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Mark S. Davies  
*Department of Justice*

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## UNDERSTANDING SPRAWL: LESSONS FROM ARCHITECTURE FOR LEGAL SCHOLARS

Mark S. Davies\*

SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM. By *Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck*. New York: North Point Press. 2000. Pp. xiv, 290. \$30.

What is suburban “sprawl”? Why is it undesirable? Why do many Americans nevertheless choose to live in sprawl? Do local zoning laws contribute to sprawl? Can democratic institutions discourage it? Legal scholars are beginning to study these urgent and complex questions. This Essay reviews *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*, by Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, leading architects of the influential New Urbanism or traditional town planning movement.

This Review makes five points about the legal study of sprawl. First, *Suburban Nation* provides a definition of “sprawl” that the law can use to distinguish between sprawl and better forms of new development. Second, the book describes how the form of the modern suburb has antidemocratic effects on public life. Third, *Suburban Nation* provides an account of why so many Americans buy houses in sprawl — motivations that any antisprawl measures must accommodate. Fourth, the book’s authors demonstrates that current suburban zoning codes contribute to sprawl. In view of the authors’ extensive experience in planning and building new suburbs, legal scholars of sprawl would benefit from attending to the authors’ definition of sprawl, their account of its allure and drawbacks, and their explanation of its cause.

*Suburban Nation* is also relevant to a fifth — and perhaps the most difficult — question for legal scholars of sprawl: What is the proper form of a democratic institution capable of discouraging it? The authors of *Suburban Nation* join the current academic consensus in favor of a unified regional government that, among many other tasks, would be responsible for reducing sprawl. A unified regional government, however, is unwise and unnecessary. As *Suburban Nation* inadvertently demonstrates, a carefully designed regional transportation

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\* Attorney, Appellate Staff, Civil Division, Department of Justice. B.A. 1992, Yale University. J.D. 1995, University of Chicago. — Ed. Thanks to Philip Hamburger, Christine Jolls, and Peter Smith.

board is probably the best form of local government for guiding a metropolitan area's new suburban development.

### I. "SPRAWL" VS. "TRADITIONAL TOWNS"

Any effort to study sprawl must begin with a definition of the term. Surprisingly, the early legal work on sprawl failed to define it. Thus, Part I of this Review calls legal scholars' attention to the definition of sprawl offered by *Suburban Nation*.

The authors of *Suburban Nation* identify the basic components of sprawl: housing subdivisions, shopping centers, office parks, and underfunded public buildings linked together by connector roads feeding into high-speed highways. No "clear center" or mixed use areas exist because "the dominant characteristic of sprawl is that each component is strictly segregated from the others" (p. 5). Thus, the essence of sprawl is the single-family house, "surrounded at close quarters by more of the same" (p. 41). Indeed, sprawl includes "ruthless segregation by minute gradations of income" (p. 41). There is no "five minute walk from the ordinary needs of daily life" (p. 5).

Another component of sprawl is the office park. "Derived from the modernist architectural vision of the building standing free in the park, the contemporary office park is usually made of boxes in parking lots" (p. 6). Here, the employee during a lunch break "can either eat in the company cafeteria or do what most people do: spend twenty-five minutes out of sixty fighting traffic in order to rush through a meal at a chain restaurant" (p. 31). In sprawl, the town halls, religious centers, and schools "take an altered form: large and infrequent, generally unadorned owing to limited funding, surrounded by parking, and located nowhere in particular" (p. 6). "[T]here are no honorable institutions. Civic buildings are sited like any other land use: behind a parking lot off the collector road" (p. 35).

The authors contrast the sprawling development with a traditional town plan. Each traditional neighborhood has a "clear center, focused on the common activities of commerce, culture, and governance" (p. 15). A "local resident is rarely more than a five minute walk from the ordinary needs of daily life: living, working, and shopping" (p. 15). The streets are narrow, have parallel parking, and have "relatively continuous walls, whose design calls attention to the space as a whole rather than to individual buildings" (p. 75). The downtown features "mixed" uses. Indeed, a single downtown building may provide housing, office space, and shopping (p. 15). But "it is not a design free-for-all" (p. 16). Instead, "[t]here is an essential discipline regarding two factors: the size of the building and its relationship to the street" (p. 16). Thus, "[l]arge buildings sit in the company of other large buildings, small buildings sit alongside other small buildings, and so on" (p. 17). "[B]uildings are arranged by their physical type more

often than by their use” (p. 17). “Parking lots, if any, are hidden at the back.” (p. 17). In addition, “traditional neighborhoods devote unique sites to civic buildings, those structures that represent the collective identity and aspirations of the community” (p. 17). Thus, the “top of a hill, the end of a street, the side of a plaza—these would be set aside for the church, the town hall, the library, and other public structures worthy of honor.”<sup>1</sup>

