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## Suburban Sprawl, Jewish Law, and Jewish Values

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# SUBURBAN SPRAWL, JEWISH LAW, AND JEWISH VALUES

Professor Michael Lewyn\*

## I. INTRODUCTION

In the second half of the twentieth century, America's cities and suburbs were engulfed by suburban sprawl—"the movement of people (especially middle-class families) and jobs from older urban cores to newer, less densely populated, more automobile-dependent communities generally referred to as suburbs."<sup>1</sup> Cities throughout America lost population to their outlying suburbs,<sup>2</sup> and cities that gained population usually did so only because they were able to annex those suburbs.<sup>3</sup>

America's suburban revolution has not left Jewish communities unscathed. For example, the city of Newark, New Jersey, contained 58,000 Jews<sup>4</sup> and thirty-four synagogues in the 1940s,<sup>5</sup> but today has only a few hundred Jews<sup>6</sup> and only two synagogues.<sup>7</sup> Similarly, the city of St.

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\* Visiting Associate Professor, Southern Illinois University Law School. I would like to thank Steven Friedell, Bradley Flamm, and Jeremy Benstein for their thoughtful comments on this article. Any errors of fact or logic are, of course, mine alone.

<sup>1</sup> Michael E. Lewyn, *Suburban Sprawl: Not Just An Environmental Issue*, 84 Marq. L. Rev. 301, 301 (2000). See also Jeremy R. Meredith, *Sprawl and the New Urbanist Solution*, 89 Va. L. Rev. 447, 449 (2003) (sprawl characterized by low density, dominance of single family housing, segregation of different type of land uses, automobile dependence, and absence of regional land use planning); Lee R. Epstein, *Where Yards Are Wide: Have Land Use Planning and Law Gone Astray?*, 21 Wm. & Mary Envtl. L. & Policy Rev. 345, 347 (1997) (sprawl is "low-density, single-use development . . . at the very edges or beyond the fringes of existing urbanization").

<sup>2</sup> See Lewyn, *supra* n. 1, at 301-02; David Rusk, *Cities Without Suburbs* 5 (3d ed., Woodrow Wilson Ctr. Press 2003) (noting that at the end of World War II, about 70% of metropolitan Americans lived in central cities, as opposed to less than 40% in 2000); *id.* at 7 (of the cities that were America's twelve largest in 1950, ten lost population in later decades).

<sup>3</sup> Rusk, *supra* n. 2, at 14-20.

<sup>4</sup> See Josh Margolin, *Suburbanites Honor Ancestors They Left Behind—Volunteers Repair and Record Graves in Newark*, Star-Ledger (Newark, N.J.) 11 (Aug. 21, 2000) (Newark "once boasted 58,000 Jews, and was the seventh-largest urban Jewish community in America in 1948.").

<sup>5</sup> See Charles F. Cummings, *Jewish Population Rose and Fell Over 150 Years—Knowing Newark*, Star-Ledger (Newark, N.J.) 3 (May 23, 2002) (in 1945, "[34] Jewish congregations [were] based in Newark and 14 in nearby suburbs").

<sup>6</sup> See Margolin, *supra* n. 4.

Louis, Missouri, now has only one synagogue, although its suburbs have over twenty.<sup>8</sup> Even in more vibrant cities, significant “Jewish flight” has occurred. In 1990, two-thirds of metropolitan Chicago’s Jews lived in suburbs, up from 4% in 1950.<sup>9</sup> This flight to suburbia has affected Jews’ daily lives dramatically. Suburban Jews, like other American suburbanites, are highly dependent on automobiles.<sup>10</sup>

This article discusses the tension between suburban sprawl and Jewish values. Specifically, Part II of the article argues that the automobile dependency and class division exacerbated by sprawl conflict with Jewish ethical and environmental values and impede observance of Jewish law. Part III sets out a program for action, both for Jews in their roles as voters and lobbyists, and for Jews in their role as private citizens deciding where to place Jewish schools and synagogues. Part IV rebuts libertarian objections to anti-sprawl policies by pointing out that Jewish law encourages public regulation of land use, and that in any event, anti-sprawl policies need not conflict with libertarian norms.

## II. SPRAWL AND JEWISH VALUES

The growth and form of suburbia has divided metropolitan areas into rich suburbs and poor cities<sup>11</sup> and has made Americans dependent on automobiles to fulfill every conceivable function.<sup>12</sup> The implications of these realities for Jewish values and Jewish observance will be discussed below.

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<sup>7</sup> See Reginald Roberts, *Irvington Seniors Keep Tradition Alive—For Their Faith*, *Star-Ledger* (Newark, N.J.) 39 (Mar. 24, 2002).

<sup>8</sup> C. Reform Congregation, *Shalom*, <http://www.centralreform.org/home.html> (accessed Mar. 3, 2005) (describing congregation as the only one in city); Repps Hudson, *Kaplan Oversimplifies St. Louis in His Quick, Scathing Analysis*, *St. Louis Post-Dispatch* D5 (Aug. 30, 1998) (region has more than twenty synagogues, and one in city of St. Louis).

<sup>9</sup> Evan Osnos, *Jewish Groups Face Future Together Synagogue, Community Center Open Hyde Park Building*, *Chi. Tribune* N3 (Sept. 18, 2000).

<sup>10</sup> *Infra* nn. 43-66 and accompanying text (discussing auto-dependent nature of suburbia generally); Ira S. Youdovin, *Jews Forever Divided and United*, *Chi. Sun-Times* 36 (May 11, 1997) (Conservative Judaism allows driving to synagogue on the Sabbath, “responding to the dispersion of American Jews from tight urban neighborhoods to sprawling suburbs.”).

<sup>11</sup> *Infra* nn. 30-40 and accompanying text.

<sup>12</sup> *Infra* nn. 43-63 and accompanying text.

