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BOOK REVIEW

FIVE MYTHS ABOUT SPRAWL

Sprawl: A Compact History by Robert Bruegmann. Chicago, Ill.: University of Chicago Press, 2005. Pp. 301. \$27.50 (cloth).

Michael Lewyn*

I. INTRODUCTION

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

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1. See ROBERT BRUEGMANN, *SPRAWL: A COMPACT HISTORY* 18 (2005) (describing sprawl as “low-density, scattered, urban development”); OLIVER GILLHAM: *THE LIMITLESS CITY* 4 (2002) (listing a variety of definitions, many of which emphasize development far from traditional regional cores as well as automobile-oriented nature of “sprawl” development). Bruegmann’s definition also describes sprawl as “unplanned.” See BRUEGMANN, *supra* at 18 (describing sprawl as development “without systematic large-scale or regional public land-use planning”). But if development is essentially sprawling in nature, it is sprawl regardless of whether or not it was “planned” by a regional government, a local government, or a real estate developer. Thus, whether the development is “planned” or “unplanned” is irrelevant to whether that development constitutes “sprawl.”
2. See DAVID RUSK, *CITIES WITHOUT SUBURBS* 7, 14–20 (3d ed. 2003) (reporting that, of America’s twelve largest cities in 1950, ten lost population in later decades; generally, cities have gained population only by annexing suburbs). *But see infra* notes 50–52 and accompanying text (discussing recovery of some cities in 1990s).
3. See Mark Andrew Snider, Note, *The Suburban Advantage: Are The Tax Benefits of Homeownership Defensible?*, 32 N. KY. L. REV. 157, 163 n.43 (2005) (noting that, since 1970, suburban population has grown by 40%).
4. See Roberta F. Mann, *On The Road Again: How Tax Policy Drives Transportation Choice*, 24 VA. TAX REV. 587, 607 (2005) (reporting that two-thirds of new jobs located in suburbs).
5. See Snider, *supra* note 3, at 163 (noting that average suburban household income in 1999 exceeded \$76,000, while average urban income only reached \$40,816).
6. See GILLHAM, *supra* note 1, at 132 (“[A]lmost 55 percent of the nation’s citizens living in poverty dwelt in the inner city in 1998. In 1960, that number was less than one-third.”).

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

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

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

7. See Mann, *supra* note 4, at 607.

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

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

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

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

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

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

14. Nicole Stelle Garnett, *Save The Cities, Stop The Suburbs?*, 116 YALE L.J. 598, 603 (2006) (describing Bruegmann’s book). See also BRUEGMANN, *supra* note 1, at 10 (positing sprawl as a result of “the democratization of society . . . [as] citizens have obtained the ability to exercise the choices that once were the sole prerogative of the wealthy and powerful.”).

15. See, e.g., Vincent J. Cannato, *The Way We Live Now*, WKLY. STANDARD, Mar. 20, 2006, at 33, available at 2006 WLNR 4965810 (lauding book as “eminently readable and rational”); Glenn Harlan Reynolds, *Learning to Love Sprawl*, SATURDAY EVENING POST, Mar. 1, 2006, at 90, available at 2006 WLNR 4261933 (stating book “makes a strong case that a lot of the things we think we know about sprawl just ain’t so. I hope that it gets the attention it deserves”); Kevin Nance, *Learning to Sprawl: Think The Suburbs Are Getting Too Crowded?*, CHI. SUN-TIMES, Dec. 27, 2005, at 39, available at 2005 WLNR 20976009 (“[T]he early critical response to Bruegmann’s book has been mostly positive”).

16. See Garnett, *supra* note 14, at 609 (criticizing some of Bruegmann’s arguments, but describing book as “a valuable addition to the voluminous land use literature—well-researched, well-written, thought-provoking, and full of captivating history”).

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

II. FIVE PRO-SPRAWL MYTHS

Bruegmann's book claims that:

1. Sprawl has been going on for centuries and is thus what most people naturally desire in the absence of government coercion;¹⁷
2. Sprawl is thus the result of the free market at work, and any seemingly pro-sprawl government policies were virtually irrelevant to the growth of automobile-dependent suburbia;¹⁸
3. Regardless of the origins of sprawl, the harmful side effects of sprawl are overrated by critics of the status quo;¹⁹
4. Sprawl cannot be limited without government regulations that artificially constrict the housing supply and thus raise housing prices;²⁰ and
5. The anti-sprawl movement is elitist.²¹

As will be shown below, each of these assertions is flawed. In fact, the status quo is: (1) not inevitable; (2) partly a result of government intervention in the economy; (3) has negative side effects ignored by Bruegmann; (4) can be changed without making government more intrusive; and (5) is opposed by Americans from a wide variety of backgrounds.

A. *Myth One: The Status Quo Is Eternal*

One of the most widely praised elements of Bruegmann's book is his use of ancient history and comparative data to justify the status quo.²²

17. See BRUEGMANN, *supra* note 1, at 10 (claiming sprawl is perhaps a "predictable result of increasing wealth"); *id.* at 23–32 (describing pre-modern and nineteenth-century "sprawl"); *id.* at 73–80 (describing trend toward sprawl in affluent countries).

18. See *id.* at 101–07.

19. See *id.* at 138–50.

20. See *id.* at 169–219.

21. See *infra* notes 179–185 and accompanying text (describing quotes scattered throughout book).

22. See, e.g., Garnett, *supra* note 14, at 600 ("Bruegmann's most important contribution is to place the current debate . . . in historical perspective"); Cannato, *supra* note 15 ("Bruegmann also places the issue within the larger historical context. He attempts to show that dispersal from high-density core areas to low-density outer areas is a phenomenon common not just to modern America, but also ancient Rome and 19th-century England"); Reynolds, *supra* note 15 ("Rich people have always wanted to

Bruegmann tells a story of eternal sprawl, pointing out that aristocrats have purchased country estates in civilizations as diverse as ancient Rome and eighteenth-century London.²³ He goes on to show that, in both Europe and the United States, some central cities have declined while automobile use has risen in recent decades.²⁴ Based on these facts, Bruegmann concludes that sprawl is a “predictable result of increasing wealth”²⁵ that has given the middle class “the ability to exercise the choices that once were the sole prerogative of the wealthy and powerful.”²⁶ He thus suggests that, if sprawl is what the middle class wants, any attempt to limit sprawl or its effects is doomed.²⁷