The authors argue that a new traditional town does not harm the urban core (p. 135). “[I]n the right form, suburban-scale growth is a healthy and natural way for cities to develop” (p. 136). They emphasize that “placing transit stops within walking distance of most houses” allows new suburbs to “contribute to the well-being of a city” (p. 139). Further, “a new neighborhood can avoid unduly contributing to sprawl by being of mixed use” (p. 187). For example, a “small corner store does wonders to limit automobile trips out of the development” (p. 187). They also suggest a “neighborhood work center,” noting that “[i]deally, every neighborhood should be designed with an even balance of residents and jobs” (p. 189). Because the jobs are “transit-accessible,” everyone can access them, and the nearby housing offers the option of avoiding a commute (p. 190). The authors also emphasize that, “to avoid the inefficient hierarchical street pattern of sprawl, in which virtually every trip uses the same few collector roads, the new neighborhood must connect wherever practical to everything around it, even if its neighbors are nothing but single-use pods” (p. 192).

Perhaps unaware of this definition of sprawl, the early legal scholarship on sprawl has equated sprawl with any new suburban expansion.<sup>2</sup> This is a mistake. Expansion of at least some suburbs is inevitable. But nothing is inevitable about the particular plan and design features that the new expansion will take. If law is to encourage new developments that are not “sprawl,” it must distinguish between sprawl and other forms of new suburban development.

This need for legal scholars to distinguish between types of suburbs is reminiscent of an earlier need for legal scholars to distinguish between types of cities. In his influential article, *The City as a Legal Concept*, Professor Gerald Frug argued that federal and state laws unduly circumscribe city powers.<sup>3</sup> In response, Professor Briffault emphasized that “in most metropolitan areas many of the entities the law defines

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1. P. 35. For a more complete description of New Urbanism, see PETER KATZ, *THE NEW URBANISM: TOWARD AN ARCHITECTURE OF COMMUNITY* (1994).

2. Professor Buzbee comes closest, noting that “[u]rban sprawl often goes undefined, but essentially assumes an urban area that through a confluence of housing, transportation, and associated private and government decisions expands in an outward sprawling pattern, usually encompassing a multiplicity of local governments.” William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *FORDHAM L. REV.* 57, 63 (1999).

3. Gerald E. Frug, *The City as a Legal Concept*, 93 *HARV. L. REV.* 1057 (1980).

as cities are—in social science parlance and lay understanding—suburbs” that have had great success in defending their interests in the law of school finance, land-use regulation, and local government formation and preservation.<sup>4</sup> Subsequently, Frug was persuaded that he had “understated the amount of power that suburbs currently exercise in America.”<sup>5</sup> Just as it was a mistake for Frug not to notice that “city” can include both urban and suburban entities, it would be a mistake for legal scholars not to distinguish between sprawl and desirable forms of suburban development.<sup>6</sup>

## II. HOW SPRAWL HARMS PUBLIC LIFE

Sprawl is a pejorative term. This Part describes the authors’ account of how sprawl harms American politics.<sup>7</sup> Although legal scholars studying sprawl generally begin from the assumption that sprawl is undesirable, *Suburban Nation* provides a careful description of the particular ways that sprawl harms public political life.

The authors claim that “Americans are splintering into insular factions, each pursuing an increasingly narrow agenda, with nary a thought for the greater good” (p. 59). They suggest that “our changing physical environment may play” a “significant role” in this withdrawal from public life (p. 60). Here, the authors emphasize that “community cannot form in the absence of communal space, without places for people to get together and talk” (p. 60). But “[i]n the absence of walkable public places—streets, squares, and parks, the *public realm*—people of diverse ages, races, and beliefs are unlikely to meet and talk” (p. 60). In a quote the authors recite several times, “[c]onstitutional guarantees of free speech and of freedom of association and assembly mean much less if there is literally no peopled public space to serve as forum in which to act out these rights.”<sup>8</sup>

What remains of local political possibility is still further compromised by sprawl’s drain on the public fisc. The authors claim that the “far-flung houses” of sprawl require municipal services that “do not begin to pay for themselves with their taxes” (p. 127). They note that one cost-benefit study found that a “new single-family home pays less than \$5,000 in property taxes but costs the city more than \$10,000 to

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4. Richard Briffault, *Our Localism, Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 348-52 (1990).