### A. *The Ethical Problem: Justice and Charity*

#### 1. What Tradition Requires

Jewish law is based primarily on the *Torah*,<sup>13</sup> the first five books of the “Hebrew Bible” (Genesis, Exodus, Leviticus, Numbers, and Deuteronomy).<sup>14</sup> The *Torah* consistently urges Jews to aid, rather than impoverish, the needy and disabled. For example, the Book of Leviticus states, “[t]hou shalt not curse the deaf, nor put a stumbling-block before the blind.”<sup>15</sup> These words, if read literally, appear to condemn mistreatment of the disabled.<sup>16</sup> In the very next verse, the *Torah* urges government officials not to favor the rich over the poor, asserting: “[y]e shall do no unrighteousness in judgment; thou shalt not respect the person of the poor, nor favor the person of the mighty.”<sup>17</sup> Although Leviticus uses the term “judgment,” that book contemplates no government officials other than judges (such as kings or legislators).<sup>18</sup> Thus, Leviticus 19:15 could plausibly be interpreted to mean that all government officials should deliver equal justice to rich and poor. The verse thus suggests that, other

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<sup>13</sup> See Sam Feldman, *Reason and Analogy: A Comparison of Early Islamic and Jewish Legal Institutions*, 2 UCLA J. Islamic and Near E. L. 129, 131 (2002-2003) (“focus of original Jewish law is the *Torah*” because other portions of “Hebrew Bible” contain few if any laws).

<sup>14</sup> See Elliot Klayman & Seth Klayman, *Punitive Damages: Toward Torah-Based Tort Reform*, 23 Cardozo L. Rev. 221, 224 n. 28 (2001) (listing books); *Sinai Meml. Chapel v. Dudker*, 282 Cal. Rptr. 263, 265 (Cal. App. 1st Dist. 1991) (“Sources of Jewish law include the legal portions of the ‘*Torah*’ which is the first five books of the *Bible*” as well as other legal writings.).

<sup>15</sup> *Leviticus* 19:14. For the purposes of this article, the author uses the 1917 Jewish Publication Society translation of the Hebrew Bible, because that translation is free online, and thus more easily accessible to readers than other Jewish translations. See Jewish Publication Socy. Bible, <http://www.hareidi.org/bible/> (accessed May 25, 2005).

<sup>16</sup> See Mary C. Scarlato & Lynne Marie Kohm, *Integrating Religion, Faith, and Morality in Traditional Law School Courses*, 11 Regent U. L. Rev. 49, 58 n. 53 (1998-1999) (interpreting verse literally to forbid “cruelty towards persons with disabilities [and to require] care of such individuals”). But Cf. Thomas L. Shaffer, *Christians, Lawyers, and Money*, 25 Vt. L. Rev. 451, 460 (2001) (verse often interpreted figuratively to bar any mistreatment of financially vulnerable who might be “blind” to such misconduct).

<sup>17</sup> *Leviticus* 19:15.

<sup>18</sup> The *Bible* does not contemplate the existence of Jewish kings until the book of Deuteronomy, which discusses events taking place some years after those addressed in Leviticus. See *Deuteronomy* 19:14-20 (containing laws governing Jewish kings and specifying that no Jewish king may be crowned until after Jews enter the land of Israel).

things being equal,<sup>19</sup> government policies should not make the poor worse off than would an unfettered free market.<sup>20</sup>

In addition to prohibiting discrimination against the poor, the *Torah* affirmatively mandates support of the needy. The provision in Leviticus states: “thou shalt not glean thy vineyard, neither shalt thou gather the fallen fruit of thy vineyard; thou shalt leave them for the poor and the stranger.”<sup>21</sup> The book of Exodus similarly requires that every seven years, landowners shall allow all their land to “lie fallow, that the poor of thy people may eat.”<sup>22</sup>

Later Jewish tradition not only requires Jews to support the poor in their midst but also privileges certain forms of charity over others. Moses ben Maimon (also known as “Rambam” or “Maimonides”), a twelfth-

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<sup>19</sup> Obviously, this principle cannot be universally applied. For example, it could be argued that laws mandating respect for property and contracts disfavor those who have less property. But Jewish law is highly protective of property and contract. See Joseph William Singer, *Rent*, 39 B.C. L. Rev. 1, 38 (1997) (although the *Torah* “contains numerous admonitions to share property with those who have none,” it “recognizes the institution of private property and devotes two of the ten commandments to prohibiting invasions of property rights [prohibiting both theft and coveting—because coveting leads to theft]”); see also James Scheinman, *Jewish Business Ethics*, 1 U. Cal. Davis Intl. L. & Policy 63 (1995) (discussing Jewish contract law, and asserting that Jewish law generally favors market competition within limits). Thus, the *Torah* does not blindly condemn all laws having a disparate impact on the poor—but it does suggest that government officials should not go out of their way to exacerbate inequalities that naturally arise in a market economy. *Id.*

<sup>20</sup> Of course, one might argue that government should seek to make the poor better off than would an unfettered free market, by redistributing wealth to the poor. This broader issue has been amply debated elsewhere, and the author accordingly sees no reason to address it in this article. It should be noted, however, that the *Bible’s* repeated endorsements of charity for the poor seem to contemplate that poverty and material inequality will exist, rather than be eliminated through redistribution of wealth. For further discussion, see *infra* notes 21-22 and the accompanying text.

<sup>21</sup> *Leviticus* 19:10; see also *id.* at 23:22 (“when ye reap the harvest of your land, thou shalt not wholly reap the corner of thy field . . . thou shalt leave them for the poor and the stranger”). Numerous other Biblical provisions mandate benevolence to the poor without specifically defining what sort of charity should be provided, or condemn oppression of the poor in general terms. See e.g. *Deuteronomy* 15:11 (“open thy hand unto thy poor and needy brother”); *Isaiah* 10:1-2 (“Woe unto them that . . . take away the right of the poor of My people.”); *Proverbs* 14:31 (“He that oppresseth the poor blasphemeth his Maker, but he that is gracious unto the needy honoureth Him.”); *Psalms* 72:4 (king should “save the children of the needy”).

