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Urban Policy and Families: How Concerns About Order Contribute to Familial Disorder

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URBAN POLICY AND FAMILIES: HOW CONCERNS ABOUT ORDER CONTRIBUTE TO FAMILIAL DISORDER

*Raphael W. Bostic**

ABSTRACT

Urban policies are often enacted with the goal of maintaining social order in a given domain. However, because domains rarely operate in isolation, efforts to maintain order along one dimension can exacerbate conditions and increase disorder in others. Families, particularly those with low incomes, often live at the intersection of these conflicting forces and are left with few options for making true progress. This Article examines this dynamic through the lens of housing policy. It documents how housing policy can make conditions more difficult for families, and offers proposals for mitigating these negative effects while preserving the original motivation for the policy.

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INTRODUCTION

Classic texts in policy analysis highlight that choices are made regarding the target and scope of specific policies.¹ These choices can have implications beyond the intended target, because individual responses to a policy focused on a single domain can have impacts in other domains that were not given significant weight when the initial policy was designed. This dynamic plays out consistently in the context of urban policy and, in the context of family well-being, the impacts are often negative.² As will be shown below, evidence clearly indicates that the design and implementation of urban policies affect families and, sadly, these impacts are often negative.³ This raises a natural question of why such policies exist and why their negative effects are not mitigated. This Article explores these questions.

The overarching thesis of this analysis is that many urban policies primarily focus on maintaining social order and, because policy often occurs along singular dimensions, rarely initially consider spillover effects in their design. However, because domains rarely operate in isolation, efforts to maintain order along one dimension can exacerbate conditions and increase disorder in others. Families, particularly those with low incomes,⁴ often live at the intersection of

1. See EUGENE BARDACH, A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM SOLVING 16-27 (Sage and Congressional Quarterly Press, 4th ed. 2012).

2. See LAWRENCE J. VALE, PURGING THE POOREST: PUBLIC HOUSING AND THE DESIGN POLITICS OF TWICE-CLEARED COMMUNITIES 218 (Timothy J. Gilfoyle et al. eds., 2013).

3. See generally, e.g., REBECCA COHEN & KEITH WARDRIP, SHOULD I STAY OR SHOULD I GO? EXPLORING THE EFFECTS OF HOUSING INSTABILITY AND MOBILITY ON CHILDREN (Center for Housing Policy 2011); CHRISTY VISHER ET AL., RETURNING HOME: UNDERSTANDING THE CHALLENGES OF PRISONER REENTRY (The Urban Institute 2003), http://www.urban.org/uploadedPDF/410974_ReturningHome_MD.pdf; ELIZABETH J. MUELLER & J. ROSIE TIGHE, *Making the Case for Affordable Housing: Connecting Housing with Health and Education Outcomes*, 21 J. PLAN. LITERATURE 371 (2007).

4. There is no single universal definition of low income. For many federal programs and regulations, a household income that is less than eighty percent of the median income of the metropolitan area in which the household lives is the threshold level that defines lower-income. See, for example, VALE, *supra* note 2, at 16 for HUD programs and the Uniform Act relocation regulations, as described by the U.S.

these conflicting forces and are left with few options for making true progress. This Article examines this dynamic through the lens of housing policy. It documents how housing policy can make conditions more difficult for families, and offers proposals for mitigating these negative effects while preserving the original motivation for the policy.

The Article begins with a discussion of why maintaining social order is a key focus of urban policy. As part of this discussion, we define social order and describe the necessary conditions to argue that it is driving policy. Part II explores the urban social order dynamic in a historical context by reviewing the evolution of federal housing policy, which is affected by the dynamic at various stages. Part III reviews three current policy intersections where the social order dynamic exists and has been detrimental to families: housing policy and crime, housing policy and education, and land use policy on density. The cases selected for this Article are not intended to be exhaustive, but rather to be illustrative of how the goal of maintaining social order can shape policies and have negative ancillary effects. This Article concludes by exploring why the social order dynamic exists and persists, and offers suggestions on how it might be overcome or mitigated. This final Part also provides possible remedies for the challenges highlighted in the discussion of the housing and land use policies.

I. INTRODUCTORY CONTEXT – THE PURSUIT OF SOCIAL ORDER

Standard economic theory posits that public policy is needed in the event of a market failure or to redistribute resources in pursuit of fulfilling an equity motive.⁵ Market failures arise when transactions either positively or negatively impact parties not directly involved in the transaction (externalities), when there are frictions that give either consumers or producers informational advantages (information failures), or when competition is hampered due to the nature of the industry or the good being produced (monopoly, public goods).⁶ Inefficiencies that reduce the available resources in the economy exist in each of these situations;⁷ policy can reduce these inefficiencies. The redistribution need arises because competitive markets maximize income and wealth in the economy but do not ensure that they are distributed such that everyone receives enough to achieve a minimum

Department of Transportation, Federal Highway Administration in 49 C.F.R. § 24.402(b)(2)(ii) (2016).

5. HARVEY S. ROSEN, PUBLIC FINANCE 46 (2002).

6. *Id.* at 44-45.

7. *Id.*

quality of life.⁸ Thus, those concerned with equity might find that the distribution of resources across families is suboptimal and look to redistributive, equity-based policy to improve the situation.

The preservation of social order motivates each of these policies. For example, information asymmetries can prevent useful markets, such as insurance markets, from forming, which can result in more serious troubles in the wake of catastrophic events for a family or community than would occur if they had an insurance policy.⁹ Similarly, food providers have more information about quality than consumers.¹⁰ A lack of food preparation standards and labeling regulations could lead an unscrupulous provider to induce a public health crisis or food panic.¹¹

In the context of designing urban policy to maintain social order, negative externalities—private activities that increase social costs—are a main focus. Such externalities are important because urban places are primarily a locus of commerce.¹² The existence of costs associated with transporting inputs to production locales and finished goods to market, creates an incentive for firms and households to congregate so that they can minimize their costs of production, and of getting the goods they would like to consume.¹³ The city is the spatial realization of firms and households responding to this incentive.

However, there are also negative amenities associated with people and firms congregating in an urban place that reduce the benefits of urbanizing, and these often involve negative externalities.¹⁴ Crime is perhaps the most obvious example. Crime is a more viable activity in places with greater populations and density, as the expected return to crime rises and the probability of being caught declines (at least for some crimes) when there are more people and firms around.¹⁵ So we should expect more crime in urban areas, and this crime will impose costs. There is clearly the loss associated with the victims.

Crime also imposes costs beyond the victim. Whether they have been victimized by crime or not, individuals and firms living in cities with crime spend their resources to prevent victimization, and those

8. *Id.* at 46.

9. JOSEPH E. STIGLITZ, *ECONOMICS* 154-57 (1993).

10. WILLIAM BOYES & MICHAEL MELVIN, *MICROECONOMICS* 113 (Houghton Mifflin Co., 4th ed. 1999).

11. *Id.*

12. ARTHUR O'SULLIVAN, *URBAN ECONOMICS* 17, 26 (1993).

13. STANLEY FISCHER & RUDIGER DORNBUSCH, *ECONOMICS* 447 (1983).

14. *Id.* at 445.

15. *See* O'SULLIVAN, *supra* note 12, at 681, 687-89.

living and operating businesses in neighborhoods with crime spend resources to protect their homes and properties.¹⁶ Both investments leave individuals worse off, with less to use for consumption.¹⁷ Moreover, there is a cost impact on the broader society. Neighborhoods with higher levels of crime become stigmatized, leading to flight of investment capital and isolation, which can trigger social problems that require resources to address.¹⁸

More generally, to the extent that the disorder created by urban disamenities is not addressed and the direct and external costs of those disamenities are not reduced, there is a risk that the costs of urbanizing exceed the benefits of urbanizing.¹⁹ As described for the neighborhood above, this can lead to disinvestment and flight from the city.²⁰ In a more extreme case, it can lead to significant urban decline.²¹ Thus, for policymakers interested in preserving their urban communities and economic vitality, maintenance of social order is of paramount importance.

Defining the social order dynamic. In order for social order to represent a true “dynamic,” one must be able to both define what social order is and establish a set of identifiable characteristics that drives the underlying relationship.²² Regarding the definition of social

16. *Id.* at 691, 695-96.

17. *Id.* at 692, 695-96.

18. FISCHER & DORNBUSCH, *supra* note 13, at 456. The academic literature confirms the theoretical concept. For example, research has found that house prices are lower in communities with higher crime levels. See Ralph B. Taylor, *The Impact of Crime on Communities*, 539 ANNALS AM. ACAD. POL. & SOC. SCI. 28, 36-37 (1995). Similarly, research has found the high incidence of violent crime is associated with high homeowner turnover and increased population outflows. See generally Lyndsay N. Boggess & John R. Hipp, *Violent Crime, Residential Instability, and Mobility: Does the Relationship Differ in Minority Neighborhoods?* 26 J. QUANTITATIVE CRIMINOLOGY 351 (2010).

19. See PAUL A. JARGOWSKY & YOONHWAN PARK, CAUSE OR CONSEQUENCE? SUBURBANIZATION AND CRIME IN U.S. METROPOLITAN AREAS 3 (National Poverty Center 2008); Peter Mieszkowski & Edwin S. Mills, *The Causes of Metropolitan Suburbanization*, 7 J. ECON. PERSPS. 135, 137-38 (1993).

20. Mieszkowski & Mills, *supra* note 19, at 137. Research shows that population flight is associated with a reduced central city capacity to provide city services. See generally Pascale M. Joassart-Marcelli et al., *Fiscal Consequences of Concentrated Poverty in a Metropolitan Region*, 95 ANNALS ASS'N AM. GEOGRAPHERS 336, 336 (1993).

21. See, e.g., Igor Vojnovic et al., *Urban Built Environments, Accessibility, and Travel Behavior in a Declining Urban Core: The Extreme Conditions of Disinvestment and Suburbanization in the Detroit Region*, 36 J. URB. AFF. 225, 226 (2013) (describing the case of Detroit).

22. Discussant remarks by Professor Tim Iglesias, Colloquium, *Flourishing Families in Context: A New Lens for New Urban Law*, FORDHAM URB. L. J. (Oct. 23, 2015).

order, the overarching interest that is the focus of order in this context is the preservation of conditions that permit for an efficient functioning of urban markets, such that resources are primarily devoted to commerce and production. The goal is twofold. First, conditions must be such that the impediments to establishing and operating businesses and buying and selling finished goods are limited.²³ Second, prevailing conditions should permit a maximal amount of private investment, so as to maximize the productive capacity of the regional economy.²⁴ This investment could involve the attraction of both capital and labor to an urban area. Thus, those seeking to preserve social order work to eliminate or mitigate threats that undermine the pursuit of one of these two goals.

Importantly, not every threat will rise to the level of requiring action. Small stresses or those associated with a single neighborhood would generally be unlikely to attract significant attention from policymakers.²⁵ The exception is those local threats that put order at a regional or metropolitan scale at risk, such that the appeal of producing or conducting commerce in a city or region is placed at risk or the desirability of investing locally is potentially, significantly diminished.²⁶

There are three characteristics that define the social order dynamic.²⁷ First, one must be able to document that policymakers are focused on a single problem, and that the problem threatens social order in a fashion described above.²⁸ Second, and importantly, the policymaker must either not be aware of the potential that the policy solution will adversely affect families or is not (or less) concerned about those adverse effects.²⁹ Finally, the policy choices made to

23. See O'SULLIVAN, *supra* note 12, at 17, 26.

24. Private investment has been shown to be a major contributor to economic growth and productivity. For example, Bronzini and Piselli found private research and development and human capital investments increase regional productivity in Italy. See generally Raffaello Bronzini & Paolo Piselli, *Determinants of Long-Run Regional Productivity with Geographical Spillovers: The Role of R&D, Human Capital and Public Infrastructure*, 39 REGIONAL SCI. AND URB. ECON. 187 (2009).