5. Gerald Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 271 (1993).

6. Cf. Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 614 (1997) (stating that “[i]ndividual suburbs are fungible”).

7. Part III, *infra*, includes a discussion of how sprawl harms the individuals that choose to live in it.

8. P. 60 (quoting Trevor Bondy, *Underground and Overhead: Building the Analogous City*, in VARIATIONS ON A THEME PARK 125 (Michael Sorkin ed., 1992)).

service” (p. 128). The result is often subpar services. The authors note that the “response time [for police calls] in some suburban municipalities is often twenty minutes or more” (p. 129).

Even if a few meaningful places for democratic engagement remain, the authors claim that the residents of sprawl develop parochial habits. The citizen of sprawl lives near only those who spend as much on housing as they do. The authors suggest that “[i]t doesn’t take a sociology degree to predict the sort of culture that this pattern of income-segregated housing creates” (p. 44). For the authors, the “unity of society is threatened not by the use of gates but by the uniformity and exclusivity of the people behind them” (p. 45). And the “segregationist pattern” perpetuates itself, because a “child growing up in such a homogeneous environment is less likely to develop a sense of empathy for people from other walks of life and is ill prepared to live in a diverse society” (p. 45).

More subtly, the authors argue that in sprawl one leaves “the finest private realm in the developed world,” only to enter a “brutal” “public realm,” where one’s role “is primarily as a motorist competing for asphalt” (p. 41). As a motorist, “you cannot get to know your neighbor, because the prevailing relationship is competitive” (p. 61). The citizens of sprawl oppose new buildings because they anticipate that the “new development, with its wide streets and vast parking lots, will be boring and unpleasant to visit and will, of course, generate more traffic” (p. 42). Thus, the citizens of sprawl become “what professional planners dismissively term a Banana (Build Nothing Anywhere Near Anything)” (p. x). Political participation becomes nothing more than the vicious articulation of the status quo.

In summary, the authors claim that the form of the modern suburban development threatens public life by devaluing public places, draining public resources, and encouraging selfish habits. If accurate, this account suggests that there may be a necessary role for public law to counter these antidemocratic effects.

### III. WHY DO SO MANY AMERICANS CHOOSE TO LIVE IN SPRAWL?

Legal scholars’ studies of sprawl must include an attempt to understand what motivates consumers to purchase houses in sprawl. At first glance, the decision to live in sprawl is difficult to understand because of the well-known and significant drawbacks to the individual who chooses to live in sprawl. Part III of this Review highlights some observations that the experienced authors of *Suburban Nation* make about the housing purchase decision. Recent work in the new field of behavioral economics may help organize these observations.

### A. *Advantages and Disadvantages of Living in Sprawl*

Throughout *Suburban Nation*, the authors suggest that people are encouraged to live in sprawl. “The most significant” causes of sprawl, according to the authors, are federal housing and highway policies that combine to make Levittown “the financially rationale choice.” Pp. 7-8. The authors emphasize, as have others, that “subsidized automobile use is the single largest violation of the free market principle in U.S. fiscal policy.”<sup>9</sup> They cite a study finding that government subsidies for highways, parking, pollution cleanup, and emergency medical treatment total approximately \$5,000 per car per year (p. 94).

Regardless of the incentives to choose sprawl, any opponent of sprawl must also confront the abiding popularity in this country of a new single-lot house.<sup>10</sup> The authors of *Suburban Nation* argue that sprawl’s enduring popularity has two sources. First, they acknowledge that “American homebuilders are perhaps the best in the world when it comes to providing buyers with the private realm, the insides of the house” (p. 41). The authors note that, “[d]ollar for dollar, no other society approaches the United States in terms of the number of square feet per person, the number of baths per bedroom, the number of appliances in the kitchen, the quality of the climate control, and the convenience of the garage” (p. 41). Second, the authors observe that “[t]oday’s suburban reality finds its origins in the pastoral dream of the autonomous homestead in the countryside” (p. 40). “Articulated throughout U.S. history, from Jefferson through Limbaugh, this vision has been equated with a democratic economy, in which homeownership equals participation” (p. 40).