There is a grain of truth underlying Bruegmann’s version of history: given the wide variety of consumer tastes, *some* people will always prefer relatively scattered, low-density housing. Bruegmann’s story, however, overlooks important differences of degree: every city may have *some* sprawling development, but not every city is equally dominated by sprawl. In the most “sprawl-bound” cities and metropolitan areas, most residents are unable to get to jobs or shops without driving. Carless residents are thus virtually helpless.²⁸ For example, in Oklahoma City, Oklahoma—a city with over 500,000 residents²⁹—buses do not operate at night or on Sundays.³⁰ Therefore, the 8.2% of households without cars³¹ are essentially frozen out of jobs that require evening work and are not within walking or bicycling distance. In cities planned around the automobile, streets are often so wide and traffic moves so fast that the basic human act of walking outdoors becomes dangerous.³² Many streets lack sidewalks and, as a

sprawl”); Nance, *supra* note 15 (“Overall, Bruegmann contends, sprawl is a natural, historic, worldwide process of decentralization that’s been going on at least since ancient Rome and China, when the wealthy got away from the bustle and noise of city centers by building homes in outlying areas.”).

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

24. *Id.* at 73–80.

25. *Id.* at 10.

26. *Id.*

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

28. See *infra* notes 134–140 and accompanying text (showing statistics on number of nondriving Americans; about one-third of all Americans, including 11.5% of adults, have no drivers’ license, while 21% of senior citizens, about half of disabled, and majority of welfare recipients do not drive).

29. THE WORLD ALMANAC AND BOOK OF FACTS 2006 (Erik C. Gopel & Vincent Spadafora eds., 2006), at 480 (Oklahoma City had 528,042 residents in 2004).

30. See, e.g., GENERAL INFORMATION, METRO TRANSIT, available at <http://www.gometro.org> (showing that, in Oklahoma City, buses do not run on Sundays or after 7:30 p.m.); Michael E. Lewyn, *Suburban Sprawl: Not Just An Environmental Issue*, 84 MARQ. L. REV. 301, 348–50 (2000) (citing other examples of inadequate transit service throughout the United States).

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

32. See SURFACE TRANSPORTATION POLICY PROJECT, MEAN STREETS 2004, EXECUTIVE SUMMARY, available at http://www.transact.org/library/reports_html/ms2004/exec_sum.asp (reporting that over 4000 American pedestrians per year killed by automobile traffic, and “the most dangerous places to walk are metropolitan areas marked by newer,

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

By contrast, residents of less sprawling regions have a variety of transportation options. For example, the majority of New York City residents get to work via public transit (as opposed to 1% of Oklahoma City residents),³⁶ and the city has prosperous neighborhoods where most households do not even own cars.³⁷ In metropolitan New York, transportation choice is not limited to city residents: New York City has some highly automobile-dependent suburbs³⁸ but also has two suburbs where a majority of commuters use public transit regularly.³⁹ In other words, New York accommodates a wide variety of consumer preferences: preferences for city living, preferences for sprawl, and preferences for transit-oriented suburbia.

Cities in some other affluent countries are similar to New York City. Over 70% of Tokyo residents walk, bicycle, or ride transit to work, as do 69% of Stockholm residents and 62% of Munich residents, respectively.⁴⁰ If some affluent places are less “sprawling” than others, it logically follows

low-density developments, where wide, high-speed arterial streets offer few sidewalks or crosswalks.”).

33. See Nicole Stelle Garnett, *Ordering (And Order In) The City*, 57 STAN. L. REV. 1, 35 (2004) (reporting that “wide residential streets without sidewalks” are now common); Ann DeFrango, *Reader Stands Ready To Battle City’s Lack of Sidewalks*, OKLAHOMAN, June 9, 2004, at 19A, available at 2004 WLNR 21091635 (reporting that many Oklahoma City streets lack sidewalks). See also MICHAEL LEWYN, BUCKHEAD—DON’T EVEN THINK OF WALKING HERE!, available at <http://atlantaphotos.fotopic.net/p14010314.html>, (photographic illustrations of residential streets without sidewalks); MICHAEL LEWYN, BUFORD HIGHWAY—ANOTHER BAD BLOCK FOR PEDESTRIANS, available at <http://atlanta.photos.fotopic.net/p14010301.html> (showing photos of commercial streets without sidewalks).
34. Lawrence M. Friedman, *The Eye That Never Sleeps: Privacy and Law in the Internet Era*, 40 TULSA L. REV. 561, 563 (2005).
35. See BRUEGMANN, *supra* note 1, at 10 (tying sprawl to “the democratization of society” as middle class now able “to exercise the choices that once were the sole prerogative of the wealthy and powerful.”).
36. See CARFREE CENSUS DATABASE, *supra* note 31.
37. See CITY DATA, 10162 ZIP CODE DETAILED PROFILE, available at <http://www.city-data.com/zips/10162.html> (reporting that, in one New York City zip code with average household income of over \$100,000, 550 of area’s 943 households had no car in 2000).
38. See *People v. Coutard*, 454 N.Y.S. 2d 639, 642 (Dist. Ct. 1982) (“[I]n a suburban county such as [Nassau County], the use of an automobile by most of its citizens is often as necessary as placing bread upon their tables.”); David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1751 (2005) (describing Nassau County as New York City suburb).
39. See CARFREE CENSUS DATABASE, *supra* note 31 (showing majority of residents in Hoboken, New Jersey and Bronxville, New York, get to work by using public transit); Doug Halonen, *Station Affiliates on Verge of Victory*, TELEVISION WK., Oct. 10, 2005, at 1, available at 2005 WLNR 16892609 (characterizing Bronxville as a “swank New York suburb”); John Kelly, *Trade Center Victims Were Mostly Men with Families*, HOUSTON CHRON., Oct. 27, 2001, at A13, 2001 WLNR 11719685 (mentioning Hoboken on list of New York City suburbs).
40. PETER NEWMAN & JEFFREY KENWORTHY, *SUSTAINABILITY AND CITIES: OVERCOMING AUTOMOBILE DEPENDENCE* 83 (1999).

that public policy can affect the degree of sprawl in affluent, democratic societies. In other words, some low-density development might be normal in an affluent, democratic society—but not the degree of sprawl that makes constant driving a necessity for most people.

