct enforcement of the Federal Trade Commission Act and its state counterparts.³⁷ Currently, city and county governments lack standing to enforce the federal act and can only enforce a small handful of state equivalents, leaving a significant gap, Professor Morris notes, in the landscape of consumer protection.³⁸ Professor Morris argues that a regime of disaggregated (but not private) enforcement has the potential to foster what she describes as a “healthy localism”³⁹ that would leverage local government proximity to local consumer activity and ability to avoid industry capture, all while enhancing local government sophistication. Increasing this leverage may avoid some of the more troubling aspects of local parochialism, as the regime local governments would be enforcing would be national, or at least statewide, in scope, which has distinct advantages in terms of uniformity over local consumer legislation. Professor Morris’s proposal is another reminder that disaggregating the internal structure of local government actors, as opposed to just focusing on local governments as a whole, holds great potential for scholars to identify new legal and regulatory strategies for urban governance.

What emerges across all of these Symposium contributions is an organic sense of urban law as an expansive discipline that considers a range of traditional legal questions—local government authority, judicial review of regulatory process, and individual rights, among others—as they inform the life of cities.⁴⁰ This may verge on a Justice Potter Stewart I-know-it-when-I-see-it-like perspective on the boundaries of the field,⁴¹ but I think it more underscores the value in using a particular kind of place as a transsubstantive lens through which to consider doctrine and legal institutions. This is something the *Journal* has ably done for four decades, and the Anniversary Symposium was a fitting capstone in—and recommitment to—that endeavor.

37. Kathleen S. Morris, *Expanding Local Enforcement of State and Federal Consumer Protection Laws*, 40 FORDHAM URB. L.J. 1903, 1916 (2013).

38. *Id.* at 1908.

39. *Id.*

40. There is one additional contribution to the Anniversary Symposium, a thoughtful examination by Professor David Schleicher of the challenges of interdisciplinarity in local government law, which I discuss below. *See infra.* text accompanying notes 54–56.

41. *Cf. Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

II. WHAT IS URBAN LAW TODAY?

As noted, the Anniversary Symposium raised the basic question of the nature of urban law as a discipline today, which can only partially be answered by the example of the Symposium's contributions. At the time of the *Journal's* founding forty years ago, urban law was an emerging and dynamic field of study in the legal academy. In 1967, when Erwin Griswold stepped down after twenty-one years as Dean of Harvard Law School, Harvard President Nathan Pusey published an encomium that listed, among Dean Griswold's most notable achievements, "new professorships and teaching fellowships in enlarging fields such as . . . urban law."⁴² A number of law schools at the time were adding urban-oriented classes and research programs,⁴³ and some were even founding entire programs focused on urban law.⁴⁴ Clearly, the field was well established and the *Fordham Urban Law Journal* was marking out a place in an active discourse.

Over the past four decades, however, "urban law" as a discipline has faded in self-identification. Law professors who profess to work in urban law as such are relatively few and far between—indeed, the Association of American Law School's *Directory of Law Teachers* jumps right from Trial Advocacy to Water Rights without so much as a nod to anything Urban.⁴⁵ Much of the subject matter of what was considered urban in focus has fragmented or shifted to areas of the legal academy such as local government law, land use and environmental law, criminal justice, race and the law, education, and similarly specialized topics. If we are to ask what urban law is today, then, it certainly seems that the field has been eclipsed, at least to some extent, and is in need of revitalization.

It is hard to discern exactly why the discipline has taken the turn that it has. One reason, perhaps, is that urban law tracked the zeitgeist of cities in the United States in the 1960s, 1970s, and 1980s. To vastly overgeneralize, urban policy in that era shifted from optimism about the nature and prospects for American cities, to

42. See Nathan M. Pusey, *A Great Dean*, 81 HARV. L. REV. 289, 291 (1967).

43. See Joel F. Handler, *Field Research Strategies in Urban Legal Studies*, 5 LAW & SOC'Y REV. 345, 348–49 (1971).

44. See Norman L. Miller & James C. Daggitt, *The Urban Law Program of the University of Detroit Law School*, 54 CALIF. L. REV. 1009, 1111–14 (1966) (describing the launch of an urban law program); see also *id.* at 1010 ("Urban law in both its public and private sectors is where law schools ought to be giving their attention now.").

45. ASS'N OF AM. LAW SCH., 2011–2012 DIRECTORY OF LAW TEACHERS 1769 (2011–2012).

pessimism as the urban crisis emerged and deepened, to neglect in the Reagan era.⁴⁶ This progression may say something about cultural trends in the legal academy, but it does not answer why the field has not paralleled the significant revival that urban areas have experienced in the past two decades.⁴⁷ Another factor contributing to the fading identity of urban law may be that the idea of “urban” was notably problematized in that same era and the term came to be racialized in ways that were used to marginalize urban concerns. Or perhaps the shift reflected recognition by some scholars that urbanism could be constraining in some contexts in which legal scholarship that engaged with local concerns needed to expand beyond a focus on cities as such.⁴⁸

Regardless of why we have arrived at this place in the changing identity of urban law, there are several strong reasons why the field continues to have relevance and value. To begin with the legal academy, it is important to preserve an intellectual space that has long transcended the specific concerns that dominate individual legal specialties. Urban law can be a conceptual bridge to connect scholars who might not think about the consequences of their research in place-based terms and might not see the relevance of their work to other scholars who are toiling in closely related areas. Urban law as a holistic category thus can help shed light on what criminal justice scholars have to say to local tax experts, land use scholars to educational specialists, and so forth. This is not to suggest that there is anything less valuable about scholarship on any of these topics that is not concerned with urban phenomena, but rather to recognize that the distinctive context of urban environments remains a quite useful starting point for a more holistic, transsubstantive discourse among legal scholars around a distinctive context.⁴⁹

46. See Michael A. Stegman, *National Urban Policy Revisited*, 71 N.C. L. REV. 1737, 1751–59 (1993).

47. See generally Byrne, *supra* note 8.

48. See, e.g., Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 346 (1990) (criticizing the syllogism between local governments and cities). Indeed, some of the most intriguing work being done in local government law today either begins with the premise that cities need not be a primary focus, see, e.g., Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV. 277 (2007), or focuses on levels of local government that tend to have their greatest saliency at the urban fringe, see Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931 (2010).