So far, the desire to live in an American Dream home has overcome the well-known disadvantages caused by sprawl’s reliance on the car. In sprawl, the activities of daily life — working and shopping, playing and praying — require frequent transportation along high-speed roads. “[A]utomobile use is a prerequisite to social viability” (p. 14). Thus, the “80 million Americans who are either too young, too old, or too poor to drive” are “victims of sprawl” (p. 115). Starting with the children, the authors emphasize “the complete loss of autonomy they suffer in suburbia,” where “personal mobility extends no farther than the edge of the subdivision” (p. 116). The result is the “cul-de-sac kid,” the “child who lives as a prisoner of a thoroughly safe and unchallenging environment” (p. 116). “Dependent always on some adult to drive them around, children and adolescents are unable to practice becoming adults” (p. 116). They cannot run simple household errands, cannot bicycle to the toy store, cannot walk to school,

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9. P. 96.

10. For empirical support, see JENNIFER HOSCHILD, *FACING UP TO THE AMERICAN DREAM: RACE, CLASS, AND THE SOUL OF THE NATION* (1995).

often cannot even get to the park. Thus, suburban life freezes children “in a form of infancy, utterly dependent on others, bereft of the ability to introduce variety into their own lives, robbed of the opportunity to make choices and exercise judgment” (p. 117). Not surprisingly, “all the suburban parents who can afford it will readily buy the additional cars that provide independence for their children, often in order to regain their own freedom” (p. 119). But teenagers make terrible drivers—“[f]ar and away, car crashes are the largest killer of American teenagers, accounting for more than one-third of all deaths” (p. 119). The authors also suggest, cautiously, that the increased rate of teenage suicide in the suburbs may be in a part a result of the “isolation and boredom” inherent to sprawl (p. 120).

For similar reasons, the nondriving elderly living in sprawl also experience severe problems. The authors note that “contemporary suburbia, with its strict separation of land uses, has inadvertently segregated the elderly from the rest of society” (p. 123). Thus, “healthy and able citizens who simply can no longer operate two tons of heavy machinery” are “quarantined with their fellow nonviable members of society” in the “retirement community,” “a way station for the assisted-care facility” (p. 123).

According to the authors, sprawl, and its use of high-speed highways, also harms our nation’s poor communities. The new roads connecting the suburbs with downtown were built on “land usually confiscated from poor neighborhoods” (p. 130). Similarly, “many streets in low-income neighborhoods . . . were widened and relieved of on-street parking to facilitate through traffic to distant destinations” (p. 130). Thus, “highways were routed directly through the centers of our cities, eviscerating entire neighborhoods—typically, African-American neighborhoods—and splitting downtowns into pieces” (p. 87). So, too, the authors note that sprawl has separated the inner-city poor from the location of new jobs, imposing a “hurdle that the would-be working poor are often unable to surmount” (p. 131).

Moreover, those who are able to drive must drive a lot. The traffic congestion in the suburbs is often horrific. The authors report that “in most American cities, the worst traffic is to be found not downtown but in the surrounding suburbs, where an ‘edge city’ chokes highways that were originally built for lighter loads” (p. 22). Because a single (large) road is critical to daily life, a major accident can render the entire system useless until it is cleared (p. 23).<sup>11</sup>

Although many people recognize the problems of car dependence,

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11. Duany, Platter-Zyberk, and Speck make a number of important points about local traffic that are beyond the scope of this Review. For example, they argue that the “latent demand” for car trips will always fill roads to the point of congestion. Thus, as they put it, the question for residents of sprawl is whether they want four or twelve lanes of bumper-to-bumper traffic.



little, if any, political will exists to reduce the federal subsidy for car use.<sup>12</sup> Thus, the authors pose the “real question” as: “[W]hy [do] so many drivers choose to sit for hours in bumper-to-bumper traffic without seeking alternatives[?]” (p. 93). The problem is not information. The authors note that the problem of subsidizing automobile use “is old news” (p. 97). Thus, they have nothing to say to “all the concerned activists nationwide who are banging their heads against the wall on this issue . . . except ‘May we join you at the wall?’ ” (p. 97).

### B. *The Possible Relevance of Behavioral Law and Economics*

Although the authors argue that “only a small number of people can achieve that dream without compromising it for all involved” (p. 40), the brilliance of sprawl is that, for many, it does appear to provide an acceptable version of the American dream. People seem willing, at least so far, to accept car dependence in order to live in their American Dream house. Scattered throughout *Suburban Nation*, however, are suggestions that residents who move to sprawl regret the decision. According to the authors, many residents find in sprawl only a parody of the American Dream, “the original promise of suburban life [replaced] with a hollow imitation” (p. xiii). With no “physical framework conducive to public discourse,” family and communal institutions “struggle to persist” (p. xiii). Thus, for “all of the household conveniences, cars, and shopping malls,” the authors claim that most Americans living in sprawl find life “less satisfying” (p. xiii).