25. John W. Kingdon's policy window theory of policy formation asserts that a "focusing" event or events is required for policy action to be triggered. See, e.g., JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 225-26 (Harper Collins, 2d ed. 1995).

26. See Vojnovic et al., *supra* note 21, at 225-27.

27. Iglesias, *supra* note 22.

28. *Id.*

29. *Id.*

maintain social order must not be benign to families.³⁰ Rather, they must impose observable negative costs for families.³¹

Social order concerns go beyond urban economics. Despite the emphasis on economic concerns thus far in the Article, one should recognize that social order considerations arise in other policy contexts. Even for redistribution policy, social order has had an overriding influence. In recent years, a number of states have amended their state regulations governing the Temporary Assistance for Needy Families (TANF) program and Supplemental Nutrition Assistance Program (SNAP) to place significant restrictions on what the assistance can be used for.³² Kansas banned the use of welfare benefits at movie stores, nail salons, pools, liquor stores, jewelry stores, and other recreation-related facilities, based on a view that idleness and relaxation promotes dependency, which undermines social order.³³

These examples make clear that the maintaining social order dynamic is ever present in urban policy. The remainder of this Article explores the implications of this order dynamic for families and asserts that they are detrimental in some cases. By examining urban policies in both historical and current contexts, this Article shows that the considerations highlighted have prevailed for some time. The policies of focus for this Article are limited to policies in the housing and land use domains, though the case could be made that other policy areas are also affected by this dynamic. In each case, this Article reviews the origins of the policy and highlights how its implementation has unintended consequences, namely, an adverse impact on families that can cause the policy's own disorder and undermine the original intent behind its implementation.

30. *Id.*

31. *Id.*

32. *See, eg.*, Bryan Lowry, *Gov. Sam Brownback Signs Welfare Restrictions into Law*, WICHITA EAGLE (Apr. 16, 2015, 10:46 AM), <http://www.kansas.com/news/politics-government/article18673983.html> [<https://perma.cc/SA5N-4DU2>]; Bryce Covert, *Kansas to Impose Unprecedented Restriction on Welfare Recipients*, THINK PROGRESS (Apr. 6, 2015, 11:08 AM), <http://thinkprogress.org/economy/2015/04/06/3643185/kansas-welfare-limits/> [<https://perma.cc/B73M-U8S8>].

33. Lowry, *supra* note 32. Regarding SNAP, an Oregon bill would ban recipients from using food stamps for “junk food.” *See* Covert, *supra* note 32. A Missouri bill would go further, banning the use of food stamps for the use of chips, cookies, soda, energy drinks, steak, and seafood. *Id.*

II. THE “MAINTAINING ORDER DYNAMIC” FROM AN HISTORICAL PERSPECTIVE: THE CASE OF FEDERAL URBAN HOUSING POLICY

Though federal housing policy is now typically considered through an equity lens, its origins make clear that social order was perhaps the primary impetus for establishing such policy. Prior to the 1930s, there was no federal housing policy in the United States.³⁴ Housing reform policies began in the middle of the 1800s and were largely local.³⁵ These reforms were motivated by concerns about the public health implications of the slums and the moral character of their residents.³⁶ The rise of tenements during the industrial revolution resulted in large tracts of low-quality, dense tenement housing and severe slum conditions.³⁷ Jared N. Day documents a newspaper description of the plight of the grocer Edward Rafter:

At two of his buildings, a baker and fish seller worked in two of the three stores on the first floor, and they shared the sink in the basement. The baker used water from the sink for his bread; the fish seller washed his fish in the sink; and the sixteen families in the two buildings used the sink as a urinal.³⁸

Such conditions were possible in part because of the legal environment, which heavily favored landlords over tenants.³⁹ Landlords were obligated to provide only the structure and any features associated with the structure—such as heat, sinks, and light—which were not the landlord’s responsibility unless explicitly included in the lease.⁴⁰ Thus, unless renters were savvy and sophisticated, they were likely to have little recourse in the event that conditions were poor.⁴¹

Local reformers sought to reduce the likelihood that horrible living conditions, such as those documented by Jared N. Day, did not become a catalyst for a public health calamity.⁴² Cities enacted building and sanitation codes and employed an army of building inspectors to

34. ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES 6-8 (2015).

35. JARED N. DAY, URBAN CASTLES: TENEMENT HOUSING AND LANDLORD ACTIVISM IN NEW YORK CITY, 1890-1943 21-22 (Kenneth T. Jackson ed., 1999); SCHWARTZ, *supra* note 34, at 6.

36. *See* DAY, *supra* note 35, at 28.

37. *See generally id.* at 13-29.

38. *Id.* at 55.

39. *Id.* at 17.

40. *Id.* at 19.

41. *See id.*

42. *Id.* at 21; SCHWARTZ, *supra* note 34, at 6-8.

enforce new regulations.⁴³ These first challenges to unfettered property rights were clearly motivated by a desire to maintain order.

The Great Depression was a trigger that sparked major federal involvement in housing.⁴⁴ Prior to this time, ownership housing was financed via short-term loans with balloon payments, and staying in a home required refinancing at regular intervals.⁴⁵ The Depression interrupted the supply of refinance capital, which resulted in foreclosure for millions of households.⁴⁶ To arrest this massive social disorder, the federal government established a number of institutions, including the Federal Home Loan Bank system (FHLB, 1932),⁴⁷ the Home Owners Loan Corporation (HOLC, 1933),⁴⁸ and the Federal Housing Administration (FHA, 1934).⁴⁹ All of these focused on stabilizing the banking industry, mortgages, and the housing market.⁵⁰

These institutions served to reduce social disorder. The FHLB and FHA, for example, were explicitly charged with helping homeowners refinance their mortgages and helping many families avoid the large disruptions associated with foreclosure.⁵¹ However, despite these positive impacts for owning-families, these actions were of limited use

43. See DAY, *supra* note 35, at 24-26.

44. In the wake of the Depression, major housing-related institutions were established, including the Federal Home Loan Bank system, the Home Owners Loan Corporation, and the Federal National Mortgage Association (also known as Fannie Mae). A number of these institutions, such as the Federal Housing Administration and Fannie Mae, have continued to operate to the present. Fed. Hous. Fin. Agency Office of the Inspector Gen., *A Brief History of the Housing Government-Sponsored Enterprises*, <http://fhfaog.gov/LearnMore/History> [<https://perma.cc/M42C-DBD5>].

45. Kenneth T. Jackson, *Race, Ethnicity, and Real Estate Appraisal: The Home Owners Loan Corporation and the Federal Housing Administration*, 6 J. URB. HIST. 419, 422 (1980).

46. *Id.* at 421.

47. Federal Home Loan Bank Act of 1932, 12 U.S.C.S. §§ 1421-1449; Adam Ashcraft et al., *The Federal Home Loan Banking System: The Lender of Next-to-Last Resort?*, 42 J. MONEY, CREDIT & BANKING, 551, 552 (2010); Fed. Hous. Fin. Agency Office of Inspector Gen., *supra* note 44.

48. Home Owners Loan Act of 1933, 12 U.S.C. § 1461; Jackson, *supra* note 45, at 421; Fed. Hous. Fin. Agency Office of Inspector Gen., *supra* note 44.

49. National Housing Act of 1934, 12 U.S.C. § 1716; Jackson, *supra* note 45, at 430; Fed. Hous. Fin. Agency Office of Inspector Gen., *supra* note 44.

50. See Ashcraft et al., *supra* note 47, at 552 (detailing the effects of the FHLB). For a discussion of the effects of the HOLC and FHA, see Jackson, *supra* note 45, at 421, 430 respectively.

51. LAWRENCE L. THOMPSON, A HISTORY OF HUD 2 (2011), <https://monarchhousing.org/wp-content/uploads/2007/03/hud-history.pdf> [<https://perma.cc/T67B-PM8E>].

for renters and lower-income families.⁵² The New Deal programs targeting lower-income families were far more modest.⁵³ For example, the Public Works Administration's housing program built just over 21,000 units between 1933 and 1937.⁵⁴ Lawrence W. Vale argues that the modest scale reflected a resistance to using federal resources to aid the poorest Americans.⁵⁵

Moreover, the early-years policies of the FHA represent a classic example of the social order dynamic. In the name of preserving social order—blacks were thought to adversely impact property values⁵⁶—the FHA instituted a policy whereby it would only extend loans to minority families in specific neighborhoods, mainly those with already large minority populations.⁵⁷ This redlining—acceptable neighborhoods for lending to minorities were circled on maps with red lines—significantly hindered the ability of minority families to access neighborhoods with strong amenities, thereby limiting their ability to increase affluence and improve their quality of life.⁵⁸ Redlining was a legal practice until 1968 with the passage of the Civil Rights Act.⁵⁹

A second wave of federal housing policy was ushered in via the National Housing Act of 1949.⁶⁰ This major piece of legislation gave the federal government a large role in providing subsidized housing for low-income families for the first time.⁶¹ The Act's provisions had two key features that are telling with respect to the focus of policymakers.

52. The policies established by the FHLB and FHA expressly favored ownership over renting. For many households, these policies made it “cheaper to buy than to rent.” See Jackson, *supra* note 45, at 432.

53. See VALE, *supra* note 2, at 7.

54. *Id.* at 9.

55. *Id.* at 7.

56. Both the FHA and HOLC established neighborhood scoring systems in which the presence of black households was viewed as a negative impact. See Jackson, *supra* note 45, at 423-24 (describing the HOLC scoring system); *id.* at 436-37 (describing the FHA scoring system).

57. See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 53-54 (Harvard Univ. Press 1993); Douglas S. Massey, *Origins of Economic Disparities: The Historical Role of Housing Segregation*, in *SEGREGATION: THE RISING COSTS FOR AMERICA* 39, 71-72 (James H. Carr & Nandinee K. Kutty eds., 2008); Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1310 (1995).

58. See Jackson, *supra* note 45, at 446-47.

59. See THOMPSON, *supra* note 51, at 8.

60. See Alexander Von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUS. POL. DEBATE 299, 309 (2000).

61. See *id.* at 310. The Wagner Housing Act of 1937 had established a public housing program, but its scale was much smaller than the program established by the National Housing Act of 1949 and was for a clearly delineated term. See *id.*

First, the slum removal provision was Title I of the Act, suggesting that a primary impetus for the Act was a policy motivation quite similar to the original public health-based motivations for the initial local housing regulatory efforts in the United States—establishing or maintaining social order through the removal of blight.⁶²

The effects of Title I were very negative for minority families, especially those with lower incomes. It eliminated thousands of housing units in the cores of American cities, and only a fraction of them were replaced.⁶³ Thus urban renewal “thinned” the urban core and reduced its energy and vitality.⁶⁴ Illustrating the imbalance, Jennifer A. Stoloff wrote regarding Boston’s urban renewal of a West End project: “Especially disturbing was the erasure of a community that, upon closer inspection, appeared perfectly functional. Perversely, the renewal process could be quite lengthy, leaving large barren areas in the center of a city waiting for development to begin.”⁶⁵ Moreover, this thinning often did not occur randomly, but rather was concentrated in long-established and viable poor and minority neighborhoods.⁶⁶ The impact was significant. The redevelopment of Chavez Ravine in Los Angeles is but one example:

Located in a valley a few miles from downtown Los Angeles, Chavez Ravine was home to generations of Mexican Americans. Named for Julian Chavez, one of the first Los Angeles County Supervisors in the 1800s, Chavez Ravine was a self-sufficient and tight-knit community, a rare example of small town life within a large urban metropolis. For decades, its residents ran their own schools and churches and grew their own food on the land. Chavez Ravine’s three main neighborhoods—Palo Verde, La Loma and Bishop—were known as a ‘poor man’s Shangri La.’ . . . In July 1950, all residents of Chavez Ravine received letters from the city telling them that they would have to sell their homes in order to make the land available for the

62. *See id.*

63. *See* William J. Collins & Katharine L. Shester, *Slum Clearance and Urban Renewal in the United States*, 5 AM. ECON. J. APPLIED ECON. 239, 264 (2013); Jacqueline Leavitt, *Urban Renewal Is Minority Renewal*, L.A. TIMES (Oct. 11, 1996), http://articles.latimes.com/1996-10-11/local/me-52672_1_urban-renewal [<https://perma.cc/DVR8-K3HL>].