<sup>22</sup> *Exodus* 23:11.

century medieval philosopher and codifier of Jewish law,<sup>23</sup> explained that the duty to give charity is not merely a voluntary obligation, but should actually be legally enforceable in rabbinic courts.<sup>24</sup> Maimonides went on to specify the proper goals of charity, writing that the “summit of charity’s golden ladder”<sup>25</sup> is to “assist the reduced fellow man . . . by putting him in the way of business, so that he may earn an honest livelihood, and not be forced to the dreadful alternative of holding out his hand for charity.”<sup>26</sup> Maimonides urged that Jews seek to make poor people self-supporting rather than promoting permanent welfare dependency.<sup>27</sup>

In sum, Jewish tradition suggests: (1) at a minimum, governments not discriminate against the poor and disabled; and, (2) Jews affirmatively seek to make the poor self-sufficient. The division of American metropolitan areas into poor cities and wealthier automobile-oriented suburbs, however, violates both of these principles because of city/suburb inequality<sup>28</sup> and because suburban jobs often are inaccessible to people who lack personal transportation.<sup>29</sup>

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<sup>23</sup> Chad Baruch & Karsten Lokken, *Research of Jewish Law Issues: A Basic Guide and Bibliography for Students and Practitioners*, 77 U. Det. Mercy L. Rev. 303, 308 n. 39 (2000); see also Alan M. Sokobin, *A Program in Comparative Jewish Law*, 33 U. Toledo L. Rev. 795, 807 (2002) (Maimonides, “most probably the most preeminent intellectual personage of the twelfth century, structured and extended the scope of Jewish law.”).

<sup>24</sup> Sheldon Nahmod, *The Duty to Rescue and the Exodus Meta-Narrative of Jewish Law*, 16 Ariz. J. Intl. & Comp. L. 751, 759 (1999). In the Middle Ages, Jews often lived in self-governing communities where rabbinic courts had the authority to impose both financial and physical punishment. See Earl Schwartz, *Land, Liens, and Ts'daqah*, 14 J.L. & Religion 391, 401 (1999-2000) (according to Shulhan Arukh, a sixteenth-century code of Jewish law, in self-governing Jewish communities, one who gives an inadequate amount of charity can be compelled to do so by a Jewish religious court; methods of compulsion may include flogging and seizure of assets). Cf. Emil A. Kleinhaus, *History as Precedent: The Post-Originalist Problem in Constitutional Law*, 110 Yale L.J. 121, 151 (2000) (“many traditionalists maintain that the Shulhan Arukh, a sixteenth-century code of Jewish law written by Rabbi Joseph Caro, is the final arbiter of Jewish law”).

<sup>25</sup> William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. Rich. L. Rev. 111, 111 n. 1 (1997).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Infra* nn. 30-40 and accompanying text.

<sup>29</sup> *Infra* nn. 43-66 and accompanying text.

## 2. Sprawl vs. Jewish Justice

### a. Rich Suburbs, Poor Cities

In the first half of the twentieth century, Americans of all social classes generally lived in the same types of municipalities.<sup>30</sup> The rich and poor shared the same government services, the same schools, the same transportation system, and the same city parks and libraries.<sup>31</sup> In recent decades, however, the rich and the middle classes have moved to suburbia while the poor have been left in cities.<sup>32</sup> By 2000, household income in American cities averaged less than three-fourths that of American suburbs,<sup>33</sup> and the average city had twice as many residents with poverty-level incomes as in the suburbs.<sup>34</sup> In some regions, the economic gap between cities and suburbs is enormous; for example, the average per

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<sup>30</sup> Lewyn, *supra* n. 1. Of course, this is still true in cities that have been able to annex newly developed areas. *See also id.* at 76, 86-87, 101-110 (noting that cities which are able to annex suburban areas tend to be more prosperous, and discussing legal obstacles to such annexation). Thus, the discussion below is limited to cities that are unable to annex their suburbs and thus are confined within their mid-twentieth century boundaries.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *See e.g.* Kristen A. Hansen, *Current Population Reports 5* (U.S. Census Bureau 1997) (discussing the increased rates at which people have moved from cities to suburbs); U.S. Census Bureau, *Current Population Survey, 2003 Annual Social and Economic Supplement 1* tbl. 26 (Dept. of Com. 2004); U.S. Census Bureau, *Current Population Survey, March 2002, 1* tbl. 26 (Dept. of Com. 2005) (showing immigration, outmigration, and net migration by metro status and selected characteristics, including income). The U.S. Census Bureau provides many more statistics and population surveys that support this point. *See generally* U.S. Census Bureau, <http://www.census.gov/> (last updated May 27, 2005).

<sup>33</sup> *See* Laurent Belsie, *Leaving the City for a Better Life?*, *Christian Science Monitor* 1 (June 25, 2002) ("By the end of the 1990s, household income averaged \$36,535 in cities versus \$50,175 in the suburbs."). By contrast, in 1960, cities were typically wealthier than their suburbs. *See* Lewyn, *supra* n. 1, at 302. For a more detailed discussion of the economic gap between cities and suburbs in the United States, see the Census Bureau's 2000 report on income in the United States. U.S. Census Bureau, *Money Income in the United States: 2000* (Dept. of Com. 2001) (asserting that high-income households tend to be family households with earners living in the suburbs of large cities).