One obvious problem with this claim is that it lacks empirical support. *Suburban Nation* cites no scientific data looking at satisfaction levels by type of suburban development. Moreover, if people truly regretted living in sprawl, one would expect residents to move out of sprawl. In other words, what a resident might say to a visiting architect or pollster may not be as accurate a statement of true personal desire as the choice to buy and stay in a house in sprawl. These complex empirical questions merit further study. At a minimum, however, the authors’ conclusions, reached after more than twenty years of talking

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12. Professor Frug draws on the New Urbanist critique to offer his own, which also highlights the car subsidy’s impact on various classes of people, particularly:

[W]omen whose ability to combine their professional and family life is frustrated by long commuting time and lack of access to nearby child care; elderly people who are prevented from remaining in their neighborhood because zoning rules prohibit them from subdividing their house to make room for family members or because the decline of their neighborhood (or its gentrification) makes it impossible to stay; residents of the vast areas of the metropolitan areas . . . who are hurt by the disinvestment produced when businesses follow the wealthy to the outer suburbs; and middle-class African-Americans, now living in their own suburbs, who are increasingly isolated both from white suburban residents and from the poor African-Americans they left behind.

Frug, *supra* note 3, at 35-36.

to residents about places to live (p. xii), suggest that such empirical work might show that many people regret moving to sprawl.

Even if the authors correctly gauge the high levels of regret among residents of sprawl, they do not begin to explain why so many people make that mistake. It is not, as noted with the well-known problems about dependence on cars, simply a matter of missing information. And without knowing why people err, it is difficult to craft laws to minimize sprawl.

In view of the possibility that consumer errors are contributing to sprawl, the new field of “behavioral law and economics” may help legal scholars understand sprawl. Professor Cass Sunstein explains that “Law and Behavioral Economics” is a “new field” that “combines the study of law with cognitive psychology and behavioral economics” so that law is based on “a clearer knowledge of human behavior.”<sup>13</sup> For example, Professor Jolls emphasizes that “people’s judgments about their future experience at the time of decision can be mistaken, in the sense that people are sometimes unable (even apart from the sorts of informational issues recognized by conventional economics) to assess what the experience will actually be like.”<sup>14</sup> Home buyers may regret the decision to live in sprawl because they cannot assess what the experience of living in sprawl “will actually be like.”

Behavioral law and economics also emphasizes consumer error caused by “heuristic devices.” Sunstein emphasizes that it is “well established that people make decisions on the basis of heuristic devices, or rules of thumb, that may work well in many cases but that also lead to systematic errors.”<sup>15</sup> In *Suburban Nation*, the authors introduce the phenomena of the “twenty-minute house.” According to the authors, the average length of a realtor visit is twenty minutes. Thus, the building industry sells a “product that is at its best for the first twenty minutes that one is in it” (p. 77). Specifically, “the house is usually organized around a tall ‘great room’ from which, immediately upon entering, the potential buyer is astounded by partial views of almost every other room in the house.” (p. 77). The authors argue that home buyers regret buying these houses because the houses afford no acoustical privacy for the individual rooms (p. 77). The twenty-minute house rule is possibly an “error” derived from a psychological rule of thumb. To the extent Behavioral Law and Economics generates policy proposals that help minimize these types of “citizen errors,” their application to the problem of sprawl would seem promising.

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13. Cass R. Sunstein, *Introduction*, in *BEHAVIORAL LAW AND ECONOMICS* 1 (Cass R. Sunstein ed., 2000).

14. Christine Jolls et al., *A Behavioral Approach to Law and Economics*, in *BEHAVIORAL LAW AND ECONOMICS* 13, 47 (Cass R. Sunstein ed., 2000).