64. *See* Collins & Shester, *supra* note 63, at 310; Leavitt, *supra* note 63; Jennifer A. Stoloff, A Brief History of Public Housing 9-10 (Aug. 14, 2004) (unpublished manuscript) (paper presented at the annual meeting of the American Sociological Association, San Francisco, CA), http://www.allacademic.com/meta/p108852_index.html [<https://perma.cc/L6WU-4MRC>].

65. *See* Stoloff, *supra* note 64, at 9-10.

66. *See* Von Hoffman, *supra* note 60, at 312. *See generally* Jordan Mechner, *CHAVEZ RAVINE: A Los Angeles Story*, PBS, <http://www.pbs.org/independentlens/chavezravine/cr.html> [<https://perma.cc/5VQS-5AU5>].

proposed Elysian Park Heights. . . . By August 1952, Chavez Ravine was essentially a ghost town. The land titles would never be returned to the original owners, and in the following years the houses would be sold, auctioned and even set on fire, used as practice sites by the local fire department.⁶⁷

A similar narrative played out in subsequent years across the country, including in the development of Lincoln Center.⁶⁸ While urban renewal did produce significant community assets, such as the highway network and New York's Lincoln Center, poor and minority families bore severe costs in terms of dislocation and isolation, which contributed to urban difficulties in the decades that followed.⁶⁹

In terms of the social order dynamic, urban renewal efforts clearly fit the framework. Urban renewal involved transforming lower-income and minority neighborhoods by removing blight, displacing many residents, and introducing amenities designed to increase a broader urban appeal that often served populations other than those living in the neighborhoods.⁷⁰ Chavez Ravine eventually became the home of the Los Angeles Dodgers.⁷¹ Lincoln Center is the home of an opera house.⁷² These were intended to ensure that the urban core remained appealing to affluent and middle-class families with available discretionary income to spend in these urban spaces that were essential for the broader economy to thrive.⁷³

Moreover, decisions were made to proceed with urban redevelopment plans, actions were taken to implement them, the displacement occurred, and those adversely affected did not appreciably benefit from these changes.⁷⁴ These decisions and actions and the subsequent displacement represent prima facie evidence demonstrating that the intent was to produce change, and that concerns about the effects on lower-income and minority families were of less importance than those of broader economic performance. The historical record also demonstrates the considerable disruption and

67. See Mechner, *supra* note 66.

68. See SAMUEL ZIPP, *MANHATTAN PROJECTS: THE RISE AND FALL OF URBAN RENEWAL IN COLD WAR NEW YORK* 157 (2010).

69. See VALE, *supra* note 2, at 203-204; Stoloff, *supra* note 64, at 9. See generally ZIPP, *supra* note 68, at 197-253; Mechner, *supra* note 66.

70. See VALE, *supra* note 2, at 194; Von Hoffman, *supra* note 60, at 313.

71. See *Dodger Stadium History*, DODGERS, <http://losangeles.dodgers.mlb.com/la/ballpark/information/index.jsp?content=history> [<https://perma.cc/RH4J-ULSL>].

72. See *Tours*, METROPOLITAN OPERA, <http://www.metopera.org/Visit/Tours/> [<https://perma.cc/LA4A-TJP4>].

73. See VALE, *supra* note 2, at 194; Von Hoffman, *supra* note 60, at 317.

74. See Von Hoffman, *supra* note 60, at 317; Stoloff, *supra* note 64, at 9-10; Mechner, *supra* note 66. See generally ZIPP, *supra* note 68, at 197-253.

harm these policies caused for the residents of the affected neighborhoods.⁷⁵

This brief history highlights the point that federal urban housing policy has a long history of being shaped importantly by the social order dynamic, and that the resultant contours did not always serve families well. In the next Part, this Article considers three specific current urban policies that, in one way or another, seek to maintain social order, and show that these again adversely affect families.

III. THE SOCIAL ORDER DYNAMIC IN TODAY'S POLICY CONTEXT: HOUSING AND LAND USE POLICIES AS CASE STUDIES

This Part examines three current policies—two in the housing policy space and one involving land use—where the maintaining of the social order dynamic has shaped policy design and led to costs for lower-income and minority families.

A. Housing Policy and Crime

The first housing policy to be considered lies at the intersection of housing and the criminal justice system. If a member of a family receiving rental assistance is arrested and convicted of a drug-related or other crime, the entire family loses their assistance under most circumstances.⁷⁶ This reality creates a strong incentive for families to stay as far from the criminal justice system as possible, even shunning family members after they have served their time and have been released. This disincentive causes families that have experience with the criminal justice system to remain disjointed, when reunification can be beneficial for the family and broader society.⁷⁷

Crime in public housing has long been a concern of policymakers, as crime emerged as a problem in public housing during the early years of its existence.⁷⁸ This was partly due to the physical characteristics of large public housing projects. These projects were initially intended to be models of Le Corbusier's "City in the Sky" concept where a vertical

75. See Von Hoffman, *supra* note 60, at 318; Mechner, *supra* note 66.

76. See Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers, 24 C.F.R. § 982.553(a) (2010).

77. See *id.*; see, e.g., SARA McLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 1-18 (1997); John Cairney et al., *Stress, Social Support and Depression in Single and Married Mothers*, 38 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 442, 442 (2003).

78. See Katharine G. Bristol, *The Pruitt-Igoe Myth*, 44 J. ARCHITECTURAL EDUC. 163, 166 (1991); Von Hoffman, *supra* note 60, at 315; see also VALE, *supra* note 2, at 96.

building included all the amenities of a city.⁷⁹ In practice, though, large dense public housing projects like Cabrini Green in Chicago⁸⁰ and Pruitt Igoe in St. Louis⁸¹ lacked many of the theorized amenities and instead were not comparable in quality to other local affordable housing options.⁸² As a consequence, those with incomes that made leaving them possible moved out, causing public housing projects to become areas of extreme poverty.⁸³ Moreover, their design was produced in areas that were difficult to police, leaving them vulnerable to control by gangs and other criminal elements.⁸⁴ The high crime rate of these public housing projects has increased sensitivity to crime ever since.⁸⁵ Thus, although levels of crime are lower than they were in those large projects,⁸⁶ public housing policies include many strict prohibitions that come down hard on those who commit crimes or have been incarcerated.⁸⁷

At the federal level, the recent thrust to address drug use began in 1982 when the Reagan Administration embarked on an anti-drug initiative—a “War on Drugs”—that declared illegal drugs to be a threat to national security that had to be defeated.⁸⁸ The initiative reached a crescendo with the passage of the Anti-Drug Abuse Act of

79. See Bristol, *supra* note 78, at 165.

80. See VALE, *supra* note 2, at 230-41.

81. See Sabine Horlitz, *The Construction of a Blast: The 1970s Urban Crisis and the Demolition of the Pruitt-Igoe Public Housing Complex*, in *CRISIS, RUPTURE AND ANXIETY: AN INTERDISCIPLINARY EXAMINATION OF CONTEMPORARY AND HISTORICAL HUMAN CHALLENGES* 16, 16 (Will Jackson et al. eds., 2012).

82. See VALE, *supra* note 2, at; Bristol, *supra* note 78, at 165; Horlitz *supra* note 81, at 22.

83. See, e.g., VALE *supra* note 2, at 230-38.

84. See Conversation with Richard Gentry, President and Chief Exec. Officer, San Diego Housing Commission; see also Bristol, *supra* note 78, at 166; Horlitz, *supra* note 81, at 166. Both document the many critiques of the design of Pruitt-Igoe.

85. See Bristol, *supra* note 78, at 166; President William J. Clinton, 1996 State of the Union Address (Jan. 23, 1996) (transcript available at <http://clinton2.nara.gov/WH/New/other/sotu.html> [<https://perma.cc/GG8E-5BMY>]); President Ronald W. Reagan, Address at the White House: Remarks on Signing the Anti-Drug Abuse Act of 1986 (Oct. 27, 1986) (transcript available at www.reagan.utexas.edu/archives/speeches/1986/102786c.htm).

86. See Dionissi Aliprantis & Daniel Hartley, *Blowing It Up and Knocking It Down: The Local and City-Wide Effects of Demolishing High Concentration Public Housing on Crime*, 88 J. U. ECON. 67, 80 (2015).

87. Many of these policies are mandated by law. See, e.g., One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. 40,262, (proposed Jul. 16, 1999) (to be codified at 24 C.F.R. pts. 5, 200, 247, 880, 882, 884, 891, 960, 966, 982).

88. See Reagan, *supra* note 85.

1986, which appropriated \$1.7 billion to fight the drug crisis.⁸⁹ The Act embodied a growing trend toward zero tolerance for drug-related criminal activities, as it introduced mandatory minimum prison sentences for drug offenses, the first such federal action on sentencing guidelines since the 1950s.⁹⁰ As President Reagan said in his remarks upon signing the Act:

[T]he vaccine that's going to end the epidemic [of drug use] is a combination of tough laws—like the one we sign today—and a dramatic change in public attitude. We must be intolerant of drug use on the campus and at the workplace. . . . The American people want their government to get tough and to go on the offensive United, together, we can see to it that there's no sanctuary for the drug criminals who are pilfering human dignity and pandering despair.⁹¹

Public housing was drawn into this “war” in 1988, when amendments to the Anti-Drug Abuse Act permitted public housing agencies to evict tenants who allowed any drug-related illegal activities on their premises.⁹² Although the war on drugs began years earlier,⁹³ the effects of drugs on poor and minority communities were already present due to the rise of the use and dealing of crack cocaine in urban poor neighborhoods in the middle and late 1980s.⁹⁴ Research has found that crack cocaine “is associated with a doubling of homicide victimizations of Black males aged 14-17, a 30 percent increase for Black males aged 18-24, and a 10 percent increase for Black males 25 and over.”⁹⁵

Public housing projects often became the locus for activities related to the selling and use of crack for at least three reasons. First, and perhaps most important, public housing projects were economically isolated, resulting in despair and desperation arising from concentrated poverty and high rates of unemployment.⁹⁶ Second, the aforementioned design challenges created areas that were difficult for law enforcement to police, which left difficult to defend spaces that

89. See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat 3207 (1970); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press 2011).

90. See Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat 3207 (1970); ALEXANDER, *supra* note 89.

91. See Reagan, *supra* note 85.

92. See generally ALEXANDER, *supra* note 89.

93. *Id.*

94. See Roland G. Fryer, Jr. et al., *Measuring Crack Cocaine and Its Impact*, 51 *ECON. INQUIRY* 1651, 1677 (2013).

95. Fryer et al., *supra* note 94, at 1654.

96. See Horlitz, *supra* note 81, at 16; Bristol, *supra* note 78, at 169.

made drug-dealing more feasible.⁹⁷ Third, particularly for larger public housing projects, the volume of regular foot traffic made it easier for those participating in the drug trade to be anonymous and not stand out.⁹⁸ Fourth, quite a few projects were located close to interstate freeways, making them easily accessible places for dealers operating on a regional scale to drop off drugs and for people seeking to buy drugs.⁹⁹ The rise in drug activity in public housing projects corresponded with a spike in violence there, and was in part a driver of the drug-related policies that ensued.¹⁰⁰

This emphasis on no tolerance for drug offenses continued into the Clinton Administration.¹⁰¹ In his 1996 State of the Union address, President Clinton cited drugs and crime as a major American challenge:

Our fourth great challenge is to take our streets back from crime and gangs and drugs . . . I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crime and peddle drugs should be one strike and you're out.¹⁰²

His call was heeded by Congress, which passed the Housing Opportunity Program Extension Act.¹⁰³ This Act introduced provisions that stipulated that people evicted for drug-related offenses could not receive housing assistance for three years unless “the person successfully completed a rehabilitation program approved by the public housing agency.”¹⁰⁴ Notably, while the statute allowed local housing authorities to consider rehabilitation as providing a potential pathway to receive support in the future, few authorities incorporated

97. See Horlitz, *supra* note 81, at 16; Bristol, *supra* note 78, at 167.

98. Conversation with Richard Gentry, *supra* note 84.

99. *Id.*

100. See ALEXANDER, *supra* note 89; Conversation with Richard Gentry, *supra* note 84.

101. See Clinton, *supra* note 85.

102. *Id.*

103. Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (1996).