49. One definitional question about urban law is whether the subject should focus on cities in some narrow sense, the larger metropolitan areas in which most cities exist, or perhaps some other marker, spatial or otherwise. My own preference is to

This bridging function for urban law leads to a second reason for preserving and reviving the field, namely the potential that it carries to enhance interdisciplinary dialogue. Outside of the law, urbanism as an academic subdiscipline within other fields has grown in sophistication and depth, engaging scholars not only in areas often drawn upon by legal scholars, such as economics⁵⁰ and sociology,⁵¹ but also more far-flung disciplines such as complexity theory.⁵² The nature of the “urban” in these fields, or urban politics, urban history, and general urban studies, is hardly free from debate and controversy,⁵³ but that has not stopped scholars in other disciplines from generating important insights into critical urban issues. Legal scholars must not forget their own comparative advantages in this discourse, but self-identified urban legal scholarship can help colleagues in other fields understand where law fits into their work, fostering a common vocabulary and scholarly culture.

Urban legal studies has always drawn on cognate research, but, in his contribution to the Anniversary Symposium, Professor David Schleicher sounds a note of caution about the rigor with which legal academics do so, focusing primarily on urban economics and positive political science.⁵⁴ Professor Schleicher argues that within local government law (which is not coterminous with urban law, but an important aspect of any definition of the field), references to Charles Tiebout’s mobility theory tend to predominate at the expense of

emphasize urban form and urban phenomena, such as density in the built environment and diversity in demographics. But urban law need not settle on any particular definition in order to foster a shared field of inquiry.

50. See, e.g., Edward L. Glaeser & Joshua D. Gottlieb, *The Wealth of Cities: Agglomeration Economies and Spatial Equilibrium in the United States*, 47 J. ECON. LITERATURE 983 (2009); see also EDWARD GLAESER, TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER (2011) (summarizing and popularizing recent work in urban economics).

51. See, e.g., Saskia Sassen, *Urban Sociology in the 21st Century*, in 21ST CENTURY SOCIOLOGY 476 (Clifton D. Bryant & Dennis L. Peck eds., 2007).

52. See Luis M. A. Bettencourt, *The Origins of Scaling in Cities*, 340 SCI. 1438 (2013) (positing a theory of urban scale to predict average properties of social, spatial, and infrastructural dynamics).

53. See, e.g., Sassen, *supra* note 51, at 477 (“As an object of study, the city has long been a debatable construct in sociology and in the social sciences generally, whether in earlier writings or in more recent ones. The concept of the city is complex, imprecise, and charged with specific historical and thereby variable meanings.”) (citations omitted).

54. David Schleicher, *Local Government Law’s “Law and ___” Problem*, 40 FORDHAM URB. L.J. 1951 (2013).

engagement with agglomeration economics.⁵⁵ Similarly, while legal scholars invoke mid-twentieth century models of urban politics, it is harder to find discussion of “positive political theory, rational choice models of legislative behavior, models of political party organization and competition, empirical research on voting and legislative behavior, or any of the other moves that have characterized the last few decades of political science.”⁵⁶ Albeit perhaps too slowly, this is changing (in no small part due to Professor Schleicher’s own work),⁵⁷ but Professor Schleicher’s critique ably proves the point that legal scholars can benefit greatly from interdisciplinary engagement, if done well, as we contemplate the role of law in cities.

Finally, and most importantly, urban law provides a platform through which legal academics can meaningfully contribute to the larger policy and cultural discourse on the urban experience. The statistic that more than half of the world’s population now lives in urban areas for the first time in human history is frequently repeated.⁵⁸ What is driving the increasing salience of cities and their metropolitan regions in the United States, however, is less that demographic reality (which is mostly a function of the rapid growth of cities in the developing world) than the fact that gridlock in national and state policymaking is increasingly ceding to the pragmatism of local governance. Urban areas are at the center of almost every important economic, political, and social trend in the United States and the idea of the urban is no longer a shorthand for pathology. As we move, then, from urban crisis to what has rightly been called the century of the city,⁵⁹ legal scholars have a critical role to play and urban law provides a unique and valuable way to foster that role.

CONCLUSION

Forty years ago, the *Fordham Urban Law Journal* set out to provide a home for a kind of legal scholarship that could help make sense of the life and governance of cities. The Anniversary Symposium was an invitation to a renewed dialogue about this mission and it succeeded admirably. As a result, the papers collected

55. *Id.* at 1951–53.

56. *Id.* at 1953.

57. *See, e.g.*, David Schleicher, *City Unplanning*, 122 *YALE L.J.* 1670 (2013).

58. *See, e.g.*, UNITED NATIONS POPULATION FUND, *STATE OF WORLD POPULATION 2007*, at 1 (2007).

59. NEAL R. PEIRCE & CURTIS W. JOHNSON WITH FARLEY M. PETERS, *THE ROCKEFELLER FOUNDATION, CENTURY OF THE CITY: NO TIME TO LOSE* (2009).

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in this volume represent nothing less than an optimistic call for recognition of the common intellectual and practical interests that unite urban legal scholars.