15. Sunstein, *supra* note 13, at 3.

Another area of study by behavioral law and economics scholars is “mental accounting.” Sunstein notes that money is not fungible; “[m]oney comes in compartments.”<sup>16</sup> “Thus some money is for retirement; some is for vacation; some is for college tuition; some is for mortgage or rental payments.”<sup>17</sup> Time, the authors of *Suburban Nation* argue in another context, is money (p. 224). Although no one suggests that time is as fungible as money, the authors do argue that time spent in the car should be time spent doing more rewarding activities. Thus, it is worth exploring whether people accept long commutes in part because time, too, comes in compartments. Do we tend to set aside a certain amount of time for work, for family, for driving? If so, as policy-makers learn to manipulate the habit of mental accounting, they may also gain knowledge of use to antisprawl advocates.

Given the apparent value in applying behavioral economics to sprawl, we may wonder whether the issue of sprawl might contribute to behavioral economics more generally. For example, the authors of *Suburban Nation* emphasize that the choice of where to live often turns on the “neighborhood.” In a neighborhood, “people buy the community first and the house second” (p. 48). As Professor Poindexter correctly suggests, selecting a neighborhood is “intimately bound up with the search for self.”<sup>18</sup> Although behavioral economics emphasizes the importance of self-perceptions of “fairness,” it may not yet fully capture the role that self-expression plays in purchasing decisions.

To be sure, behavioral economics has not yet generated a “unitary theory of behavior” and may only be an “unruly collection of effects.”<sup>19</sup> The same can certainly be said of the authors’ effort to explain why people continue to choose sprawl. Nevertheless, *Suburban Nation* provides reason to believe that Behavioral Law and Economics may help reduce sprawl.

#### IV. SUBURBAN ZONING CODES AND SPRAWL

So far, this Review has defined sprawl, discussed why it is undesirable, and considered the motivations of residents who choose to live there. Parts IV and V discuss topics that are more traditionally the domain of legal scholars. This Part considers the role of local law in causing or avoiding sprawl, and Part V considers the design of a political institution capable of stopping sprawl.

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16. *Id.* at 7.

17. *Id.*

18. Poindexter, *supra* note 6, at 621.

19. Sunstein, *supra* note 13, at 9.

Although legal scholars have mentioned zoning as a potential cause of sprawl, they tend to focus on its exclusionary character. As Frug and others have emphasized, localities may use zoning laws “to keep Them where They belonged—Out. If They had already gotten in, then its purpose was to confine Them to limited areas” (p. 10). Both Frug and Briffault emphasize that exclusionary zoning by local governments contributes significantly to sprawl.<sup>20</sup> Without disputing that sprawl’s “strict separation of housing types” derives from “insidious” urges (p. 10), the authors of *Suburban Nation* direct attention to other ways in which the current zoning codes cause sprawl.<sup>21</sup> The authors also propose alternatives to current codes that would encourage better developments.

A. *Three Ways That Current Suburban Zoning Codes Promote Sprawl*

*Suburban Nation*’s authors argue that current suburban zoning codes cause sprawl in three ways. First, the codes prohibit mixed uses in a single area. The codes typically “separate everything from everything else” (p. 10). The authors recall that in the nineteenth century planners minimized steel mill pollution by mandating separation of industry from living quarters. “[E]ver since, planners have repeatedly attempted to relive that moment of glory by separating everything from everything else” (p. 10). No longer satisfied separating “incompatible uses,” zoning now applies to every use. “A typical contemporary zoning code has several dozen land-use designations; not only is housing separated from industry but low-density housing is separated from medium-density housing, which is separated from high-density housing. Medical offices are separated from general offices, which are in turn separated from restaurants and shopping” (p. 10). In effect, sprawl is often the only form of lawful new development.

One consequence of all this separating is the elimination of many traditional forms of affordable housing. For example, “the timeless custom of living above the store” is “one of the most economical ways to provide housing, since the land and infrastructure costs are covered by the shops” (p. 50). Another example is the “outbuilding, also known as the garage apartment or granny flat” (p. 51). “The outbuilding provides affordable housing in stable single-family neighborhoods” (p. 51). Both of these traditional forms of affordable housing “are currently illegal in most suburban zoning codes” (p. 50).

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20. Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 9 (2000); Gerald E. Frug, *Against Centralization*, 48 BUFF. L. REV. 31, 38 (2000).

21. See, e.g., Briffault, *supra* note 20, at 8; Frug, *supra* note 20, at 33.

According to the authors, another problem with current zoning codes is that the codes “do not emanate from any physical vision.” “They have no images, no diagrams, no recommended models, only numbers and words” (p. 19). For example, the authors note that the codes require a large amount of open space but do not specify “the configuration and quality of open space” (p. 32). Thus, rather than a usable public area, such as a square, the preserved open space is distributed “along the house’s backyards” and rarely used by the public. Similarly, “most zoning codes, focused on numbers and ratios rather than on physical form,” cannot distinguish between well and poorly designed property (p. 176). They also suggest that the drafters of the local codes “have no clear picture of what they want their communities to be” (p. 19). The drafters, according to the authors, “are not imagining a place that they admire, or buildings they hope to emulate” (p. 19). Thus, sprawl is perhaps an “innocent error” caused by an absence of vision (p. 20).