104. See 110 Stat. at 838; One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. 40,262 (proposed Jul. 23, 1999) (to be codified at 24 C.F.R. pts. 5, 200, 247, 880, 882, 884,891, 960, 966, and 982). The provision also allows for waivers to the three-year ban in certain circumstances. For example, if the household member is no longer engaged in such behavior and the family includes a person with disabilities, the PHA may consider if allowing the person to reside with the family represents a reasonable accommodation. See *id.* at 40,276.

it into their local rules and those that did imposed waiting periods far longer than three years.¹⁰⁵

In 1999, HUD issued new regulations tightening the eviction provisions of the Housing Opportunity Extension Act.¹⁰⁶ The new rule, which applied to all rental assistance programs (pursuant to the Public Housing Reform Act of 1988)¹⁰⁷, clarified the scope and scale of eviction provisions.¹⁰⁸ People convicted of methamphetamine-related activities, convicted sex offenders, and fleeing felons were no longer eligible to participate in rental assistance programs.¹⁰⁹ The new rules also clarified that the entire family is responsible for the actions of a family member;¹¹⁰ if a family member is found to have engaged in one of the proscribed activities, the entire family—not just the offending individual—is subject to eviction.¹¹¹

The intent of these provisions is laid out in the preamble materials for the rule:

It is critical that assisted housing owners have the same opportunities to fight criminal activity, so that residents in their communities can also live in peace. The proposed rule provides for that broadened authority and responsibility. The rule is intended to give PHAs and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for both crime prevention and enforcement.¹¹²

Both the rhetoric and the public record around this policy demonstrate that the policy's goal was to stamp out crime and preserve social order.¹¹³ The rule's objective as stated is to promote peace, which is a clear reference to order.¹¹⁴ That said, the context of the rule—a

105. Conversation with Ron Ashford, Dir., Public Housing Supportive Services at the U.S. Department of Housing and Urban Development.

106. *See* One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. at 40,262.

107. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2461 (1998). This Act is referred to as the "Public Housing Reform Act" in the HUD regulation. *See* One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. at 40,262.

108. *See* One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. at 40,262.

109. *See id.* at 40,266.

110. *See id.*

111. *See id.*

112. *See id.* at 40,262.

113. *See generally id.*; Clinton, *supra* note 85, at 6; Reagan, *supra* note 85, at 1.

114. One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. at 40,262.

decade-long federal fight against crime involving billions of dollars¹¹⁵ — suggests that the peace is not solely for the public housing residents. Rather, the extreme outlay of funds and devotion of policy attention strongly implies that fear of negative spillover effects adversely affecting the broader social interests of preserving communities and facilitating economic growth was a major driver of policy.¹¹⁶

Second, the regulations were initially designed to allow convicted people to regain access to rental assistance programs after participation in an approved rehabilitation program, recognizing that preventing formerly incarcerated people from receiving assistance and keeping them from their families can be harmful.¹¹⁷ However, trends since this initial design have all made program participation and reunification more difficult and less likely.¹¹⁸ The set of crimes for which eviction applies was expanded, and clarification in the new rule that the entire family is at risk for the behavior of an individual family member, strengthened the disincentive rather than weakened it.¹¹⁹ Concerns about family well-being were subordinate to the larger goals of regional and urban economic growth, and became less so over time.

Regarding impacts, because recidivism rates are very high,¹²⁰ the policy likely does help reduce crime in public housing. However, it potentially adversely affects families by making every family member touched by the initial incarceration worse off.¹²¹ Because their family's

115. ALEXANDER, *supra* note 89; see Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (1996).

116. See generally Clinton, *supra* note 85; Reagan, *supra* note 85.

117. One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity, 64 Fed. Reg. at 40,266.

118. Conversation with Ron Ashford, *supra* note 105.

119. This reality became quite apparent in the experience associated with a current reunification pilot program in Los Angeles, in which eligible tenants refused to consider participation in the pilot for fear that they would be placed at risk, despite clear statements in the pilot solicitation letters that current tenants would have no liability in the event that the formerly incarcerated person was again convicted.

120. See MATTHEW R. DUROSE et al., RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 1 (Morgan Young & Jill Thomas eds., 2014).

121. See *eg.*, NANDINEE KUTTY, USING THE MAKING CONNECTIONS SURVEY DATA TO ANALYZE HOUSING MOBILITY AND CHILD OUTCOMES AMONG LOW-INCOME FAMILIES 1 (Center for Housing Policy ed., 2008); NANCY G. LA VIGNE ET AL., CHICAGO PRISONERS' EXPERIENCES RETURNING HOME 1 (Urban Institute ed., 2004), http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf; SENDHIL MULLAINATHAN & ELДАР SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (Macmillan ed. 2013); MARTA NELSON ET AL., THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY (Vera Institute of Justice ed. 1999); VISHER ET AL. *supra* note 3; Rosa M. Cho, *Understanding the Mechanism Behind Maternal Imprisonment and Adolescent School Dropout*, 60-3 FAM. REL. 272 (2011);

housing is off-limits, formerly incarcerated people often have difficulty securing housing, which can heighten the likelihood of future problems.¹²² Evidence shows that formerly incarcerated persons with unstable housing are at higher risk of recidivism and non-compliance with parole.¹²³

The absence of an adult presence in the family adversely affects other family members as well. For other adults in the family, the burden of providing for the family and raising children is now spread across fewer people.¹²⁴ In many cases, this is a single individual.¹²⁵ This reality introduces economic and social stress, which has been shown to degrade the decision-making ability of all people, independent of income level or wealth.¹²⁶ Increased burdens thus harm the adults and place the families at greater risk of extreme distress.¹²⁷

In addition, research finds that children who experience parental incarceration are at increased risk of many negative outcomes, including negative educational outcomes,¹²⁸ increased risk of behavioral problems,¹²⁹ and poor health outcomes.¹³⁰ There is some

Amanda Geller, & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40-4 SOC. SCI. RES. 1196 (2011); Amanda Geller, *Parental Incarceration and Child Well-Being: Implications for Urban Families*, 90-5 SOC. SCI. Q. 1186 (2009); Amanda Geller et al., *Paternal Incarceration and Support for Children in Fragile Families*, 48-1 DEMOGRAPHY 25 (2011); Rosalyn D. Lee et al., *The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults*, 131-4 PEDIATRICS e1188 (2012); Anandi Mandi et al., *Poverty Impedes Cognitive Function*, 341-6149 SCI. 976 (2013); Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release: Assessing the Risk*, 3(2) CRIMINOLOGY & PUB. POL'Y 201 (2004); Emily Bever Nichols & Ann Booker Loper, *Incarceration in the Household: Academic Outcomes of Adolescents with an Incarcerated Household Member*, 41-11 J. YOUTH & ADOLESCENCE 1455 (2012); Christopher Wildeman, *Paternal Incarceration and Children's Physically Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, 89-1 SOC. FORCES 285 (2010).

122. See La Vigne et al., *supra* note 121, at 16; see also VISHER ET AL., *supra* note 3, at 7.

123. NELSON, *supra* note 121, at 10; Geller & Curtis, *supra* note 121, at 3; Metraux & Culhane, *supra* note 121, at 139.

124. ALEXANDER, *supra* note 89.

125. See, e.g., Cairney et al., *supra* note 77.

126. See Mandi et al., *supra* note 121, at 976. See generally KUTTY, *supra* note 121; MULLAINATHAN & SHAFIR, *supra* note 121; Cairney, *supra* note 77.

127. See Cairney et al., *supra* note 77, at 443 (discussing harm to adults). See generally BENJAMIN R. KARNEY & JOHN S. CROWN, *FAMILIES UNDER STRESS: AN ASSESSMENT OF DATA, THEORY, AND RESEARCH ON MARRIAGE AND DIVORCE IN THE MILITARY* (Rand Corporation ed., 2007) (discussing harm to families).

128. Cho, *supra* note 121, at 273; Nichols & Loper, *supra* note 121, at 1463.

129. Geller et al., *supra* note 121, at 1186; see Wildeman, *supra* note 121, at 304.

indication that these negative impacts arise, in part, from the children living apart from their fathers post-incarceration.¹³¹

Beyond these individual impacts, this policy might also have important broader social implications. Mass incarceration is a reality in many African-American communities, with the “penetration” of incarceration being quite deep in some places.¹³² For example, Michelle Alexander documents that in some communities, nearly eighty percent of young African American males have been incarcerated.¹³³ This suggests that the individual impacts discussed above are being felt at a large scale. In assessing this reality, there are two possible interpretations.

One (perhaps cynical) view is that this policy is maintaining a status quo that preserves the existing social order.¹³⁴ The other is that the policy is now a destabilizing force that further threatens the social order.¹³⁵ If the latter is more accurate, then the policy is currently counterproductive even in its primary objectives. Adaptation of policy to reflect this new reality would appear to be an urgent priority. Unfortunately, aside from a few pilot programs, federal and local policymakers show little inclination to revise public housing agency policies regarding formerly incarcerated people.¹³⁶

B. Housing Policy and Education

The second policy I examine involves the interaction of two policies developed to promote social order—housing assistance and school assignment. Each policy individually creates stability for families. Housing assistance reduces housing instability, which evidence consistently shows adversely affects outcomes for families and

130. Lee et al., *supra* note 121, at 1188.

131. See Geller et al., *supra* note 121, at 3.

132. ALEXANDER, *supra* note 121.

133. *Id.*

134. *Id.*

135. *NYCHA Family Reentry Pilot: Reuniting Families in New York City Public Housing*, VERA INSTITUTE OF JUSTICE, [hereinafter Vera Institute] <http://www.vera.org/project/nycha-family-reentry-pilot-reuniting-families-new-york-city-public-housing> [https://perma.cc/HY7X-Q8YS]. See generally Letter from Shaun Donovan, U.S. Sec. of Hous. & Urban Dev., and Sandra B. Henriquez, Assistant Sec. for Public and Indian Housing, U.S. Department of Housing and Urban Development, to PHA Executive Directors (June 17, 2011), https://www.usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf [https://perma.cc/76EL-SCQL].