<sup>34</sup> *See* Belsie, *supra* n. 33, at 1 (cities had an 18.2% poverty rate, as opposed to an 8.6% rate for suburbs). *See also* Nicole Stele Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 *Harv. J. on Legis.* 173, 179 (2001) (half of nation's welfare recipients live in central cities, and central cities of the twelve largest metropolitan areas are poorer than suburbs).

capita income for residents of Newark is only 42% of the average per capita income for Newark suburbanites.<sup>35</sup>

Because most cities are poorer than their suburbs, those cities' tax bases tend to be smaller,<sup>36</sup> which means that those cities either have higher taxes than their suburbs or poorer quality of municipal services.<sup>37</sup> Moreover, a poverty-packed city typically must spend more money than its suburbs to obtain the same quality of public services, because poor people need more money for public assistance, police services, and poverty-related health care than would the population of a more affluent municipality.<sup>38</sup> Thus, the division of American metropolitan areas into rich suburbs and poor cities means that wealthy and middle-class Americans live in suburbs with superb tax bases and fine services, while the poor are confined to cities where weak tax bases force municipal leaders to choose between high taxes and poor services.<sup>39</sup>

In sum, suburbanization means better local government for the rich than the poor.<sup>40</sup> By contrast, the *Torah* suggests that government should not favor the rich over the poor.<sup>41</sup> Thus, the city/suburb division is inconsistent with the values of the *Torah*.

#### b. The Injustice of Automobile Dependency

As noted above, some traditional Jewish sources assert that the poor should be given an opportunity to work rather than being forced to subsist

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<sup>35</sup> See Jeffery C. Mays, *Newark Failing to Catch Up to Suburbs in Public Health*, Star-Ledger (Newark, N.J.) 21 (Feb. 28, 2003) (Newark's per capita income is \$13,009, as opposed to \$30,833 for its suburbs). See also Rusk, *supra* n. 2, at 8 (citing similar 1990 U.S. Census figures for numerous cities; the overall population density in cities dropped from 5873 to 2937 people per square mile).

<sup>36</sup> See generally Meredith, *supra* n. 1, at 456 (flight of jobs and people from city caused tax bases to deteriorate).

<sup>37</sup> Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 Colum. L. Rev. 346, 352 (1990).

<sup>38</sup> See Meredith, *supra* n. 1, at 456 (“[T]hose residents who remain in the city often have higher relative demands for health care and social programs, but a decreased ability to pay for them.”); Bruce Katz, *Enough of the Small Stuff? Toward a New Urban Agenda*, Brookings Rev. 6 (2000) (“The incomes of the working poor and other low-income families have not kept pace with the rising costs of health care, housing, child care, transportation, and other necessities. Cities, therefore, are more likely to have residents who lack health insurance and struggle with the burdens of housing and child care.”).

<sup>39</sup> See generally Katz, *supra* n. 38.

<sup>40</sup> *Supra* nn. 30-39 and accompanying text.

<sup>41</sup> See e.g. *Leviticus* 19:15.



on charity.<sup>42</sup> American transportation policies do exactly the opposite by using highway spending to develop suburbs while refusing to provide enough public transit to enable the car-less poor and disabled to reach the jobs the highway system has shifted to suburbia.<sup>43</sup> The majority of welfare recipients<sup>44</sup> and millions of disabled Americans<sup>45</sup> do not own a car. These Americans are often frozen out of jobs and are more likely to be dependent on private and public charity due to America's highway-dominated transportation policy.<sup>46</sup>

For decades, government at all levels has funneled money into highway construction. In the first half of the twentieth century, public transportation was generally private and unsubsidized—yet as early as 1921, the federal government poured \$1.4 billion into highways.<sup>47</sup>

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<sup>42</sup> *Supra* nn. 23-27 and accompanying text (discussing Maimonides' goals of charity).

<sup>43</sup> See generally William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (Vintage Books 1996); see e.g. *Our Opinion: Sun Tran Must Not Be For Poor Only*, Tucson Citizen A9 (May 24, 2005) (Tucson, Ariz.'s bus system is the domain of the poor and carless); George Foster, *For Rural Poor, the Bus Won't Be Stopping*, Seattle-Post Intelligencer Reporter (Aug. 15, 2001) (Washington state denied funding for bus programs that would have helped the poor); Jeff Gerritt, *Looking at Limits for Urban Sprawl*, Det. Free Press 1 (Mar. 11, 1999) ("About one-third of Detroit households don't have cars, and some Detroit workers travel up to two hours on a bus to get to suburban jobs."). See also *infra* nn. 49-66 and accompanying text.

<sup>44</sup> See *Transportation Equity Act for the 21st Century*, Pub. L. No. 105-178, § 3037(a)(5), 112 Stat. 107, 387 (1998) (Congress finds that "94 percent of welfare recipients do not own cars"); Garnett, *supra* n. 34, at 183 n. 61 (although some studies question "94 percent" figure, all studies agree that majority of welfare recipients do not own cars).

<sup>45</sup> H.R. Subcomm. on Lab., Health, and Human Servs. of the Comm. on Appropriations, *Hearing of the American Transit Association* (Feb. 5, 1998) (testimony of William W. Millar).

<sup>46</sup> See e.g. C. for L. in the Pub. Interest, *Transportation Justice*, <http://www.clipi.org/ourwork/transportation.html> (last updated Mar. 1 2005) ("Los Angeles may be regarded as the car capital of the world, but for the working poor and other people with limited or no access to a car who depend on public transit, it can be almost impossible to get to work, school, the market, parks, forests and beaches, doctors, or many other basic needs of life."); Gregg Krupa, *No Car, No Bus Means No Job*, Det. News (Mar. 25, 2001) ("The biggest problem for the working poor, who are called upon to work to obtain government assistance, often is just getting from home to work. The lack of transportation is a major force that continually pulls them back into poverty."); Robyn Meredith, *Job-Seeking Detroiters Cannot Get to Where the Jobs Are*, N.Y. Times (May 26, 1998) (discussing the need to travel to the suburbs for higher paying jobs, but the limitations on those who do not own a car); Jane Gross, *Getting There the Hard Way, Every Day*, L.A. Times A1 (July 16, 1995) (same). See also *infra* nn. 49-66 and accompanying text.