#### B. *A Suburban Zoning Code That Promotes Traditional Development*

The authors of *Suburban Nation* observe that desirable traditional cities such as Charleston, Nantucket, Santa Fe, Alexandria, and others “exist in direct violation of current zoning ordinances” (pp. xi, 15). To address the problems with local zoning codes, the authors of *Suburban Nation* wrote the Traditional Neighborhood Development Ordinance (“TNDO”) (pp. 222-23). They state that the code reflects the design principles of traditional town planning (p. 222). They also describe it as a “physical-form-based ordinance” rather than the “typical” “words-and-numbers” ordinance (p. 177). Thus, it “visually describes the building’s volume, articulation, and relationship to the street—in other words, its building type” (p. 176). The code requires that all building types are “pedestrian-friendly, and that buildings are located nearby buildings of similar type” (p. 177). The code should “specify the building’s alignment, in order to shape public spaces” (p. 177). This specification is important “because it is a consistent streetscape that makes different uses compatible” (p. 177). The authors note that adoption of such a code requires the local government to have a “well-articulated vision of what the city is to be” (p. 177). If a community wishes “to achieve a high degree of harmony in building style—either to protect and enhance their historic character or to develop a new character,” the authors suggest adoption of an architectural code that “addresses building materials, proportions, colors, and other surface design issues” (p. 177). According to the authors, TNDO-type ordi-

nances have been adopted in several jurisdictions.<sup>22</sup> Aware that alterations to zoning codes often lead to litigation over lost property values, the authors recommend that localities make compliance with a TNDO “optional, but made attractive by an accelerated permitting process” (p. 224).

Unfortunately, *Suburban Nation* does not contain the text of either current codes or their proposed alternatives. Nevertheless, in providing both a cogent critique of present codes and describing a real alternative, the authors provide legal scholars with a promising source of ideas for reducing sprawl.

## V. A UNIFIED REGIONAL GOVERNMENT?

A main responsibility for legal scholars who study sprawl is to describe a democratic institution that provides citizens with the capacity to stop sprawl. Although the authors of *Suburban Nation* join the current academic consensus in favor of a unified regional government, the evidence in their book suggests that a properly designed regional transportation board would suffice to stop sprawl.

Frug and Briffault recommend establishing a general regional government that, among other things, would address sprawl.<sup>23</sup> In *The City as a Legal Concept*, Frug argued for increased local control because the locality was a major focal point of democratic participation.<sup>24</sup> Briffault, emphasizing that suburbs have had great success in defending their interests and noting that strengthening local control most benefits those localities with the most resources, urged a greater state role.<sup>25</sup> In turn, Frug agreed that “problems with current judicial and legislative deference to suburban self-interest” exist but argued that Briffault “does not confront the equally serious problems engendered by cities’ inability to be self-governing.”<sup>26</sup> He urged increased power for neighborhoods within a regional metropolitan government. Briffault and many others agree.<sup>27</sup> By increasing the power of neigh-

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22. P. 177. Jurisdictions using TNDO-style ordinances include Sacramento County, Pasadena, Loudon County, Miami-Dade County, Orlando, Columbus, Santa Fe, and Austin. P. 223. Charleston, Santa Barbara, Nantucket, and Santa Fe, among other cities, have adopted architectural codes. P. 177.

23. Briffault, *supra* note 20, at 10; Frug, *supra* note 20, at 37.

24. Frug, *supra* note 3, at 1059 (1980).

25. Briffault, *supra* note 4, at 346-56.

26. Frug, *supra* note 5, at 271-72.

27. See, e.g., Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 473 (1999) (arguing that “[g]overnance in metropolitan areas would be far more consistent with public values if metropolitan area local governments were as limited and subordinate as BIDs are”); Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75 (1998) (proposing Block Improvement Districts); Poindexter, *supra* note 6, at 649 (arguing that the “neighborhood would be the optimal level for city government”).

borhoods within a strong regional governmental framework, many local government academics hope to capture the participatory benefits of decentralization while minimizing its tendency to empower exclusivity.