136. See generally Vera Institute, *supra* note 135; *Section 8 Pilot Re-Entry Program*, HOUS. AUTH. OF THE CITY OF L.A., [hereinafter Housing Authority of Los Angeles] <http://www.hacla.org/abouts8> [https://perma.cc/YY3A-HZNK].

neighborhoods.¹³⁷ A lack of affordable housing has been found to negatively affect the ability of families to maintain self-sufficiency, remain healthy, and build human capital, while communities see lower levels of job creation and less purchasing power.¹³⁸

The origin of the federal housing voucher program was the negative experience many jurisdictions had with large public housing projects, many of which had become blighted islands of concentrated poverty in a very short time.¹³⁹ The federal government lost its appetite for building and managing new subsidized housing projects, but also recognized that a need for rental assistance still existed.¹⁴⁰ Beginning in 1970, the Department of Housing and Urban Development's Office of Policy Development and Research started the Experimental Housing Assistance Program (EHAP) demonstration, an experiment that was instrumental in the creation of a voucher program for rental assistance.¹⁴¹ This approach has become the primary means by which rental assistance is provided today.¹⁴² EHAP, which evolved into the Section 8¹⁴³ and Housing Choice Voucher programs,¹⁴⁴ was focused on how to deliver cost-effective rental assistance while leveraging the expertise of the private sector.¹⁴⁵

The intersections of housing with other dimensions of local life often were not a primary concern of policymakers. Rather, a recognition of the important connections across policy domains and the need to consider explicitly incorporating these connections into housing policy emerged far later.¹⁴⁶

137. See generally AMY BRISSON & LINDSAY DUERR, IMPACT OF AFFORDABLE HOUSING ON FAMILIES AND COMMUNITIES: A REVIEW OF THE EVIDENCE BASE 1 (Enterprise Community Partners ed., 2014).

138. *Id.* at 2.

139. See Horlitz, *supra* note 81, at 16. See generally Bristol, *supra* note 127.

140. Virtually no new units have been added to the public housing stock since 1980. See generally SCHWARTZ, *supra* note 34.

141. VALE, *supra* note 2, at 20; see THE COMMITTEE TO EVALUATE THE RESEARCH PLAN OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OF THE NATIONAL RESEARCH COUNCIL, REBUILDING THE RESEARCH CAPACITY AT HUD 14 (Center for Economic, Governance, and International Studies, Division of Behavioral and Social Sciences and Education ed., 2008).

142. See generally SCHWARTZ, *supra* note 34.

143. VALE, *supra* note 2; SCHWARTZ, *supra* note 34.

144. VALE, *supra* note 2; SCHWARTZ, *supra* note 34.

145. See generally Edgar O. Olsen, Housing Programs for Low-Income Households, *in* MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 365-441 (Robert A. Moffitt ed., 2003).

146. For example, the Obama Administration's Neighborhood Revitalization Initiative coordinated policy action and awarding of grants across the Departments of Housing and Urban Development (HUD), Education (ED), Justice (DOJ), Health &

Rules for assigning students to schools similarly are designed to promote stability. Public schooling has long been an obligation of local jurisdictions in the United States,¹⁴⁷ and for much of the history of public schooling the rules for assigning students to schools have been uniform across jurisdictions.¹⁴⁸ The standard arrangement has been for school assignment to be based on the location of one's home, with children going to the school closest to their residence.¹⁴⁹ This approach minimizes the system-wide monetary, time, and other costs associated with getting children to and from school, which frees up resources for other purposes.¹⁵⁰ The use of neighborhood-based attendance zones also potentially makes it easier for parents to be engaged in the school, which is another order-enhancing attribute.¹⁵¹ This is because, as a large amount of literature demonstrates, school outcomes improve with paternal engagement.¹⁵² The stability produced by this urban policy thus translates into better school outcomes and broader social order.¹⁵³

The rules regarding school assignment were upended during the Civil Rights movement in the 1950s and 1960s, when the Supreme Court, in a series of rulings including *Brown v. Board of Education of Topeka*,¹⁵⁴ established that segregated schools were unconstitutional.¹⁵⁵ The reaction to these rulings, which one can see in the case law, makes clear the intent of school assignment rules.¹⁵⁶ For

Human Services (HHS) and Treasury. See <https://www.whitehouse.gov/administration/eop/oua/initiatives/neighborhood-revitalization> [<https://perma.cc/6THA-CMAP>].

147. See, e.g., JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS, AND AMERICA'S SCHOOLS* (Brookings Institution Press ed., 1990).

148. See, e.g., R.L. Church & O.B. Schoepfle, *The Choice Alternative to School Assignment*, 20.4 ENV'T & PLAN. B: PLAN. & DESIGN 447 (1993).

149. This abstracts from magnet schools and busing programs.

150. Church & Schoepfle, *supra* note 148.

151. See, e.g., William H. Jeynes, *A Meta-Analysis of the Relation of Parental Involvement to Urban Elementary School Student Academic Achievement*, 40.3 URB. EDUC. 237 (2005); Nancy E. Hill & Diana F. Tyson, *Parental Involvement in Middle School: A Meta-Analytic Assessment of the Strategies that Promote Achievement*, 45.3 DEVELOPMENTAL PSYCHOL. 740 (2009).

152. Hill & Tyson, *supra* note 151, at 1; Jeynes, *supra* note 151, at 260.

153. See generally Hill & Tyson, *supra* note 151; Jeynes, *supra* note 151.

154. *Brown v. Board of Education of Topeka*, 347 US 483, 495 (1954).

155. *Id.*

156. See generally THE STATE OF WASHINGTON, STATE GENERAL ELECTION: 1978 VOTERS AND CANDIDATES PAMPHLET (Secretary of State of Washington ed., 1978). Further, in an extreme response to the charge to desegregate public schools, Prince William County in Virginia decided to stop offering public schooling rather than integrate their schools. See generally CHRISTOPHER BONASTIA, *SOUTHERN STALEMATE: FIVE YEARS WITHOUT PUBLIC EDUCATION IN PRINCE EDWARD COUNTY, VIRGINIA* (2012).

example, in 1978, voters in the State of Washington overwhelmingly passed Initiative 350, which, with some exceptions, prohibited school districts from requiring any student to attend a school other than the school geographically nearest or next nearest his place of residence.¹⁵⁷ The initiative was placed on the ballot in response to Seattle's plan to use mandatory busing to desegregate its schools.¹⁵⁸ In articulating the need for the initiative, the referendum's backers argued that local assignment was necessary because schools are "the glue that holds neighborhoods together."¹⁵⁹ On balance, these arguments reveal a view that parochial interests should dominate concerns about adverse impacts of neighborhood-based assignment rules.¹⁶⁰

This dual stability—stability of housing because of rental assistance and stability of schools due to neighborhood-based assignment—is undermined, however, because of realities associated with housing. Lower-income people move more often than others¹⁶¹ and, despite the added stability that rental assistance provides, households receiving this assistance do as well.¹⁶² This means that, because of the school

157. Secretary of State of Washington, *supra* note 156, at 5. The ballot measure was later overturned by the Supreme Court. See *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 487 (1982).

158. Associated Press, *High Court's in the Driver's Seat*, SPOKANE DAILY CHRONICLE (Oct. 14, 1978), <https://news.google.com/newspapers?nid=ddb7do2jUx8C&dat=19811014&printsec=frontpage&hl=en> [https://perma.cc/D27W-KFE6]; R. Parker, *Only One Initiative Looks OK*, THE SPOKESMAN REVIEW, (July 7 1978), <https://news.google.com/newspapers?nid=1314&dat=19780707&id=3PBLAAAAIIBAJ&sjid=3-0DAAAIAIBAJ&pg=5567,2043263&hl=en> [https://perma.cc/RD72-2WUE] ; United Press International, *Anti-Busing Measure Gets Little Attention*, ELLENSBURG DAILY RECORD, (Nov. 2, 1987), <https://news.google.com/newspapers?nid=4oJvMfeQlr8C&dat=19781102&printsec=frontpage&hl=en> [https://perma.cc/AA7R-L4E3].

159. United Press International, *Anti-Busing Measure Gets Little Attention*, ELLENSBURG DAILY RECORD, Nov. 2, 1979, at 7. <https://news.google.com/newspapers?nid=4oJvMfeQlr8C&dat=19781102&printsec=frontpage&hl=en> [https://perma.cc/9K6H-XD9S].

160. As an aside, the school segregation policy battle is another instance where maintaining social order was detrimental to families. Many (white) Americans believed that racial integration would disrupt social order and undermine their investments in business, property, and other amenities. Thus many jurisdictions had explicit policies to ensure that white and black children attended separate schools. This separation adversely affected black children, a finding that drove the decision in *Brown v. Board of Education of Topeka* banning school segregation. The result of segregation policies, separate schools that were generally unequal, was quite detrimental to black families. BONASTIA, *supra* note 156.

161. Research using data at national, state, and city levels shows that children of lower-income families are more likely to move and change schools. See ALEXANDRA BEATTY, *EXPLORING THE IMPACT OF FREQUENT MOVES ON ACHIEVEMENT: SUMMARY OF A WORKSHOP* (The National Academies Press ed., 2010).

162. For example, homeowners, who are less likely to be lower-income, move less frequently than renters. See CLAUDIA COULTON ET AL., *FAMILY MOBILITY AND*

assignment policy, children in lower-income families are more likely to change schools during their childhood than other children.¹⁶³ Further, because rental assistance contracts are not tied to the school calendar, families receiving rental assistance may be less able than other families to delay moves to ensure that their children are not forced to change schools mid-year.¹⁶⁴

Mid-year moves are quite disruptive, and the performance of students who make such moves is hampered as they adjust to their new environments.¹⁶⁵ Children who move more often fare worse in health and education than children with greater housing stability.¹⁶⁶ They are more likely to repeat a grade, get suspended, and be among the lowest academic performers in their class.¹⁶⁷ In addition, they achieve lower standardized test scores and lower graduation rates.¹⁶⁸ These negative outcomes are associated with moves that result in school changes both within a school system and across systems.¹⁶⁹ Moreover, effects are larger if the move is involuntary.¹⁷⁰

This last finding means that the issue of moving is particularly significant for residents of affordable housing developments participating in the project-based rental assistance program. Landlords that choose to participate in this program agree to keep their rents at

NEIGHBORHOOD CHANGE: NEW EVIDENCE AND IMPLICATIONS FOR COMMUNITY INITIATIVES 10 (Urban Institute ed., 2009).

163. BEATTY, *supra* note 161; Mary Cunningham & Graham MacDonald, *Housing as a Platform for Improving Education Outcomes Among Low-Income Children*, THE URB. INST. 7 (2012).

164. There are no requirements that lease dates align with local school calendars. See U.S. Department of Housing and Urban Development, *Housing Assistance Payments Contract: Section 8 Tenant-Based Assistance Housing Choice Voucher Program*, https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11737.pdf [<https://perma.cc/K4ZT-S3T3>].

165. COHEN & WARDRIP, *supra* note 3, at 4; KUTTY, *supra* note 121, at 4; see KIDS MOBILITY PROJECT, KIDS MOBILITY PROJECT REPORT 5 (1988); Christopher B. Swanson & Barbara Schneider, *Students on the Move: Residential and Educational Mobility in America's Schools*, 72 SOC. OF EDUC. 54 (1999). See generally Shana Pribesh & Douglas B. Downey, *Why Are Residential and School Moves Associated with Poor School Performance?*, 364 DEMOGRAPHY 521 (1999).

166. KUTTY, *supra* note 121, at 2; see COHEN & WARDRIP, *supra* note 3, at 7-8. See generally KIDS MOBILITY PROJECT, *supra* note 165; Pribesh & Downey, *supra* note 165, at 522; Swanson & Schneider, *supra* note 165.

167. COHEN & WARDRIP, *supra* note 3, at 5; KUTTY, *supra* note 121, at 87.

168. COHEN & WARDRIP, *supra* note 3, at 7; KUTTY, *supra* note 121, at 2; BEATTY, *supra* note 161.

169. See KIDS MOBILITY PROJECT, *supra* note 165, at 2; Pribesh & Downey, *supra* note 165, at 521; Swanson & Schneider, *supra* note 165, at 55.