Bruegmann implies that the differences between the United States and Europe are meaningless because even compact European cities have become more suburbanized and automobile-dependent.⁴¹ In Europe, however, transit ridership has actually *increased* in recent years: in European Union countries, streetcar and subway ridership rose by 12.5% between 1995 and 2003,⁴² and despite massive highway construction by European governments,⁴³ the automobile's share of European passenger transportation increased only slightly between 1995 and 2003 (from 74.1% of all passenger miles to 74.4%).⁴⁴ Furthermore, after losing population for decades, some European core cities have begun to regain population.⁴⁵

Even in the United States, there is some reason to believe that sprawl is not an unstoppable trend. American public transit ridership has risen by over 20% in the past decade⁴⁶ and (as Bruegmann admits) some American cities are beginning to grow and to retain middle-class residents,⁴⁷

41. See BRUEGMANN, *supra* note 1, at 52 (citing numerous examples, including Paris' loss of jobs to its suburbs); *id.* at 202 ("Just as in America, European urban dwellers are using their cars more and using public transportation less.").

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

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

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

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

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

47. See BRUEGMANN, *supra* note 1, at 51–56.

while some American suburbs have become more densely populated.⁴⁸ While some cities have continued to lose population,⁴⁹ eight of America's ten largest cities gained population between 1990 and 2000,⁵⁰ including two (New York and Chicago) that had lost population in earlier decades.⁵¹ Similarly, several smaller cities gained population in the 1990s after having lost people in earlier decades.⁵² Thus, Bruegmann's vision of sprawl as inevitable and natural is belied by the countertrends towards higher transit ridership and urban recovery.

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

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

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

48. *Id.* at 67–69.

49. See THE WORLD ALMANAC AND BOOK OF FACTS 2006, *supra* note 29, at 480 (listing gains and losses of various cities).

50. *Id.*

51. *Id.* (showing that New York lost population between 1950 and 1980, and Chicago lost population between 1950 and 1990).

52. *Id.* (showing that Indianapolis, San Francisco, Fort Worth, Seattle, Boston, Denver, Portland, Kansas City, Atlanta, Omaha, Oakland, Minneapolis, Tampa, Madison, and Fort Wayne all lost population in the 1970s but regained residents in at least one of the following two decades). Ten of these fifteen cities apparently continued to gain population between 2000 and 2004. See 2006 ABSTRACT, *supra* note 46, at 32–35 (estimating that Fort Worth, Indianapolis, Denver, Omaha, Seattle, Portland, Atlanta, Tampa, Kansas City, and Madison gained population while Boston, San Francisco, Oakland, Minneapolis, and Fort Wayne did not).

53. See BRUEGMANN, *supra* note 1, at 10 (claiming sprawl is perhaps a "predictable result of increasing wealth").

54. See, e.g., THOMAS SOWELL, "URBAN SPRAWL" AND LIBERAL GALL (June 29, 1999), available at <http://www.jewishworldreview.com/cols/sowell062999.asp> (attacking "a government-sponsored crusade against urban sprawl" without acknowledging the possibility of pro-sprawl government policies, and asserting that "[t]he real objection [to sprawl] may be that all this is going on without the guiding hand of Big Brother.>").

55. See Lewyn, *supra* note 30, at 304–35; GILLHAM, *supra* note 1, at 15–16, 32–38, 42–45, 134–36 (discussing how government policies have accelerated sprawl).

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

ban homeowners,⁵⁷ and pro-sprawl zoning regulations.⁵⁸ Bruegmann's responses to these arguments, however, are based on questionable logic.

1. *Do Highways Matter?*

Throughout the twentieth century, government at all levels favored highways over public transit.⁵⁹ Government highway spending began early in the twentieth century⁶⁰ but accelerated after 1956 when the federal government enacted the Interstate Highway Act, committing the federal government to paying ninety percent of the cost of America's interstate highway network.⁶¹ In the decades immediately after the passage of the Highway Act, central cities lost population faster than ever before or afterward.⁶² Highway spending almost certainly accelerated suburbanization: when a government builds a superhighway from downtown X to suburb Y, people who work downtown can commute more quickly from suburb Y to downtown X, and thus are more likely to move to suburb Y. By contrast, when dirt roads served suburb Y, it was far less appealing to commuters.⁶³

In addition to making suburbs more attractive to commuters, highways made cities less attractive to inhabitants by destroying urban neighborhoods. Millions of houses in cities were bulldozed in order to create space for highways and other redevelopment schemes.⁶⁴ For example, nearly 20% of Baltimore's African Americans were displaced by I-95 and I-83,⁶⁵ 20,000 families in Miami were displaced by highway construction,⁶⁶ and

57. *Id.* at 102–04.

58. *Id.* at 105–06.

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

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

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

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

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

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

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

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

19,000 Clevelanders were displaced by one downtown freeway.⁶⁷ Even neighborhoods not destroyed by highways were damaged by expressway construction. For example, before the enactment of the Highway Act, Claiborne Avenue was the main street of the Treme section of New Orleans, with 200 businesses and a 6100-foot median.⁶⁸ Highway bureaucrats built I-10 on Claiborne Avenue, cutting the neighborhood in half and turning the median into a strip of dirt.⁶⁹ After the destruction of Claiborne Avenue, Treme deteriorated: a more recent survey of area businesses showed that 63% of business owners would not invest in another business in the neighborhood because of the neighborhood's physical unattractiveness and high crime.⁷⁰

Since the government did not always replace housing units that were destroyed in order to make room for highways, highway construction reduced the urban housing supply and, in turn, the city population. In Cincinnati, for example, the construction of I-75 displaced residents of the city's African American West End. The displaced West Enders thus flooded nearby neighborhoods (causing massive racial transition and "white flight" from those neighborhoods).⁷¹ One such neighborhood, Mount Auburn, changed from 84% white in 1960 to 74% black in 1970;⁷² presumably, at least some of the whites who left Mount Auburn moved to Cincinnati's suburbs.

When a city loses population to its suburbs, it may become less attractive in a variety of other ways. For example, the city's tax base might decline, forcing the city to raise taxes to pay for city services.⁷³ Moreover, if the people who leave the city are disproportionately middle- and upper-class, the remaining, relatively low-income residents might support redis-

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

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

69. *Id.* at 133–34.