The authors of *Suburban Nation* also argue for a consolidated regional government that would address sprawl. Their regional government would address “issues of environmental conservation and restoration, transportation, social services, affordable housing, the location of Lulus [Locally Undesirable Land Uses], and economic development” (p. 149). They add that “local planning and zoning, policing, and maintenance should remain” at the municipal level, while “community enhancement and redevelopment, quality of life, and tourism should be attended to by neighborhood organizations” (p. 149). “This redistribution recognizes that the success of governance at every scale depends on the assignment of responsibilities to the smallest jurisdiction that can handle it comprehensively” (p. 149).

Nothing in *Suburban Nation* begins to establish the need for such a radical restructuring of local governance. Nor is it clear why “comprehensiveness” alone should dictate the proper form of democratic government. A full consideration of the merits of a unified regional government is beyond the scope of this Review. Rather, it suffices here to make two brief points.

First, a unified regional government sacrifices a key attribute that makes American local government so successful. Like the federal and state governments, a unified regional government would have the same boundaries, voting arrangements, and powers for every issue within its domain. America has different local structures for governing schools, economic development, and provision of medical care, however, because fair distribution of each social good requires a slightly different form of local government.<sup>28</sup> For instance, business improvement districts succeed in promoting urban economic development in part because of their limited size, limited authority, and a voting arrangement that convinces local private interests to invest in the urban core while preserving to the public a sufficient role in neighborhood governance.<sup>29</sup> Other tasks may not warrant the same structure. A uni-

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28. Professor Michael Walzer argues that the proper “distribution” of a particular social good — education, health care, housing — depends on “principles internal to each distributive sphere.” The variety of specialized forms of local government may be thought of as (imperfectly) allowing the distribution of a good to reflect the values of that good. MICHAEL WALZER, *SPHERES OF JUSTICE* (1983).

29. The precise contours of the institutional arrangement requires a debate about the meaning of the particular good. For example, the correct voting structure for a local school board requires a debate about public education. If public education aims to teach democratic values, an egalitarian school board may be warranted. The more concerns of transmitting parental values move to the fore, the more a voting arrangement that gives parents a greater role makes sense.

fied regional government would prevent the form of local government from best matching its particular task.

Second, a unified regional government is not necessary to combat sprawl. Americans have long rejected calls for unified regional government. Although academic solutions need not be politically feasible at the time they are first proposed, the strong and enduring public resistance to this form of government at a minimum requires that scholars justify the necessity of such a form of government. As the authors note, the principles of good regional planning — such as encouraging traditional neighborhood developments — are “straightforward” (p. 141). What is needed, therefore, is a regional institution capable of and focused on implementing these rules. A regional government devoted exclusively to combating sprawl is, at least according to some, politically realistic.<sup>30</sup> And given the key role of transportation policy, it takes little imagination to see that the many existing regional transportation bodies could, with some modifications, become effective anti-sprawl regional governments. Sprawl, therefore, does not provide a justification for a full-fledged “consolidated regional government.”

Accordingly, legal scholars of sprawl must give specific consideration to the authority, boundaries, and voting arrangements that would make America’s regional transportation boards capable of encouraging better forms of suburban development. Should such a regional board have the power to rewrite a locality’s zoning law? Should current residents or developers of sprawl have more (or less) voting authority than those in other areas? Should neighborhoods have a formal role? There is much to consider.

#### CONCLUSION

This Review has discussed *Suburban Nation* in order to make five points about the study of law and sprawl. First, Duany, Plater-Zyberk, and Speck provide a useful definition of sprawl that will allow legal scholars to distinguish between sprawl and better forms of new suburban development. Second, *Suburban Nation* provides a careful description of how sprawl harms local democratic life — harms that may provide justification for new anti-sprawl laws. Third, *Suburban Nation* suggests that many residents who choose to live in sprawl come to regret that decision. If that is correct, the nascent effort of Law and Behavioral Economics to explain “citizen errors” may someday help to reduce sprawl. Fourth, the book suggests that local suburban zoning

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30. See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing The Barriers To New Regionalism*, 88 GEO. L.J. 1985, 2048 (2000). (“Regionalism is most likely to take root on matters of land use and transportation . . .”).



codes cause sprawl in ways not yet considered by legal scholars. Finally, there is evidence in *Suburban Nation* suggesting that legal scholars should focus on reforming current regional planning boards so that the boards are capable of stopping sprawl.