170. COHEN & WARDRIP, *supra* note 3, at 1.

or below a fair market rent.¹⁷¹ Tenants in the program pay thirty percent of their income towards rent and the government agrees to pay the difference between the fair market rent and the tenant payment.¹⁷² As of 2010, nearly one million households—including several million children—live in buildings governed by the tenant-based rental assistance program.¹⁷³

Participating landlords commit to continue in the program for a period of fifteen to twenty years, after which they may opt out and no longer have to participate.¹⁷⁴ If they do so, tenants are forced to leave their units and find another place to live, unless they are willing to pay the usually higher new rent.¹⁷⁵ Many project-based buildings are reaching the end of their commitment period and opting out is becoming more prevalent.¹⁷⁶ This means that an increasing number of lower-income tenants are vulnerable to involuntary moves, and their children are subject to all the challenges that implies.

C. Land Use Policy on Density

In addition to housing policy, one can observe the social order dynamic in land use policy as well. One land use policy that promotes order is zoning that limits the number of units that a landowner can have on a single parcel.¹⁷⁷ This was motivated by a desire to maintain order within a neighborhood and prevent the development of informal residences that could transform a neighborhood into a shanty town and magnet for migrants and other elements that could bring crime and other illegal activities.¹⁷⁸ Moreover, concerns have also been raised about limiting the total population in a neighborhood so that demands on infrastructure such as roads and sewers do not outstrip the existing

171. HEATHER L. SCHWARTZ ET AL., PRESERVATION OF AFFORDABLE RENTAL HOUSING: EVALUATION OF MACARTHUR FOUNDATION'S WINDOW OF OPPORTUNITY INITIATIVE, report to the John D. and Catherine T. MacArthur Foundation (2015).

172. *Id.* Under certain circumstances, voucher holders are permitted to pay up to forty percent of their income for rent.

173. *Id.*

174. *Id.*; see also Vincent Reina & Ben J. Winter, *Are They Protected? The End of Place-Based Rental Subsidies and the Welfare of Low-Income Households* (USC Price School Working Paper 2015).

175. Reina & Winter, *supra* note 174.

176. *Id.*

177. EDWARD L. GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 65 (American Enterprise Institute Press ed., 2008).

178. See *generally id.* at 64; MARC A. WEISS, THE RISE OF THE COMMUNITY BUILDERS: THE AMERICAN REAL ESTATE INDUSTRY AND URBAN LAND PLANNING (Columbia University Press ed., 1987).

capacity.¹⁷⁹ While these concerns helped produce the policies in the early 1900s, they still remain today.¹⁸⁰

Zoning was introduced in the early 1900s as a mechanism to create and preserve neighborhood order, by promoting synergies among neighbors and preventing disruptive activities from interfering with daily life.¹⁸¹ Developers and other real estate professionals—who together Marc Weiss calls “community builders”—teamed with city planning advocates to develop sections of cities “along the right lines.”¹⁸² A key goal for both city planners and community builders was creating an efficient system for developing neighborhoods that would ensure that any value created through development would be secure and evolve in predictable ways.¹⁸³ The main objective was to create certainty that facilitated investments in long-lived assets:

Key to all discussion of changes in private subdividing and public planning were two concepts: (1) spatial separation, and (2) permanency of land and building use. Technological innovations were making it increasingly possible to lower urban densities and spread the various working and living spaces over a wide metropolitan area. This separation could only be sustained, however, if there were some means of stabilizing land uses such that urban physical *investment* would have a longer and more predictable life.¹⁸⁴

These arguments culminated in a landmark 1916 speech to the National Conference on City Planning given by J.C. Nichols, a developer and leader of the National Association of Real Estate Boards.¹⁸⁵ In that speech, Nichols articulated his view that the only way that developers could build housing at a rate close to the pace of geographic expansion in urbanizing cities was through the introduction of zoning and other planning tools.¹⁸⁶ Nichols’ arguments were well

179. See generally GLAESER & GYOURKO, *supra* note 177, at 64.

180. See, e.g., *id.* at 66-67; Ron Kaye, *Coming Soon to Your Neighborhood: Granny Flats, Converted Garages, Houses Turned into Tenements*, RON KAYE L.A. BLOG (Nov. 16, 2009), <http://ronkayela.com/2009/11/coming-soon-to-your-neighborho.html> [<https://perma.cc/H2V9-3M6Q>].

181. Synergies reflect complementary uses, such as a gasoline station and a retail strip mall. As an example of disruptive activities, funeral processions to a burial site can disrupt a street’s traffic flow, one reason why cemeteries were carefully zoned. See generally GLAESER & GYOURKO, *supra* note 177; WEISS, *supra* note 178.

182. WEISS, *supra* note 178, at 55.

183. *Id.*

184. *Id.* at 61.

185. *Id.*

186. *Id.*

received and the speech was an important trigger of action by planners nationwide.¹⁸⁷

Subdivision controls and zoning became the primary mechanism for promoting stability and order in neighborhoods across the city.¹⁸⁸ Subdivision controls facilitated master planning by dividing cities or parts of cities into a set of distinct locations where specific types of activities occurred, as well as determining what types of activities occurred proximate to each other.¹⁸⁹ Land use regulation established predictability at the parcel level, as it specified parameters for building use, building size, land coverage and setback.¹⁹⁰ Together, these promoted homogeneity in land use, and limited the likelihood that objectionable land uses abutted a prevailing land use.¹⁹¹ This was particularly significant for residential zones. In these areas, there was a desire to promote an “appropriate” scaling,¹⁹² as well as create separation from industrial uses and other less desirable uses, such as cemeteries.¹⁹³

Regarding these land use controls, it has long been recognized in the academic literature that there is a tension between the interests of local landowners and investors and others who might want to access the city. Citing decades-old theory, Johanna Duke writes:

Society places a priority on the exchange value of space by partitioning land in such a way that makes it suitable for sale in the real estate market (Logan and Molotch, 1987). . . . When it comes to use and exchange values, housing goes beyond the physical structure of a house itself. People pay based on locational amenities as well as the physical condition of the house. They will fight to keep the location’s exchange value intact by maintaining neighbourhood stability.¹⁹⁴

Duke views this private appropriation of space as problematic, particularly for lower-income families, but inevitable given existing political and power structures.¹⁹⁵

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Joanna Duke, *Mixed Income Housing Policy and Public Housing Residents’ ‘Right to the City’*, 29-1 CRITICAL SOC. POL’Y 100, 112 (2009) (citing JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* (University of California Press eds., 1987)).

195. See Duke, *supra* note 194, at 112-13.

The legal record demonstrates that the transactions-based priority of collective social order, and the certainty in value that it imparted, was explicitly thought to be more important than other possible priorities.¹⁹⁶ Indeed, this tension was recognized almost immediately after zoning was introduced, and arguments to limit the density of housing carried the day in policy fights.¹⁹⁷ Two court cases demonstrate this.

In *Village of Euclid, Ohio v. Ambler Realty Company*¹⁹⁸ the Supreme Court validated the jurisdiction's zoning code provisions placing single-family detached residential housing above other land uses:

With particular reference to apartment housing, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment housing, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open space and attractive surroundings created by the residential character of the district.¹⁹⁹

Here, the Court ruled that the city's decision to limit density was a valid approach to maintaining a quality of life that promotes order and investment.²⁰⁰

As a second example, in *Palo Alto Tenants, v. Morgan*,²⁰¹ California's Supreme Court upheld local limits placed on density by local jurisdictions. The Court rejected arguments that rights of association and privacy required jurisdictions to permit living arrangements that might result in more dense living arrangements than those allowed for by zoning codes.²⁰² Instead, the Court reaffirmed the "truly vital interests of the citizenry" that the restrictions embodied.²⁰³ One of these interests was the integrity of traditional families, which the Court noted "perform unique and valuable social functions in raising and educating young people and providing for the emotional and physical needs of family members."²⁰⁴

196. See, e.g., *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Palo Alto Tenants v. Morgan*, 321 F. Supp. 908, 912 (N.D. Cal. 1970).

197. See generally *Duke*, *supra* note 194; *LOGAN & MOLOTCH*, *supra* note 194.

198. 272 U.S. 365 (1926).

199. *Id.* at 394.

200. See *id.* at 397.

201. 321 F. Supp. 908 (N.D. Cal. 1970).

202. See *id.* at 912.

203. *Id.*

204. *Id.* at 911.

Admittedly, there is some irony here. The California Supreme Court's ruling effectively argues that the interests of families and broader social order align, and this alignment justifies the existence of density restrictions enacted through zoning.²⁰⁵ However, this view of alignment relies upon a stylized notion of traditional family, and one that is becoming less common as the diversity in the United States grows.²⁰⁶ Indeed, data indicates that immigration from non-European countries, especially from Mexico, has accelerated since the 1960s.²⁰⁷ In an increasingly pluralistic society, policies codifying the priority of a one-size-fits-all "traditional family" will become more difficult to defend as legitimate.²⁰⁸ That said, such restrictions remain the policy standard in many communities nationwide.²⁰⁹

I emphasize that these two cases demonstrate that the policymaking as regards land use policy on density satisfies key definitional features of the urban social policy dynamic described in Part I. First, the *Village of Euclid, Ohio* case shows that there has been a long and vigorous debate about the extent to which density in residential areas should be limited.²¹⁰ Seeking to loosen these restrictions, jurisdictions (i.e., policymakers) are largely on the side of limiting density in neighborhoods featuring single-family detached homes and others, including real estate interests and others.²¹¹ The intent of policymakers is consistent and clear. Second, both cases also show that policymakers were asked to consider the value of other perspectives and chose not to adopt alternative frameworks.²¹² They were willing to go to the Supreme Court to vindicate their decision to reject the alternatives in lieu of their preferred approach.

205. *See generally id.*

206. *See generally* WILLIAM H. FREY & ROSS C. DEVOL, AMERICA'S DEMOGRAPHY IN THE NEW CENTURY: AGING BABY BOOMERS AND NEW IMMIGRANTS AS MAJOR PLAYERS (Milken Institute ed., 2000).

207. *See id.* at 11.

208. *See id.* at 54; Nancy S. Landale, R. Salvador Oropesa & Cristina Bradatan, *Hispanic Families in the United States: Family Structure and Process in an Era of Family Change*, in *HISPANICS AND THE FUTURE OF AMERICA* 138, 139 (Marta Tienda & Faith Mitchell eds., 2006).

209. *See generally* U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF POLICY DEVELOPMENT AND RESEARCH, ACCESSORY DWELLING UNITS: CASE STUDY (2008), <https://www.huduser.gov/portal/publications/adu.pdf> [<https://perma.cc/C6QX-XVU9>].

210. *See, e.g.*, *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

211. *See, e.g., id.*; *Palo Alto Tenants v. Morgan*, 321 F. Supp. 908 (N.D. Cal. 1970).

212. *See, e.g.*, *Village of Euclid, Ohio* 272 U.S. at 365; *Palo Alto Tenants* 321 F. Supp. at 908.

While these restrictions can be an effective vehicle for creating neighborhood social order, they can adversely impact families. First, by limiting the supply of housing, they can drive up prices and reduce affordability.²¹³ A reduction in affordability places stress on families, as they will be forced to devote more money to housing, leaving less for other necessities.²¹⁴ In such situations, families may choose to buy less food, clothes, or medical supplies.²¹⁵ Alternatively, families may choose not to spend more on housing, but rather opt for living in overcrowded conditions. Moreover, these restrictions can limit the ability of families to manage intergenerational and extended family relationships.²¹⁶ In some cases, an extra unit can accommodate the needs of older generations, who remain able but require closer monitoring.²¹⁷

A lack of affordable housing has similarly been found to be problematic for families and communities more broadly.²¹⁸ Overcrowding in housing has long been recognized as a problem and there is a voluminous literature demonstrating its deleterious effects.²¹⁹ Poor housing conditions, including overcrowding, have been found to be associated with elevated likelihood of foster care, among other problems.²²⁰ It has similarly been found to adversely affect mental and physical health outcomes.²²¹ Indeed, federal policy has for decades used overcrowding as an indicator of substandard housing.²²²

Finally, while this emphasis on reducing and limiting density in residential neighborhoods served to severely reduce the possibility of group homes that were (and often continue to be) widely feared by

213. See GLAESER & GYOURKO, *supra* note 177, at 63.

214. See, e.g., Diana Becker Cutts et al., *U.S. Housing Insecurity and the Health of Very Young Children*, 101.8 AM. J. PUB. HEALTH 1508, 1512 (2011).