<sup>47</sup> Michael Lewyn, *Campaign of Sabotage: Big Government's War Against Public Transportation*, 26 Colum. J. Envtl. L. 259, 268 (2001).

Government highway spending continued to grow in subsequent decades and now exceeds \$100 billion annually.<sup>48</sup>

Initially, highway spending generated suburban residential development by making it easier for commuters to drive to downtown jobs from once-distant suburbs.<sup>49</sup> However, jobs inevitably followed highway-driven residential development, as retail and other businesses moved to suburbia to accommodate suburban customers and employees.<sup>50</sup> Even supporters of road construction admit new highways encourage people to move to areas served by these roads. For example, in 1999 the National Association of Home Builders<sup>51</sup> (which supports increased road construction)<sup>52</sup> conducted a poll asking respondents what amenities would encourage them to move to another neighborhood, and their top choice (endorsed by 55% of respondents) was “highway access.”<sup>53</sup>

If the suburbs created by highway-generated sprawl had adequate public transit service, government transportation policies might not implicate the question of fairness. Governments could have served suburban employers with buses and rail lines, matching each highway-related spending spree with a parallel spending spree on public transit. Instead, governments chose to invest in roads for the middle class and other commuters while ignoring transit for the poor.<sup>54</sup> The federal government did little to support public transit until the 1960s.<sup>55</sup> As a result, vehicle miles of transit service declined nationally by 37% between

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<sup>48</sup>See U.S. Census Bureau, *Statistical Abstract of the United States 2003*, 694 (Dept. of Com. 2003) (government spends just over \$129 billion on highways) [hereinafter *Statistical Abstract*]; see also Rusk, *supra* n. 2, at 114 (from 1956 to 2001, federal government spent \$874 billion in 2001 dollars for highways compared to only \$147 billion for public transit).

<sup>49</sup> See Penny Mintz, *Transportation Alternatives Within the Clean Air Act: A History of Congressional Failure to Effectuate and Recommendations for the Future*, 3 N.Y.U. Envtl. L.J. 156, 159 (1994) (“Highways made land outside cities accessible, which in turn made the land attractive for development.”).

<sup>50</sup> See Peter Gordon & Harry W. Richardson, *Defending Suburban Sprawl*, 139 The Pub. Interest 65, 70 (Spring 2000) (Firms “follow the labor force to the suburbs where their employees live.”); Meredith, *supra* n. 1, at 475 (“Once highways are constructed, commercial and residential centers quickly develop around them.”).

<sup>51</sup> Natl. Assn. of Home Builders, <http://www.nahb.org> (last updated May 27, 2005).

<sup>52</sup> See Lewyn, *supra* n. 47, at 272.

<sup>53</sup> *Id.* at 273.

<sup>54</sup> *Supra* nn. 47-53 and accompanying text.

<sup>55</sup> Lewyn, *supra* n. 47, at 269.

1950 and 1970.<sup>56</sup> Today, all levels of government spend far more on highways than on public transit.<sup>57</sup>

As a result of government's highway-oriented policies, many suburban jobs simply are not accessible to the car-less poor and disabled.<sup>58</sup> For example, in 2000 only 10% of all entry-level jobs in the Boston metropolitan area could be reached by public transit within sixty minutes from the Boston inner city, and 45% could not be reached even after a two-hour transit commute.<sup>59</sup> In metropolitan Cleveland, residents of one poor Cleveland neighborhood can reach only 929 entry-level jobs via a public transit commute of average length (approximately thirty minutes) and only 8-15% of all job openings are similarly transit-accessible.<sup>60</sup> Similarly, in 1999 one-third of all entry-level jobs in the Baltimore region could not be reached at all without an automobile.<sup>61</sup> Boston, Baltimore, and Cleveland are all regions with relatively well-developed public transit systems—all three regions' transit systems are among the thirty largest in America.<sup>62</sup> In smaller cities, the non-driver's plight is more desperate still. For example, bus service ceases after 7:30 p.m. and disappears altogether on Sundays and holidays<sup>63</sup> in Oklahoma City, a city with over half a million residents.<sup>64</sup>

It seems then that governments have slashed job opportunities for transit-dependent Americans by building highways that shifted jobs to suburbs and by refusing to provide transit service to those suburbs.<sup>65</sup> Jobs and civic opportunities are kept away from low-skilled workers who cannot afford private transportation, as well as from Americans physically

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<sup>56</sup> *Id.*

<sup>57</sup> See *Statistical Abstract*, *supra* n. 48, at 287 (state and local highway spending, excluding intergovernmental grants, exceeds transit spending by over three to one); *id.* at 694 (federal grants to state and local governments for highways exceed transit-related grants by over five to one).

<sup>58</sup> *Supra* nn. 45-46.

<sup>59</sup> Garnett, *supra* n. 34, at 187.

<sup>60</sup> *Id.* at 188.

<sup>61</sup> Marcia Myers, *Jobs Out of Reach of the Carless*, *Balt. Sun* (Nov. 16, 1999).

<sup>62</sup> See Am. Pub. Transit Assn., *75 Largest Transit Agencies, Fiscal Year 2002, Ranked by Passenger Miles*, <http://www.apta.com/research/stats/overview/75largest.cfm> (accessed May 27, 2005).

<sup>63</sup> Metro Transit, *General Information*, <http://www.gometro.org/> (accessed May 27, 2005).

<sup>64</sup> *Statistical Abstract*, *supra* n. 48, at 36. Oklahoma City is America's 29th largest city; the Oklahoma City metropolitan area has over a million residents. *Id.*

<sup>65</sup> See Katz, *supra* n. 38, at 5 (discussing employment growth in suburbs).

incapable of driving a car.<sup>66</sup> Thus, sprawl systematically impoverishes the weakest members of American society. By contrast, Jewish tradition urges people to do their best to make every member of society employable.<sup>67</sup> In other words, the automobile dependency produced by sprawl creates a direct contradiction between American transportation policy and Jewish values.