70. *Id.* at 135.

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

72. Michael E. Lewyn, *Suburban Sprawl: Not Just An Environmental Issue*, 84 MARQ. L. REV. 301, 316 n.128 (citation omitted).

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

tributionist policies that increase taxes and drive away even more middle-class voters.⁷⁴

Nevertheless, Bruegmann speculates that highways may have actually helped cities, noting that roads “were heavily supported by central-city interests because these individuals believed that these roads, like the railroads before them, would reinforce the centrality of the downtown and make it easier for people from throughout the region to get to it.”⁷⁵ However, Bruegmann does not explain why he thinks this view is correct.⁷⁶ Similarly, he asserts that, “[g]iven the strong rebound of many of these cities in recent years, it is altogether possible that, at some point in the near future, most people will conclude that [expressways] were actually largely beneficial for central cities.”⁷⁷ Again, Bruegmann does not explain why “most people” would reach this conclusion. In fact, his conclusion seems highly implausible, given the rapid decline of cities during the years immediately after the passage of the Highway Act.⁷⁸ If cities rebound, their success is likely to be despite, not because of, the highways that fed suburban growth.

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

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

75. BRUEGMANN, *supra* note 1, at 108.

76. It is unclear whether Bruegmann actually believes that highways help downtowns. He writes that highways “made leaving town easier” but then writes that “both [highways and railroads] caused some dispersal and both caused some centralization.” *Id.* The first remark suggests that highways did cause sprawl, while the second statement is more equivocal.

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

78. See *supra* note 62 and accompanying text.

79. BRUEGMANN, *supra* note 1, at 105.

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

from cities (thus reducing urban tax bases, leading to higher taxes).⁸¹ In other words, Social Security spending is place-neutral—but highway spending is not.

2. Housing Subsidies

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

Bruegmann apparently defends the FHA's racist policies, asserting that "there was, in fact, a great deal of evidence over many years indicating that property values did tend to drop as neighborhoods got older and experienced ethnic or racial turnover."⁸⁷ Even if Bruegmann's claim is factually correct,⁸⁸ he overlooks the possibility that subsidies such as FHA

81. See *supra* notes 62–74 and accompanying text (describing the impact of highways upon cities). Bruegmann also asserts that in any city/suburb accounting, "the spending by the federal government since the eighteenth century for ports and railroads, bridges and highways, universities and hospitals located primarily in the central cities would have to be factored in." BRUEGMANN, *supra* note 1, at 105. This argument lacks merit for two reasons. First, since government was far smaller prior to the 1950s than it is today, such expenses were not always government-financed. See Eric A. Cesnik, *The American Street*, 33 URB. LAW. 147, 167 (2001) (explaining that streets were often privately financed until the twentieth century); U.S. OFFICE OF MGMT. AND BUDGET, BUDGET OF THE UNITED STATES GOV'T: HISTORICAL TABLES, FISCAL YEAR 2007 23–24 available at <http://www.whitehouse.gov/omb/budget/fy2007/pdf/hist.pdf> (showing that federal spending was only 3.4% of GNP in 1930, grew to 11.6% of GNP in 1948, and is now about 20% of GNP); *id.* at 312–13 (showing that state and local government spending grew from 5.6% of GNP in 1948 to over 11% of GNP today). Second, highway spending, as noted above, was often not beneficial for cities. See *supra* notes 62–74 and accompanying text.

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

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

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

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

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

87. BRUEGMANN, *supra* note 1, at 102. He also states that "[n]o amount of regulatory control would have altered this fact of life." *Id.* The FHA, however, was not trying to "control" private racism but, rather, to subsidize such racism—a very different issue.

88. Bruegmann provides no evidence for this assertion. Although he does footnote this statement, his footnote relates to an entirely different issue: the anti-urban bias of an entirely different government agency, the Home Owners' Loan Corporation (HOLC). HOLC "redlined" urban neighborhoods by issuing maps that graded neighborhoods

loan insurance might make moving to suburbia cheaper at the margin: that is, some people might be willing to leave a low-value urban neighborhood if they could make a 10% down payment on a suburban home, but would not be willing to move if they had to make a 33% down payment on a suburban home. To the extent that would-be homeowners fell into this category, FHA mortgage insurance encouraged suburban growth.

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

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

and colored the riskiest areas red. AMY HILLIER, REDLINING IN PHILADELPHIA, *available at* <http://cml.upenn.edu/redlining/intro.html>. Bruegmann writes that HOLC's influence was limited because it did not make its maps available to private lenders. BRUEGMANN, *supra* note 1, at 248 n.12. However, Amy Hillier, the researcher cited by Bruegmann, has pointed out that HOLC was far less influential than FHA. *See* HILLIER, *supra* (stating that the FHA manuals "established highly racialized neighborhood standards that lenders were encouraged to consider if they wanted to receive FHA insurance. FHA's neighborhood appraisal standards ultimately had a much greater impact on lending patterns in urban communities than HOLC's maps."). Thus, Bruegmann's footnote does not support either his broad claim that FHA's anti-urban bias was unimportant or his narrower claim that racial integration lowers property values.

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

90. *Compare* MICHAEL SOUTHWORTH & ERAN BEN-JOSEPH, REGULATED STREETS: THE EVOLUTION OF STANDARDS FOR SUBURBAN RESIDENTIAL STREETS 34–36 (1993) (showing that the FHA favored cul-de-sacs over grid streets, houses sitting on at least 6000 square feet of land, and blocks at least 600 feet long) *with* REID EWING, PEDESTRIAN- AND TRANSIT-FRIENDLY DESIGN: A PRIMER FOR SMART GROWTH 2–4, *available at* http://www.epa.gov/smartgrowth/pdf/ptfd_primer.pdf (arguing pedestrian-friendly, transit-friendly development requires higher densities than are common in many suburbs and blocks no longer than 300 feet; higher density means more people can walk to transit stops, and short blocks mean pedestrians can cross streets more frequently) *and* DUANY ET AL., *supra* note 9, at 23 (explaining that the cul-de-sac street pattern discourages walking because residential streets are not connected to each other, which means pedestrians must go out of their way to visit nearby residential streets).

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

92. *See* U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1935 25 (57th ed. 1935), *available at* <http://www2.census.gov/prod2/statcomp/documents/1935-02.pdf> (showing that the city of St. Louis was 11.6% black).