215. *Id.*

216. See generally Antoninetti, Maurizio, *The Difficult History of Ancillary Units: The Obstacles and Potential Opportunities to Increase the Heterogeneity of Neighborhoods and the Flexibility of Households in the United States*, 22 J. HOUS. FOR THE ELDERLY 348 (2008).

217. See Nancy J. Chapman & Deborah A. Howe, *Accessory Apartments: Are They a Realistic Alternative for Ageing in Place?*, 16.5 HOUSING STUD. 637, 638 (2001).

218. See, e.g., MUELLER & TIGHE, *supra* note 3.

219. See Miriam Cohen-Schlanger et al., *Housing as a Factor in Admissions of Children to Temporary Care: A Survey*, 74 CHILD WELFARE 547, 549 (1995). See generally Samiya A. Bashir, *Home is Where the Harm Is: Inadequate Housing as a Public Health Crisis*, 92 AM. J. PUB. HEALTH 733, 733-38; Dowell Myers, *The Changing Problem of Overcrowded Housing*, 62 J. AM. PLAN. ASS'N 62, 66-84; MUELLER & TIGHE, *supra* note 3.

220. Cohen-Schlanger et al., *supra* note 219, at 549-50.

221. Bashir, *supra* note 219, at 735.

222. Myers, *supra* note 219, at 68.

residents in neighborhoods dominated by detached single-family structures, it also made it more difficult for families that did not fit the prevailing notion of “traditional.”²²³ These latter families are able to find fewer housing arrangements that conveniently permit intergenerational living and either must live in an illegal unit or use resources to convert units to meet their needs.²²⁴ This becomes an increasingly burdensome constraint for immigrant families, because research has shown that there are significant differences in family configurations by ethnicity, with immigrant Latino families found more likely to have larger families and live with extended kin.²²⁵

In this context, what was needed was a policy that evolved with changing demographics and an increased diversity of norms. As in the case of the housing policy associated with crime, policy adaptation at the local level has been very slow to occur.

D. The Social Order Dynamic Today: Its Origins and a Path Forward

The preceding discussion makes clear that the social order dynamic runs at cross purposes with other policy goals, including the promotion of families and family well-being. The natural questions to ask are why this reality persists and what can be done to reduce its prevalence.

In thinking about the reasons why our urban policies suffer from the social order dynamic and, thus, can work at cross purposes, an important conclusion is that our policies are the result of the institutional context in which they are created. In short, our governance structures, which involve institutions, bureaucracy, and logistics, drive policy design that is narrow in focus and policymakers that are parochial in mindset.²²⁶ There are at least three elements that contribute to the persistence of the social order dynamic.

223. See, e.g., Carissa Schively, *Understanding the NIMBY and LULU phenomena: Reassessing Our Knowledge Base and Informing Future Research*. 21 J. OF PLANNING LITERATURE 255 (2007).

224. See Larry Wilson, *Granny Flats in Pasadena are a Good for the Whole Family*, PASADENA STAR-NEWS (Sept. 8, 2015), <http://www.pasadenastarnews.com/opinion/20150908/granny-flats-in-pasadena-are-good-for-the-whole-family-larry-wilson> [<https://perma.cc/WVA8-FK9D>]; U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF POLICY DEVELOPMENT AND RESEARCH, ACCESSORY DWELLING UNITS: CASE STUDY 1 (Sage Computing, Inc., 2008), <https://www.huduser.gov/portal/publications/adu.pdf> [<https://perma.cc/P9WV-V3FD>].

225. Landale, *supra* note 208.

226. See Eugene Bardach, *Getting Agencies to Work Together: The Practice and Theory of Managerial Craftsmanship*, BROOKINGS INSTITUTION PRESS (1998); Laura R. Bronstein, *A Model for Interdisciplinary Collaboration*, 48 SOC. WORK 297, 297-306 (2003).

First, policymakers in one arena are often unaware of the policies, practices, and initiatives in other domains.²²⁷ There are few opportunities for sharing such information. The Obama Administration's effort to revise the regulations associated with their charge to "affirmatively further fair housing" (AFFH) makes clear the magnitude of this challenge.²²⁸ A goal of the AFFH regulation is to help local officials consider the broad range of investments they make within their communities and how they promote or hamper desegregation and increased access to opportunity for residents.²²⁹ If effective, the regulation will cause jurisdictions to review the patterns and effectiveness of their investments in housing, education, business development, transportation, and other amenities to see if they have reduced race-based disparities in opportunity, among other possible objectives.²³⁰

To have greatest effect, however, the bureaucrats who run the programs locally need to be aware of what policies and practices are in place in other policy areas.²³¹ There is a great lack of such awareness. Research I conducted during the development of the AFFH regulation revealed that very few officials working in one area know very much about the policies and rules associated with another.²³² As an extreme example, in one southern jurisdiction, the officials that ran the city's housing program did not even know the *building* in which the officials making decisions on transportation policy were located, to say nothing of policy details such as application deadlines for grant and loan programs and program innovations that could be of value for housing practitioners.²³³ Without this basic level of knowledge, it is difficult to imagine local staff in a diverse set of policy areas working together to consider a wider range of outcomes.

227. Bardach, *supra* note 226; Bronstein, *supra* note 226.

228. A final rule was issued in July of 2015. HUD (2015a), Affirmatively Furthering Fair Housing final rule, 24 CFR 5, 91, 92, 570, 574, 576 and 903, Docket No FR-5173-F-04. p. 42272-42371; Press Release, U.S. Department of Housing and Urban Development, HUD Announces Final Rule On Affirmatively Furthering Fair Housing (July 8, 2015), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-084 [<https://perma.cc/6WZ2-HUXQ>].

229. *Id.*

230. *Id.*

231. *See generally* Bardach, *supra* note 226, at 19-23; Bronstein, *supra* note 226, at 302.

232. Interviews with state and local public sector officials and bureaucrats in Frankfurt, KY, Indianapolis, IN, San Diego, CA, Los Angeles, CA, Miami, FL, and Nashville, TN.

233. Interview with state housing officials in Frankfurt, KY.

These challenges are not limited, however, to coordination associated with federal policy. As discussed below, significant efforts have been devoted in recent years to harmonizing efforts between the community development and public health communities. Organizations with an ability to bridge both communities and create focal points for action have recently established new structures whose goal is to strengthen the intersection of the two fields, due in part to a recognition that strong linkages were not forming on their own.²³⁴

Two byproducts of these investments are the Build Healthy Places Network,²³⁵ sponsored in part by the Robert Wood Foundation, and the Population Health Roundtable of the National Academies of Sciences, Engineering, and Medicine.²³⁶ These linkages will promote new thinking and new knowledge, which hopefully will translate into policy innovations, both regarding the policies themselves and the strategies for doing policies. For example, the Build Healthy Places Network has highlighted a proposal to introduce a certification scheme for community health that would be patterned on the LEED certification system for green building.²³⁷ These have grown in part because of an increased awareness of both the importance of social determinants of health (i.e., non-medical factors that drive health outcomes), and how poor levels of health make community development more difficult.²³⁸

Second, there are few incentives for departments and agencies to pursue policies targeted at goals beyond their primary mandate. Consider typical budget rules. At the federal level, agencies that pursue effective policies that advance another agency's mission are not

234. See, e.g., Build Healthy Places Network, www.buildhealthyplaces.org [<https://perma.cc/4QLY-5AHS>]; Roundtable on Population Health Improvement: iom.nationalacademies.org/Activities/PublicHealth/PopulationHealthImprovementRT.aspx [<https://perma.cc/9DZH-E2N5>].

235. Build Healthy Places Network, www.buildhealthyplaces.org [<https://perma.cc/4QLY-5AHS>].

236. *Id.*

237. See Kathleen Costanza, *Using the LEED Approach to Encourage Healthier Building Designs*, BUILD HEALTHY PLACES NETWORK BLOG (Feb. 16, 2016), <http://www.buildhealthyplaces.org/using-the-leed-approach-to-encourage-healthier-building-designs/> [<https://perma.cc/R4EW-SNW3>].

238. Raphael W. Bostic et al., *Health in All Policies: The Role of the US Department of Housing and Urban Development and Present and Future Challenges* 31 HEALTH AFFAIRS 2130, 2130-37 (2012); see Jairo O. Arrow, *Estimating the Influence of Health as a Risk Factor on Unemployment: A Survival Analysis of Employment Durations for Workers Surveyed in the German Socio-Economic Panel (1984-1990)* 42 SOC. SCI. & MED. 1651, 1651-59 (1996); Janet Currie, *Healthy, Wealthy, and Wise: Socioeconomic Status, Poor Health in Childhood, and Human Capital Development*, No. w13987, NAT'L BUREAU OF ECON. RES. (2008).

rewarded budget-wise.²³⁹ For example, if HUD were to promote a policy that produced reductions in health care expenditures, it would receive no budgetary offsets to reward it for those benefits. Indeed, Congressional Budget Office rules preclude such cross-agency accounting involving savings.²⁴⁰ Agencies that choose to pursue such policies regardless are effectively choosing to engage in charity.

This also holds at state and local levels. If benefits accrue to agencies not under the same governance umbrella, there is no guarantee that savings will be realized for all participants.²⁴¹ Consider housing and health in Los Angeles. Money that the City of Los Angeles directs to homeless services could result in lower expenses at Los Angeles County Hospital, which is under the jurisdiction of the County Board of Supervisors.²⁴² There are currently few reliable mechanisms for ensuring that the city and county share in those savings.²⁴³ Challenges include, but are not limited to, creating a unified accountability structure, ensuring that future officials abide by their initial commitments, and that accounting rules are clarified such that there is agreement on the actual savings realized.²⁴⁴

One local governance solution is to have a single authority across multiple policy areas. San Francisco is an example of this, as it is both a city and a county.²⁴⁵ In contrast to the governance challenge that Los Angeles faces with respect to coordinating housing and health policy, San Francisco has an advantage in that the same governing body is responsible for the housing and health services budget,²⁴⁶ meaning that the same policymakers that authorized the investment in homeless services would see any resultant health-related savings and incorporate

239. Zachary Karabell, *CBO's Rigid Scoring is Holding U.S. Government Back in Long-Term Programs*, WASHINGTON POST (Feb. 28, 2014), http://www.washingtonpost.com/business/cbos-rigid-scoring-is-holding-us-government-back-in-long-term-programs/2014/02/28/d445b3b0-9f02-11e3-b8d8-94577ff66b28_story.html [https://perma.cc/6EZZ-W54J].

240. *Id.*

241. Barbara Koremenos, *Loosening the Ties that Bind: A Learning Model of Agreement Flexibility*, 55 INT'L ORG. 289, 289-325 (2001).

242. See Los Angeles County Dep't of Health Services, *LAC+USC Medical Center: About Us*, https://dhs.lacounty.gov/wps/portal/dhs!/ut/p/b1/04_Sj9Q1NDe3NDAYnzUz14_Qj8pLLMtMTyzJzM9LzAHxo8zi3QwMDNz9nYKN3C0sDAwcDVx83Dz8XY3cXY2ACiKRFViY-jkBFZiY-lt4mBg6mxoQ0h-uH4WqBN0EU0IKDKAKDHAARwN9P4_83FT93KgcS88sE0UANmK56Q!!/dl4/d5/L2dJQSEvUUt3QS80SmtFL1o2X0YwMDBHT0JTMkc4ODAwQTBETEZIT0UyS0g1/ [https://perma.cc/385G-YNWV].