### *B. Sprawl, the Environment, and Jewish Land Use Regulation*

The *Torah* and later sources of Jewish law, such as the Mishna (a code of Jewish law and oral tradition compiled in the second century)<sup>68</sup> and the Talmud (a set of books written in the fourth and fifth centuries discussing and interpreting the Mishna),<sup>69</sup> regulate land use in two relevant respects. First, they restrict the right to develop rural land in Jewish communities, and second, they limit Jews' ability to engage in polluting activities.<sup>70</sup> By contrast, suburban sprawl leads to more development of rural land<sup>71</sup> and, arguably, more pollution.<sup>72</sup>

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<sup>66</sup> *Supra* nn. 43-46 and accompanying text.

<sup>67</sup> See generally Quigley, *supra* n. 25.

<sup>68</sup> Ora R. Sheinson, *Lessons from the Jewish Law of Property Rights for the Modern American Takings Debate*, 26 Colum. J. Envtl. L. 483, 491 (2001). The most traditional Jews assert that Mishna is part of an "oral tradition [that] was given [to Moses] at Mount Sinai that supplements and explains the written Jewish law." *Id.* Conservative and Reform Jews, by contrast, view post-*Torah* Jewish law as primarily man-made. See also generally Sam Feldman, *Reason and Analogy: A Comparison of Early Islamic and Jewish Legal Institutions*, 2 UCLA J. of Islamic and Near E. L. 129, 142 (2002-2003) ("Today the divinity of the oral *Torah* is a major point of separation between the theologies of Orthodox and Conservative Judaism."); *Judaism, Canada and The World Backgrounder* (Dec. 1, 1999) (available at [http://www.24hourscholar.com/p/articles/mi\\_qa3695/is\\_199912/ai\\_n8866682](http://www.24hourscholar.com/p/articles/mi_qa3695/is_199912/ai_n8866682)) (reform Judaism "rejects the divine revelation of the oral law"); Jewish Virtual Lib., *The Oral Law*, [http://www.us-israel.org/jsource/Judaism/Oral\\_Law.html](http://www.us-israel.org/jsource/Judaism/Oral_Law.html) (accessed May 25, 2005) (non-Orthodox Jews "more apt to see the Talmud and the Oral Law as an evolving system, in which successive generations of rabbis discussed and debated how to incorporate the *Torah* into their lives. Thus, they feel more free than the Orthodox to ignore, modify, or change the Oral Law").

<sup>69</sup> Sheinson, *supra* n. 68, at 491.

<sup>70</sup> *Id.* See also generally *supra* n. 68.

<sup>71</sup> See Rusk, *supra* n. 2.

<sup>72</sup> See *infra* n. 88. EPA asks why people should be concerned with sprawl. See EPA, *Sustainable Urban Environments*, "Why Should We Be Concerned About Sprawl," <http://www.epa.gov/region5/sue/whyconcern.htm> (last updated Oct. 12, 2004) [hereinafter *Sustainable Urban Environments*]. "At a metropolitan scale, sprawl may be said to occur when the rate at which land is converted to non-agricultural or non-natural uses exceeds the rate of population growth. This pattern of development is occurring . . . as people and jobs move outward from the older cities and suburbs . . . fueling a

### 1. Protecting the Land: A Jewish Value

The *Torah* mandates an uncultivated green belt around cities dominated by the Levite tribe.<sup>73</sup> The Talmud expanded this rule to all Jewish-dominated cities in Israel.<sup>74</sup> Rabbi Samson Raphael Hirsch, a nineteenth-century Jewish scholar,<sup>75</sup> asserts that these laws are designed to “maintain an urban population with a connection to agriculture . . . [and] prevent cities from growing into metropolises cut off from the fields.”<sup>76</sup>

While Jewish law discourages the expansion of urban areas into the countryside, sprawl by definition involves increased development of once-rural suburbia.<sup>77</sup> Although some suburban development may be a necessary result of increased population, in much of America land has been developed at a rate far exceeding the rate of population growth.<sup>78</sup> In

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dependency upon the automobile.” *Id.* EPA lists some of sprawl’s environmental consequences: air pollution (“[n]ot only are there more cars on the road, but sprawl forces us to drive each car further, increasing congestion and emissions of greenhouse gases and the precursors to ground level ozone (smog)”; water pollution (“[t]hrough soil erosion, increased urban runoff, and destruction of wetlands, sprawl threatens the quality of both ground and surface waters”); costs of infrastructure (“[s]prawl significantly increases the costs of infrastructure such as sewers, stormwater retention, and drinking water treatment because of the need to provide services in the metropolitan periphery while having to maintain aging core infrastructure”); farmland (“[s]prawl converts high quality farmland into impervious surfaces, thereby increasing flooding and runoff, and adding pressure to farm on marginal lands which formerly served as habitat”); and water quantity (“[s]prawl may lead to more flooding throughout the region because of the increase in impermeable surfaces such as roads and parking lots. Loss of wetlands that provide flood control is increasing the number and intensity of floods”). *Id.*

<sup>73</sup> *Numbers* 35:2-4 (stating that nation shall “give unto the Levites . . . cities to dwell in,” that cities should be surrounded by “open land [that] shall be for their cattle, for their substance, and for all their beasts,” and that such open land “shall be near the wall of the city and outward a thousand cubits round about”). While other tribes received large chunks of land for agriculture, the Levite tribe was supported by tithes and relegated to forty-eight cities. See Heschel Ctr., *The City’s Life Lies Outside It*, [http://www.heschelcenter.org/text\\_files/city%20life.doc](http://www.heschelcenter.org/text_files/city%20life.doc) (accessed May 27, 2005). Each of these cities was to be surrounded by public open space. *Id.*

<sup>74</sup> See Sheinson, *supra* n. 68, at 502; Heschel Ctr., *supra* n. 73; Alain Attar, *Environmental Issues in Judaism*, <http://www.lookstein.org/articles/environment.htm> (accessed May 27, 2005).