More plausibly, Bruegmann points out that the federal income tax deduction for interest on mortgages does not favor suburbs because this deduction can be used for “any kind of single-family unit, whether a house in the suburbs or a condominium in a high-rise downtown.”⁹³ Even here, however, Bruegmann oversimplifies. Condominiums were not common (or even authorized by most states’ statutes) until the 1960s.⁹⁴ Before that time, Americans could not easily purchase apartments⁹⁵ and thus had to buy a house in order to qualify for the home mortgage deduction. Because houses tend to be disproportionately located in suburbs,⁹⁶ the home mortgage deduction tended to favor migration to suburbia until the 1960s.

3. Zoning

As Bruegmann admits, municipal zoning codes often mandate segregation of housing from other land uses and require low population density.⁹⁷ These policies, by increasing the distance between housing and other land uses, ensure that many Americans cannot live within walking distance of shops or offices, thus effectively forcing Americans into their cars.⁹⁸ Nevertheless, Bruegmann asserts that “zoning itself cannot be blamed for most of the sprawl that has occurred because sprawl was well underway long before zoning became common in American cities, which only started to happen in the 1920s.”⁹⁹ Bruegmann’s suggestion that “most of the sprawl that has occurred” preceded zoning is misleading. As of 2003, there were 105.8 million occupied housing units in the United States.¹⁰⁰ Only 9.6 million of these units (or about 9%) were built before 1920.¹⁰¹ Thus, most of America’s housing was created after zoning became common.

Bruegmann also suggests that, because some suburbs have become more densely populated in recent years, “zoning has changed as neces-

93. BRUEGMANN, *supra* note 1, at 103.

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

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

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

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

98. Cf. Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L.J. 1445, 1447 (2002) (explaining that, in neighborhoods organized around “the mobility pattern of the pedestrian,” most residents should live no more than a quarter of a mile from stores and schools).

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

100. U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY FOR THE UNITED STATES, 2003, available at <http://www.census.gov/hhes/www/housing/ahs/ahs03/tab1a1.htm>.

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

sary to accommodate market realities"¹⁰²—in other words, that zoning merely mimics the market, mandating sprawl when the market wants sprawl and changing when the market wants change.

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

Moreover, surveys of developers suggest that pro-sprawl land use regulation really *does* impede, rather than follow, market pressures for more compact housing. In 2001, the Urban Land Institute (ULI), a developers' trade association,¹⁰⁴ conducted a survey asking developers about the impact of zoning upon "alternatives to conventional, low-density, automobile-oriented, suburban development."¹⁰⁵ According to the survey, 85.4% of developers agreed that the supply of such development was inadequate to meet market demand,¹⁰⁶ and 78.2% of developers identified government regulation as a significant barrier to such development.¹⁰⁷ The ULI survey also revealed that over sixty percent of developers in both cities and inner suburbs stated that they wished to build more compact development than was generally allowable under government regulation.¹⁰⁸

For example, in California's Silicon Valley, exploding housing prices might, in the absence of government regulation, cause landowners to build smaller houses and more multifamily developments in order to meet consumer demand for affordable housing.¹⁰⁹ In Silicon Valley communities such as Santa Clara and Cupertino, however, almost every prop-

102. BRUEGMANN, *supra* note 1, at 106.

103. *Id.* at 106–07.

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

105. *Id.* at 126.

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

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

108. LEVINE, *supra* note 104, at 131. In particular, about 80% of developers indicated that they would develop more compactly in inner suburbs if zoning was less burdensome, and over 60% similarly indicated that relaxed regulations would lead them to develop more densely in central cities. *Id.* By contrast, developers in outer suburbs and rural areas were less interested in more compact development. *See id.*

109. *See id.* at 77.

erty zoned as single-family in the 1960s remains single-family today.¹¹⁰ Similarly, in Massachusetts only three-tenths of one percent of single-family parcels were rezoned between 1970 and 1999,¹¹¹ despite the fact that housing prices near Boston have exploded.¹¹² Thus, zoning does not always respond to consumer demand for more compact development.¹¹³

C. *Myth Three: Sprawl Is Harmless*

Even if government spending and government zoning policies have depopulated cities and made suburbia automobile-dependent, sprawl is hardly a serious social problem if its overall effects are harmless or beneficial. Therefore, Bruegmann attacks a wide variety of claims about the evil effects of sprawl. Bruegmann's rebuttal of some anti-sprawl claims is fairly persuasive, given the difficulty of establishing cause-and-effect relationships between sprawl and other social problems. For example, Bruegmann correctly suggests that there is no way of knowing whether limiting sprawl will reduce energy consumption enough to reduce global warming.¹¹⁴ Similarly, it is not clear whether sprawl costs suburban taxpayers significantly more than compact development,¹¹⁵ or whether sprawl will ever reduce food supply by creating a shortage of farmland.¹¹⁶

110. *Id.* at 204 n.1.

111. *Id.* at 78.

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

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

114. See BRUEGMANN, *supra* note 1, at 149 (“Even if everyone in the world came to live in the same way as the inhabitants of European central cities, this would certainly not, in itself, solve the global warming problem.”) Of course, if sprawl increases pollution, it probably contributes in some degree to global warming. See also *infra* notes 116–123 and accompanying text (describing relationship between sprawl and pollution). However, there is no way of knowing how significant that contribution is.

115. See BRUEGMANN, *supra* note 1, at 125. I note, however, that even if sprawl does not affect suburban or statewide tax burdens, sprawl may increase the taxes of urban taxpayers under certain circumstances. See Lewyn, *supra* note 30, at 336–37 (stating that, where new development is outside city limits, city taxes may increase because: (1) “if a city’s middle class migrates en masse to suburbia, its tax base will be smaller and it, therefore, will, other things being equal, have to raise taxes or reduce services”; and (2) a poorer city electorate is more likely to favor redistributive fiscal policies).

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

Bruegmann's handling of other issues, however, is far less supple. He attempts, for example, to deny the link between air pollution¹¹⁷ and sprawl by writing that the "cause of the pollution was neither sprawl nor the automobile itself but, rather, the inefficient fuel source it used."¹¹⁸ As long as automobiles are *using* those inefficient fuel sources, however, they are creating pollution. It logically follows that, by increasing driving, sprawl increases pollution. Perhaps someday automobiles will use more efficient fuel sources; until that day comes, however,¹¹⁹ more sprawl (other factors being equal) means more driving which, in turn, means more pollution.