243. Koremenos, *supra* note 241; see also Bardach, *supra* note 226.

244. See Bronstein, *supra* note 226, at 299; see also Bardach, *supra* note 226, at 117-18; Koremenos, *supra* note 241.

245. See SFGov, www.sfgov.org [https://perma.cc/5WSM-NVV4].

246. *Id.* (noting under "Government, Key Services, Departments and Agencies").

that into their future decision-making. The prospect of creating such comprehensive unified governance structures given the existing governance structure is daunting. For example, the likelihood that the eighty-eight jurisdictions in Los Angeles County would all agree to relinquish their autonomy and join a single unified government seems exceedingly small.²⁴⁷

Third, federal, state, and local policymaking historically has been field-based, with the policymakers and advocates being deeply familiar with all the ins-and-outs of a particular policy issue, including the causes of the problem, the various stakeholder perspectives, the institutional details associated with the policy, the politics governing the issue, and feasible alternative implementation approaches.²⁴⁸ Such expertise is essential, as the details of policy are critical in ultimately determining the outcomes for those touched by the policy.

But this specialization has come at a cost—a narrow vision of “the possible” and a limited consideration of the types of policy interventions that could make a difference.²⁴⁹ Instead, we need much more research at these intersections to improve the evidence base and provide opportunities to create narratives like the “Million Dollar Murray”²⁵⁰ for homelessness. In this case, the identification of a single homeless person (Murray) as responsible for nearly \$1 million in public service costs in Reno, Nevada resulted in heightened attention to assisting chronically homeless people.²⁵¹ The lack of data suitable for intersectoral research, without which makes research at the intersections of fields extremely difficult to conduct, is one problem. A noteworthy move in the right direction is the data sharing initiatives between HUD and the Department of Health and Human Services, through which program data from the two agencies are combined to make a comprehensive database so that the compound effects of

247. Rather, the impulse of local governments has been to fight efforts to disincorporate. See, e.g., Adrian Glick Kudler, *Should Southeast LA's Corrupt Little Cities Be Forced to Merge?*, L.A. CURBED (Apr. 9, 2013, 1:28 PM), http://la.curbed.com/archives/2013/04/should_southeast_la_corrupt_little_cities_be_forced_to_merge.php [<https://perma.cc/Z9RU-B9SJ>].

248. See generally Bardach, *supra* note 226, at 1-18; Bronstein, *supra* note 226.

249. See Philip Lowe & Jeremy Phillipson, *Barriers to Research Collaboration Across Disciplines: Scientific Paradigms and Institutional Practices*, 41 ENV'T AND PLAN. 1171, 1171-1184 (2009); see also Bardach, *supra* note 226, at 10-13; Bronstein, *supra* note 226.

250. Malcolm Gladwell, *Million-Dollar Murray*, 82 THE NEW YORKER 96, 96 (2006).

251. *Id.*

housing and health care-related policies can be studied and better understood.²⁵²

The lack of incentives in academia is another barrier to seeing a larger volume of research that crosses fields.²⁵³ For many fields, academics receive greater credit for publications within their field journals than for publications that appear elsewhere.²⁵⁴ Therefore, it is no surprise that academic researchers conduct “traditional” studies that have a higher likelihood of getting published in their own journals, rather than introduce new policies and issues where the probability of publication is more unknown. Leadership in universities needs to provide clear statements that high quality research and publishing out of one’s field is not necessarily problematic, but rather a good thing, and then change their policies accordingly. Academics, like everyone else, recognize and respond to incentives.

Fortunately, we have begun to see some thawing of this policy and research specialization, which is resulting in some interesting policy experiments. In each of the policy areas discussed above, we are seeing experimentation that can potentially mitigate or end the social order dynamic.²⁵⁵ Housing authorities in New York and Los Angeles, among others, are conducting pilot programs that allow families receiving rental assistance to be voluntarily rejoined by their formerly incarcerated family members.²⁵⁶ Evaluations are underway to determine whether this policy results in improved outcomes for family members and the formerly incarcerated themselves.²⁵⁷ The Highline school system in King County, Washington, is also modifying their policies on a trial basis to permit students to stay in a single school

252. Press Release, U.S. Department of Housing and Urban Development, HUD and HHS Announce Successful Test to Match Housing and Health Data to Better Understand the Needs of HUD-Assisted Households (June 12, 2014) http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-070 [<https://perma.cc/US8B-T3YD>].

253. *See generally* Lowe & Phillipson, *supra* note 249.

254. KELLY L. MAGLAUGHLIN & DIANE H. SONNENWALD, FACTORS THAT IMPACT INTERDISCIPLINARY NATURAL SCIENCE RESEARCH COLLABORATION IN ACADEMIA 7-8 (International Society for Scientometrics and Informatics Conference, 2005).

255. *E.g.*, Housing Authority of Los Angeles, *supra* note 136; Vera Institute, *supra* note 135; Highline Public Schools, Student Assignment and Transfer Procedures, Superintendent Procedure 332P (Dec. 21, 2015), http://www.highlineschools.org/cms/lib07/WA01919413/Centricity/domain/1147/school%20board%20policies/series_3000/3132P.pdf [<https://perma.cc/Z2TM-T242>].

256. Housing Authority of Los Angeles, *supra* note 136; Vera Institute, *supra* note 135.

257. Vera Institute, *supra* note 135; *see also* Haynes Foundation, 2013 Major Research Grants Awards (Dec. 2, 2013) <http://haynesfoundation.org/news/index.asp> [<https://perma.cc/NS96-E3JS>].

regardless of where they may move to during that school year.²⁵⁸ There is great interest to see if a “keep kids in place” policy translates into improved student performance.

The progress that has been made in terms of land use and zoning has been stilted. For example, there is a vigorous ongoing debate about the utility of allowing more auxiliary units (granny flats) to be produced.²⁵⁹ The State of California mandated that localities allow for the creation of auxiliary units in 2003, and cities responded with regulatory overlays.²⁶⁰ Pasadena, a suburb to the northeast, changed its ordinance by taking a baby step, allowing them only on lots sized 15,000 square feet or more.²⁶¹ To date, only one unit has been built.²⁶² One could interpret this as evidence of the social order dynamic’s power. Given the tremendous affordability challenge faced by most communities in southern California, advocates are pushing for a revisiting of this issue.²⁶³ Similarly, the Los Angeles Planning Department explored this issue,²⁶⁴ but it is unclear whether any action will result from their analysis. Similar debates are occurring across the country. For example, citizens in the city of Seattle are currently considering and debating proposals to allow more density in neighborhoods that are currently zoned exclusively for single-family detached units.²⁶⁵

CONCLUSION

There are two final points to be made regarding the social order dynamic. First, although I have couched this as purposeful, it should be said that I do not believe that agents are actively pursuing a social

258. Highline Public Schools, *supra* note 255.

259. *See, e.g.*, Press Release, Bureau of Planning and Sustainability, Small Homes go Big: Accessory Dwelling Unit (ADU) Development Soars in Portland, (2015), <https://www.portlandoregon.gov/bps/article/484726> [<https://perma.cc/RGB4-HWCM>].

260. Center for Housing Policy, *Accessory Dwelling Units*, HOUSINGPOLICY.ORG (Jan. 11, 2016, 12:36 PM), http://www.housingpolicy.org/toolbox/strategy/policies/diverse_housing_types.html?tierid=42 [<https://perma.cc/KX94-ZN8U>].

261. Wilson, *supra* note 223.

262. *Id.*

263. *See, e.g.*, Wilson, *supra* note 223; *see also* L.A. Hous. Dep’t (2012); Steven L. Morris, *Granny Flats on Hold*, L.A. WKLY. (Dec. 19, 2009), <http://www.laweekly.com/news/granny-flats-on-hold-2391535> [<https://perma.cc/K5MY-SLUJ>].

264. Los Angeles Housing Department, Report to the Housing, Community and Economic Development Committee and the Planning and Land Use Management Committee of the City Council (2012), http://clkrep.lacity.org/online/docs/2012/12-0600-S63_RPT_LAHD_09-23-12.pdf [<https://perma.cc/T2AX-Y5BE>].

265. Discussion, 3rd Annual Real Estate Symposium, Foster School of Business and Runstad Center for Real Estate (Dec. 8, 2015).

order agenda that purposefully harms certain families. Put another way, my experience suggests that very few policymakers have goals that are actively pernicious to families, particularly lower-income families. Rather, it is often the case that the policymakers prioritize social order over the well-being of lower-income and minority families, who often are not their main constituents and who they often do not know.²⁶⁶ Their only attention to such populations is in the context of problems, and so they are disinclined to give priority until they become such a large problem that ignoring them becomes impossible.²⁶⁷ But “solutions” that improve social order may not help the families in need. This is exacerbated by realities of political campaigns, in which wealthier interests who typically have the most to gain by preserving and enforcing social order are the main financiers of elected officials.²⁶⁸

Second, although I focused on negative by-products in this Article, policies to preserve social order as conceptualized here are generally justified. Situations such as the crack cocaine epidemic centered in public housing projects are a clear threat and warrant strong remedial policies.²⁶⁹ But conditions change over time, and the original threats to order may cease to exist or the resultant challenges the initial policy responses create may grow to represent a new threat to order.²⁷⁰ Despite this, policies are typically slow to adapt to such changes. This is due in part to political and policymaking processes, which generally are not designed for rapid responses to policy imperatives, and in part to the politics of the policies themselves. Few politicians want to risk being “soft on crime,” for example.²⁷¹ Regardless of the reason for it, the lack of a public sector rapid response capacity makes the decisions regarding a policy or program’s initial design of paramount importance.

The presence of an urban social order dynamic, where policies are pursued to ensure that urban places represent an environment that facilitates commerce and private investment, has existed consistently

266. *E.g.*, ALEXANDER, *supra* note 89; Reagan, *supra* note 85.

267. *Compare* Clinton, *supra* note 85, *with* Donovan & Henriquez, *supra* note 135.

268. *See generally* Stephen Ansolabehere et al., *Why Is There so Little Money in Politics?* (National Bureau of Economic Research, Working Paper No. w9409, 2003).

269. Fryer et al., *supra* note 94; Conversation with Richard Gentry, *supra* note 84.

270. For example, violent crime in the communities where high-rise public housing in Chicago once stood has fallen significantly. Aliprantis & Hartley, *supra* note 86.

271. *See, e.g.*, Pat Garofalo, *Soft on Crime, Part Two*, U.S. NEWS & WORLD REP. (Sept. 18, 2015), <http://www.usnews.com/news/the-report/articles/2015/09/18/has-2016-tough-on-crime-talk-already-doomed-criminal-justice-reform> [https://perma.cc/VF6F-U8X2].

over the long history of urban policy in America.²⁷² The social order dynamic has persisted in part because of institutional impediments in policymaking, political governance, and academia.²⁷³ Recent developments in a number of policy areas suggests that, at least in a few contexts, broader consideration of a policy's impact is resulting in a breaking down of these barriers.²⁷⁴ Ultimately, consistent creation of policies that do not suffer from the social order dynamic, in which policies are pursued to create and maintain social order without making allowances for collateral impacts, requires attention to the issue and a policymaking infrastructure that creates incentives for decision-makers to do so.

272. *E.g.*, DAY, *supra*, note 35; VALE, *supra* note 2; VISHER ET AL., *supra* note 3; Stoloff, *supra* note 64; Von Hoffman, *supra* note 60.

273. *See generally* Koremenos, *supra* note 241; *see also* Bronstein, *supra* note 236; Karabell, *supra* note 239; Lowe & Phillipson, *supra* note 249.

274. *See generally* Build Health Places Network, www.buildhealthyplaces.org [<https://perma.cc/4QLY-5AHS>]; Roundtable on Population Health Improvement, iom.nationalacademies.org/Activities/PublicHealth/PopulationHealthImprovement RT.aspx [<https://perma.cc/M59Y-T3JS>].