<sup>75</sup> See Sheinson, *supra* n. 68, at 494 n. 55 (Hirsch was a “major Rabbinic philosopher and decisor of 19th-century Germany” who “advocated the integration of traditional Jewish thought with modern science, while at the same time upholding Orthodox Jewish practices.”); Heschel Ctr., *supra* n. 73 (Hirsch was the “founder and prime expositor of modern Orthodoxy.”).

<sup>76</sup> *Id.*

<sup>77</sup> *Infra* nn. 79-81 and accompanying text.

<sup>78</sup> *Id.*

1950, 69 million Americans lived in urbanized areas containing 12,715 square miles.<sup>79</sup> By 2000, those same urbanized areas contained 155 million residents in 52,388 square miles of developed land.<sup>80</sup> Thus, America's urban and suburban population doubled in the late twentieth century. However, Americans occupied more than four times as much urban and suburban land in 2000 as in 1950.<sup>81</sup> America's exploding population makes literal application of the *Torah* impractical.<sup>82</sup> Nevertheless, the *Torah's* greenbelt law suggests Jews should be predisposed to support redevelopment of land within existing neighborhoods, rather than supporting policies that shift development to rural areas on the outskirts of metropolitan areas.<sup>83</sup>

## 2. Judaism, Pollution, and Sprawl

Jewish law regulates land use not only to further aesthetic goals, but also to limit pollution. For example, the Talmud contends that carcasses, graves, tanneries, and furnaces be distanced from a town because they are sources of smoke and smell that can blow into a city.<sup>84</sup> Jewish law even bars seemingly innocuous activities, such as commercial bakeries, when

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<sup>79</sup> See Rusk, *supra* n. 2, at 8 (An "urbanized area" is a "central city and its contiguous, built-up suburbs.").

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* Of course, land lost to development is only a small proportion of all American land. See Oliver Gillham, *The Limitless City: A Primer on the Urban Sprawl Debate* 84 (Island Press 2002) (only about 5% of American land is developed). To qualify this statement, the land closest to major population centers, and thus "most precious" to urbanites, is the land most likely to be developed over the next few decades. *Id.* at 85-86.

<sup>82</sup> Indeed, it has been argued that even land use regulations far more modest than those of the *Torah* reduce housing affordability by creating an artificial shortage of land. For example, the state of Oregon has created a system of "urban growth boundaries" that draws boundary rings around the state's larger urban areas and bars most construction outside those rings. See Michael Lewyn, *Sprawl, Growth Boundaries, and the Rehnquist Court*, 2002 Utah L. Rev. 1, 5-8 (2002) (describing the Oregon system in detail). Although Oregon law allows modification of the boundaries, some commentators nevertheless assert that the growth boundary system has raised housing prices by creating an artificial shortage of developable land. *Id.* See e.g. David L. Callies, *The Quiet Revolution Redux: How Selected Local Governments Have Fared*, 20 Pace Envtl. L. Rev. 277, 284 (2002) (asserting that in Portland, Oregon, "housing prices continue to climb" as a result of the growth boundary); Alphonso R. Jackson, *Rising Housing Costs are a National Concern*, 12 J. Affordable Hous. & Community Dev. L. 1, 3 (2002) (Portland's rising housing costs show that cities "with the most restrictive land use and zoning regulations often have affordable housing shortages."). But see Lewyn, *supra* n. 1, at 35-42 (questioning link between growth boundaries and increased housing costs).

<sup>83</sup> See generally *supra* n. 73.

<sup>84</sup> Sheinson, *supra* n. 68, at 503.

these activities create intolerable levels of smoke.<sup>85</sup> Domestic activities that cannot be placed outside of cities are also subject to regulation. For example, an oven located on the second floor of a building must be placed upon plaster, so that any fire caused by the oven does not spread downstairs.<sup>86</sup>

American sprawl has led to increased automobile use,<sup>87</sup> thereby increasing air pollution.<sup>88</sup> As early as 1977, the Supreme Court noted that “driving an automobile [is] a virtual necessity for most Americans.”<sup>89</sup> As people and jobs have moved to suburbia,<sup>90</sup> Americans have been forced to drive more and more miles to do the business of everyday life.<sup>91</sup> “Between 1980 and 1997, the number of miles driven in the United States increased by 63%—over three times the rate of the population increase during that period.”<sup>92</sup> In turn, motor vehicles are a primary source of pollutants such as carbon monoxide and ozone smog, pollutants linked to asthma and lung disease.<sup>93</sup>

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<sup>85</sup> *Id.* at 503-04.

<sup>86</sup> *Id.* at 505.

<sup>87</sup> *Supra* nn. 49-57 and accompanying text.

<sup>88</sup> See generally EPA, *Mobile Source Emissions—Past, Present, and Future*, “Pollutants,” <http://www.epa.gov/OMSWWW/inventory/overview/pollutants/index.htm> (last updated Mar. 11, 2005) [hereinafter *Mobile Source Emissions*] (giving an overview of the sources of air pollution, including “mobile sources,” such as trucks, cars, bulldozers, and trains). “Mobile sources pollute the air through combustion and fuel evaporation. These emissions contribute greatly to air pollution nationwide and are the primary cause of air pollution in many urban areas. . . . Nationwide, mobile sources represent the largest contributor to air toxics. Air toxics are pollutants known or suspected to cause cancer or other serious health or environmental effects.” *Id.* See also *Sustainable Urban Environments*, *supra* n. 72. Stated differently, American sprawl may have prevented pollution from decreasing as fast as it otherwise might have decreased. Cf. Richard J. Lazarus, *Highways and Bi-Ways for Environmental Justice*, 31 *Cumb. L. Rev.* 569, 593 (2000-2001) (because of tighter environmental regulation, emissions of several major pollutants have decreased in recent decades); Meghan E. O’Neill, *Corporate Welfare?: State Tax Incentives for Air Pollution Control*, 35 *Conn. L. Rev.* 1717, 1729 n. 80 (2003) (same).