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

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

118. BRUEGMANN, *supra* note 1, at 127. Bruegmann inexplicably adds: "For many of those in the anti-suburban camp, however, developing new and cleaner fuel sources was the last thing they wanted. It would only lead to more driving and more sprawl." *Id.* This unverifiable claim exemplifies the *ad hominem* fallacy: Bruegmann is trying to "shift [his] argument from the point being discussed (*ad rem*) to irrelevant personal characteristics of an opponent (*ad hominem*). Instead of addressing the issue presented by an opponent, this argument makes the opponent the issue." Paul E. Salamanca, *Constitutional Protection for Conversations Between Therapists and Clients*, 64 Mo. L. REV. 77, 97 n.106 (1999) (citation omitted). The sentence quoted seeks to persuade readers by attacking the alleged "anti-suburban camp" rather than focusing on the relationship between sprawl and pollution.

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

120. BRUEGMANN, *supra* note 1, at 127.

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

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

air pollution.¹²³ Thus, sprawl (other factors being equal) increases automobile-induced pollution even in central cities.

Bruegmann's treatment of the relationship between sprawl and obesity is similarly illogical. He writes that "ethnic and racial characteristics and low income are much more closely associated with obesity than any particular land-use pattern."¹²⁴ This claim presents a false dichotomy: *either* poverty causes obesity *or* sprawl causes obesity. The claim ignores the possibility, however, that both may be causes: poor people may be more likely to be obese than rich people, but poor people (or for that matter, not-so-poor people) living in a neighborhood that discourages walking may also be even *more* likely to be obese than other people with similar incomes.

Furthermore, Bruegmann's attempt to break the link between sprawl and traffic congestion rests on a slender factual base. At first glance, it might seem obvious that suburban life might increase driving, which, in turn, increases congestion. Bruegmann defends sprawl, however, on the grounds that "congestion and commuting times tend to rise, not fall, with density."¹²⁵ For example, Bruegmann cites Kansas City and Oklahoma City as role models of low-density places with little traffic congestion. Indeed, like most smaller cities, they do have less congestion than bigger cities.¹²⁶ Bruegmann's own examples, however, rebut his claim. If Bruegmann's theory was correct, these low-density cities would have experienced reduced traffic congestion if their densities fell over time. This reduced traffic congestion did not occur in Kansas City, however, where regionwide population density decreased by over 20% (from 1982 persons per square mile to 1435)—while the annual congestion-related delay per rush-hour traveler rose from 2 hours per year to 17 hours per year.¹²⁷ In Oklahoma City, moreover, population density did not change significantly (increasing slightly from 1524 persons per square mile to 1568) but congestion nevertheless increased from 3 hours per year to 12 hours per

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

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

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

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

127. TEXAS TRANSP. INST., THE MOBILITY DATA FOR KANSAS CITY, MO-KS, *available at* http://mobility.tamu.edu/ums/congestion_data/tables/kansas_city.pdf. It could be argued, of course, that places such as Kansas City failed to build enough roads to accommodate traffic. See *infra* notes 159–168 and accompanying text (discussing relationship between road construction and congestion). This argument is weak because, if lower density reduces congestion, Kansas City's decreased density should have reduced traffic without any need for massive road construction.

year.¹²⁸ Thus, sprawl has failed to reduce congestion, even in low-density, low-congestion regions.

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

More important than the anti-sprawl arguments Bruegmann mishandles are the arguments that he simply ignores. His chapter discussing the social costs of sprawl contains a subheading for "Social Concerns and Equity Problems"¹³² but his discussion under that subheading completely overlooks a major "equity problem" with sprawl—the plight of the carless young, old, poor, and disabled who lack access to jobs and shopping when streets are unfit for pedestrians and transit service is inadequate.¹³³ Almost one-third of all Americans have no drivers' license,¹³⁴ including about 11.5% of Americans over eighteen.¹³⁵ This figure almost certainly understates the number of non-drivers, since some Americans acquired a drivers' license

128. TEXAS TRANSP. INST., THE MOBILITY DATA FOR OKLAHOMA CITY, OK, *available at* http://mobility.tamu.edu/ums/congestion_data/tables/oklahoma_city.pdf.

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

130. MICHELLE CONLIN ET AL., EXTREME COMMUTING, *available at* http://www.businessweek.com/magazine/content/05_08/b3921127.htm.

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

132. BRUEGMANN, *supra* note 1, at 143. Instead of focusing upon the effects of sprawl upon non-drivers generally, he focuses on the question of whether cities should annex suburbs in order to improve urban tax bases, *id.* at 143-45—an important but not nationwide problem, since in many regions, cities have been able to annex a significant portion of their suburbs. *See* GILLHAM, *supra* note 1, at 141 (finding that of twenty largest U.S. cities, seven were able to annex over 100 miles of suburban territory between 1950 and 1990).

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

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

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

at one time but do not own a car.¹³⁶ Non-drivers tend to be among the most physically and economically disadvantaged members of American society. Twenty-one percent of Americans over sixty-five do not drive,¹³⁷ most children obviously do not drive,¹³⁸ almost half of disabled Americans have no car,¹³⁹ and the majority of welfare recipients do not own cars.¹⁴⁰

Non-drivers, however, are not characters in Bruegmann's story of suburban triumph.¹⁴¹ In fact, Bruegmann is an aggressive defender of government-funded road construction,¹⁴² apparently ignoring the possibility that, by moving jobs to suburbia, expressways move jobs to areas far from public transit and thus inaccessible to people without cars.¹⁴³ Despite Bruegmann's attempts to tie sprawl to freedom,¹⁴⁴ he is a huge proponent of "Big Government" if it supports suburbia—even if "Big Government's" decisions reduce the mobility of non-drivers.

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

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

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

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

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

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

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

142. See *id.* at 192–94. Cf. *supra* notes 62–74 and accompanying text (discussing the suburbanizing impact of highways).

143. See Garnett, *supra* note 140, at 183 ("[W]hile most suburban jobs are readily accessible by car, only a small percentage are accessible by public transit.").

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

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

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

147. See Georgette Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 616 n.31 (1997) (noting that poor often cannot afford to live in sub-

Bruegmann likewise overlooks the fiscal impact of compulsory motor-ing upon the vehicle-owning majority. The average American household spends \$6,960 on vehicle purchases, gasoline, vehicle maintenance and repair, and vehicle insurance.¹⁴⁸ To the extent that vehicle ownership is a virtually compulsory result of government policy,¹⁴⁹ these expenditures are essentially a government-imposed tax, similar to the income tax or property taxes.¹⁵⁰

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

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

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

It is unclear, however, whether Bruegmann thinks these negative ef-fects are inevitable. In discussing Oregon’s planning system (which limits suburban development around Portland and other Oregon cities by pro-hibiting large-scale development outside governmentally designated “ur-ban growth boundaries”),¹⁵⁴ Bruegmann goes back and forth between condemning the Oregon system and acknowledging that the effects of growth boundaries upon housing prices are unclear. At one point, Brueg-mann writes that the “losers” from the growth boundary include “all of the potential future inhabitants of the city [who] will pay sharply higher prices for their houses than those who arrived before the growth man-

urbs); GILLHAM, *supra* note 1, at 132 (noting that the majority of America’s poor live in central cities).

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

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

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

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

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

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

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

agement measures started to have an effect.”¹⁵⁵ A few pages earlier, however, he characterizes studies of the Oregon system’s effects upon prices as a “bewildering duel of statistics”¹⁵⁶ with “inconclusive”¹⁵⁷ results.

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

Bruegmann also fails to adequately discuss the possibility of limiting sprawl through more market-oriented, libertarian policies. The only such policy that Bruegmann discusses in detail is the option of cutting government spending on sprawl-creating expressways—an option Bruegmann vigorously rejects. He asserts that inadequate road construction “has led to a marked increase in congestion”¹⁵⁹ while regions such as Phoenix, Atlanta, and Houston are “building [their way] out of congestion.”¹⁶⁰ In fact, however, congestion increased in all three areas between 1982 and 2003: from 17 hours per rush-hour traveler to 67 in Atlanta,¹⁶¹ from 39 hours to 63 in Houston,¹⁶² and from 18 hours to 49 in Phoenix.¹⁶³ Bruegmann further asserts that Chicago has not built enough freeways to accommodate traffic,¹⁶⁴ but two of the three regions he praises (Atlanta and Houston) have *more* hours of delay per traveler than Chicago!¹⁶⁵

155. BRUEGMANN, *supra* note 1, at 216.

156. *Id.* at 210.

157. *Id.*

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

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

160. *Id.* at 253 n.25.

161. See TEXAS TRANSP. INST., THE MOBILITY DATA FOR ATLANTA, GA, available at http://mobility.tamu.edu/ums/congestion_data/tables/atlanta.pdf.

162. See TEXAS TRANSP. INST., THE MOBILITY DATA FOR HOUSTON, TX, available at http://mobility.tamu.edu/ums/congestion_data/tables/houston.pdf.

163. See TEXAS TRANSP. INST., THE MOBILITY DATA FOR PHOENIX, AZ, available at http://mobility.tamu.edu/ums/congestion_data/tables/phoenix.pdf.

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

165. See TEXAS TRANSP. INST., THE MOBILITY DATA FOR CHICAGO, IL-IN, available at http://mobility.tamu.edu/ums/congestion_data/tables/chicago.pdf (Chicago has 58 hours

In fact, the effects of road-building upon congestion are anything but certain. Perversely, road-building may make some places more congested because of the phenomenon of “induced traffic.”¹⁶⁶ If a road makes suburb X more popular to commuters and employers,¹⁶⁷ that suburb will attract more development, which means roads going to and from suburb X will inevitably be more crowded.¹⁶⁸

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

- * Allow landowners to mix commercial and residential uses more frequently so that more Americans could live within walking distance of shops and jobs.¹⁶⁹
- * Allow the market, rather than zoning laws, to govern population density.¹⁷⁰ If landowners could build compact neighborhoods without government interference, more people could live within walking distance of commercial areas or transit stops.¹⁷¹

of delay per traveler); see also *supra* notes 161–162 and accompanying text (Atlanta has 67 hours of delay per traveler; Houston has 63).

166. Public debate over this proposition has led to “a bewildering duel of statistics [with] inconclusive [results].” BRUEGMANN, *supra* note 1, at 210 (using these phrases to describe debate over effects of Oregon planning policies upon housing prices). See SURFACE TRANSP. POL’Y PROJECT, ROAD BUILDING HAS LITTLE EFFECT ON CONGESTION, available at <http://transact.org/report.asp?id=88> (suggesting that regions that most rapidly expanded road network experienced increased congestion to same extent as regions that had built fewer roads). But see *contra* BRUEGMANN, *supra* note 1, at 284 n.29 (citing studies to contrary).
167. Indeed, roads often make a given suburb more popular. See *supra* note 63.
168. Bruegmann asserts that “induced traffic” is comprised of people “switching from one route or means of transportation to a faster and more direct one” and thus does not increase overall travel. BRUEGMANN, *supra* note 1, at 131. This may be true where the highway does not affect where people live—for example, a road between two already-developed areas that merely duplicates an existing road. Not all roads, however, necessarily meet these narrow criteria. Cf. Neal Peirce, *Highway Builders Rev Up For New Wave of Beltways*, NEW ORLEANS TIMES-PICAYUNE, Oct. 9, 1995, at B7, available at 1995 WNLR 1001416 (suggesting that a new road near Chicago “will open up large new areas of inexpensive farmland for development”).
169. See Garnett, *supra* note 33, at 21 (stating that existing zoning creates “spatial separation of land uses”); at 32 (zoning laws could be amended to allow mixed-use neighborhoods “where homes are situated within walking distance of stores, restaurants and parks.”).
170. See Richard Briffault, *Smart Growth and American Land Use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 253 (2002) (“[H]allmarks of American land use law [include] reducing population density and dispersing residents over wider areas”).
171. See Robert H. Freilich, *The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 552 n.18 (1998) (explaining that, in low-density areas, transit use is rare because “commuters are required to travel too far to transit stations”); see also Duany & Talen, *supra* note 98, at 1448 (explaining that in a pedestrian-oriented neighborhood, residences should be within ¼ mile of other destinations); EWING, *supra* note 90, at 2–3 (discussing positive effects of higher density in more detail).

* Abolish setback and minimum parking requirements that require owners of apartment buildings, offices and stores to place buildings far from streets and to surround those buildings with parking lots.¹⁷² If landowners had the right to substitute houses and shops for parking lots and to bring buildings closer to streets, they could create more compact, pedestrian-friendly places by placing more buildings on a parcel. In turn, this would make pedestrian commutes shorter and more pleasant by eliminating the seas of parking that separate shops, offices and other destinations from each other.¹⁷³

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

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

Unlike growth controls, some of these reforms might actually expand housing supply; land that is currently used for parking or streets could be used for additional housing. Unlike regulation-oriented policies, moreover, these reforms would actually expand consumer choice by reducing government regulation of land use. Thus, it is possible to increase the number of compact, pedestrian-friendly neighborhoods without making government more intrusive or increasing housing prices. It follows that, because Bruegmann gives short shift to such deregulatory anti-sprawl reforms,¹⁷⁸ his analysis of remedies for sprawl is incomplete.

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

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

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

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

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

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

178. With the exception of his assertion early in his book that, because some places have become more dense, zoning may have "changed as necessary to accommodate mar-

E. Myth Five: Only Elitists Oppose Sprawl

Bruegmann repeatedly asserts that sprawl is what ordinary middle-class people want while “elites” dare to question this trend. For example, he claims that, in the 1920s, the creation of suburbs in Britain “led to a violent reaction among members of Britain’s literary and artistic elite.”¹⁷⁹ He asserts that, in recent decades, “upper-middle-class residents of central cities”¹⁸⁰ engaged in an “assault on urban freeways”¹⁸¹ only when “the automobile ceased to be a luxury item for the affluent and came into the hands of a large middle class.”¹⁸² Bruegmann similarly writes that, today, “the anti-sprawl movement has been heavily supported by individuals drawn from an upper-middle class professional population . . . an elite group of academics, central-city business leaders, and employees of not-for-profit organizations.”¹⁸³ This “elite” believes that “[s]prawl is where other people live, particularly people with less taste and good sense than themselves. Much anti-sprawl activism is based on a desire to reform these other people’s lives.”¹⁸⁴ Bruegmann further suggests that New Urbanism (a movement of architects who seek to design more mixed-use neighborhoods) is “only the latest version of a long-standing desire by cultural elites to manage middle-class urban life.”¹⁸⁵

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

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

ket realities.” BRUEGMANN, *supra* note 1, at 106. This statement, as noted above, overlooks the possibility that not every attempt to rezone property is successful. See *supra* notes 104–113 and accompanying text.

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

180. *Id.* at 130.

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

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

183. *Id.* at 163.

184. *Id.* at 161.

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

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

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

Bruegmann also writes that “stopping or slowing the growth of new development and sprawl often provides great material advantage to existing residents”¹⁸⁸ by reducing the number of new cars on the roads that suburbanites use and increasing home values by limiting the supply of developable land.¹⁸⁹ Since most Americans drive cars¹⁹⁰ (and thus may want less traffic) and own homes¹⁹¹ (and thus may want increasing housing prices), it logically follows that most Americans have selfish reasons to oppose new suburban development. Americans who do not own cars, moreover, have even stronger motives to oppose sprawl: where jobs move to automobile-dependent suburbs, carless Americans are frozen out of those jobs.¹⁹² Therefore, if both Americans with and without cars have reason to be concerned about sprawl, nearly all Americans are part of Bruegmann’s so-called “anti-sprawl elite.”

Indeed, Bruegmann’s populist rhetoric could just as easily be turned against sprawl because the United States has a powerful pro-sprawl “elite”: the road-building lobby.¹⁹³ A wide variety of corporate interests, including automobile manufacturers, tire manufacturers, cement manufacturers, car dealers, truckers,¹⁹⁴ general contractors, and homebuilders,¹⁹⁵ lobby Congress to spend more money on highways¹⁹⁶ (although federal spending on highways already exceeds transit spending by about a 5-1 margin).¹⁹⁷ This

ing communities so that houses and shops were closer together, even if houses would be closer together).

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

189. *Id.*

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

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

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

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

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

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

196. *Id.* at 10–11.

197. 2006 ABSTRACT, *supra* note 46, at 709 (showing that in 2003, federal budget included just over \$97 billion in outlays for highway trust fund and just under \$20 billion for Federal Transit Administration grants). Bruegmann argues that this gap is hardly inequitable because highway ridership is much higher than transit ridership. See BRUEGMANN, *supra* note 1, at 146. Building highways based on low transit ridership creates a self-fulfilling prophecy: if government provides lots of highways and scarce transit service, of course more people will use the highways. See TRANSP. DATA, *supra* note 129 (“Only 4 percent of the nation’s 4 million miles of roads are now served by tran-

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

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

III. CONCLUSION

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

Bruegmann claims that sprawl exists in every affluent society—but there is a world of difference between a region like New York City, where an automobile-centered life is one lifestyle choice among many, and a city like Oklahoma City, in which almost every adult needs a car to live a normal life. Bruegmann claims that sprawl is a result of the free market at work—but, in fact, government-built highways fragment development across the landscape, and government-enforced zoning, parking and street design regulations impede the creation of alternatives to sprawl. Bruegmann claims that sprawl expands consumer choice—but, in its most extreme forms, sprawl actually limits consumer choices by making the automobile the only feasible mode of transportation in many places.

sit.”). By contrast, if government shifted resources to transit, transit ridership might continue to rise. *Cf. supra* note 46 and accompanying text (showing that transit ridership rose in recent years).

198. CTR. FOR RESPONSIVE POLS., GENERAL CONTRACTORS: MONEY TO CONGRESS, *available at* <http://opensecrets.org/industries/summary.asp?Ind=C01&cycle=2004>.

199. CTR. FOR RESPONSIVE POLS., CAR DEALERS: MONEY TO CONGRESS, *available at* <http://opensecrets.org/industries/summary.asp?Ind=T2300&recipdetail=A&sortorder=U&Cycle=2004>.

200. CTR. FOR RESPONSIVE POLS., AUTO MANUFACTURERS: MONEY TO CONGRESS, *available at* <http://opensecrets.org/industries/summary.asp?cycle=2004&ind=T2100>.

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