<sup>89</sup> *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). For additional discussion describing automobile dependency in American cities and suburbs, see *supra* notes 43-66 and the accompanying text.

<sup>90</sup> See Rusk, *supra* n. 2, at 5 (describing movement of population to suburbs); Gillham, *supra* n. 81, at 18, (describing movement of jobs to suburbs).

<sup>91</sup> *Supra* nn. 59-64 and accompanying text.

<sup>92</sup> Oliver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 *Fordham Urb. L.J.* 1529, 1535 (2002).

<sup>93</sup> See *id.* at 1537. See also Meredith, *supra* n. 1, at 465 (“One study estimates that health costs resulting from air pollution exceed \$56 billion each year within the United States.”);

The connection between air pollution and automobiles was demonstrated quite visibly during the 1996 Olympics, when a restrictive citywide traffic plan forced Atlanta motorists to drive less.<sup>94</sup> As traffic on Atlanta roads fell by 23%, smog levels fell by 28%, and emergency room visits associated with asthma dropped by 42%.<sup>95</sup>

Sprawl may also increase water pollution.<sup>96</sup> Suburban growth means more roads, parking lots, and buildings in once-rural areas.<sup>97</sup> When rain falls on such impervious land,<sup>98</sup> it runs off into nearby water sources, rather than being absorbed by soil.<sup>99</sup> Such runoff contains not only rainwater, but pollutants contained in suburban lawns and other surfaces, such as pesticides used for lawns, salt used to protect roads from snow, and other materials found in or on roads, parking lots, and other

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*Mobile Source Emissions*, *supra* n. 88, at <http://www.epa.gov/OMSWWW/invtory/overview/pollutants/index.htm>. Many believe that mobile pollutants are directly linked to some of the nation's urban health problems. *See e.g.* Lyle Harris, *Sprawl is Unhealthy*, *CDC Researchers Find '96 Olympics Drop in Cars, Asthma Noted*, *Atlanta Journal-Constitution* E5 (Nov. 2, 2001); Holcomb B. Noble, *Far More Children Are Hospitalized for Asthma, Study Shows*, *N.Y. Times* B1 (July 27, 1999) (nation's urban asthma epidemic); Richard Perez-Pena, *An Everyday Struggle for Breath*, *N.Y. Times* B1 (May 1, 2003) (same); Helen Epstein, *Ghetto Misma, Enough to Make You Sick?*, *N.Y. Times* B1 (Oct. 12, 2003) (discussing possible links between urban living and a myriad of diseases).

<sup>94</sup> *See* Harris, *supra* n. 93.

<sup>95</sup> *Id.*; *see also* Pollard, *supra* n. 92, at 1556. Some commentators also assert that by emitting carbon dioxide into the world's air, America's cars and trucks contribute to global warming. *See* Gillham, *supra* n. 81, at 113-14; *Mobile Source Emissions*, *supra* n. 88, at <http://www.epa.gov/OMSWWW/invtory/overview/pollutants/index.htm> ("Mobile sources also produce several other important air pollutants, such as air toxics and greenhouse gases. . . . Greenhouse gases, such as carbon dioxide (CO<sub>2</sub>), trap heat in the Earth's atmosphere, contributing to global climate change."). *But cf.* Todd J. Zywicki, *Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform*, 73 *Tul. L. Rev.* 845, 889 (1999) (asserting that human contribution to global warming is "unproven").

<sup>96</sup> *See Sustainable Urban Environments*, *supra* n. 72 ("Through soil erosion, increased urban runoff, and destruction of wetlands, sprawl threatens the quality of both ground and surface waters.").

<sup>97</sup> Gillham, *supra* n. 81, at 116; *see also Maps Tell Sprawl Story*, *Hartford Courant* (Hartford, Conn.) A8 (Mar. 22, 2004) (sprawling development caused buildings, parking lots, roads, and other development to cover twelve acres of Connecticut landscape every day between 1985 and 2002).

<sup>98</sup> Gillham, *supra* n. 81, at 116 (describing roads, parking lots, and buildings as "impervious surfaces"—that is, surfaces that do not easily absorb water).

<sup>99</sup> *Id.* at 115-16 (describing harm caused by "runoff" of rain from impervious surfaces). *See also Sustainable Urban Environments*, *supra* n. 72.



structures.<sup>100</sup> In fact, such runoff is the third leading cause of pollution in America's rivers and lakes.<sup>101</sup>

### *C. Sprawl vs. Jewish Observance*

The *Torah* prohibits work on the Sabbath (traditionally understood by Jews to include Friday night and Saturday until nightfall)<sup>102</sup> and on religious holidays.<sup>103</sup> Jewish law traditionally has understood this restriction to prohibit not only labor for compensation,<sup>104</sup> but also a wide variety of other activities.<sup>105</sup> In addition, the *Torah* independently prohibits the kindling of fire on the Sabbath.<sup>106</sup>

For several reasons, tradition-minded Jews interpret these laws to prohibit the use of automobiles or other mechanized vehicles on the Sabbath.<sup>107</sup> First, driving violates the *Torah*'s prohibition against the use of fire because automobile engines work by burning gasoline.<sup>108</sup> Second, driving may lead to other forms of work forbidden on the Sabbath. For example, if a car breaks down, its owner must repair it, thus violating the rule of not working on the Sabbath, as repair is considered prohibited

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<sup>100</sup> Gillham, *supra* n. 81, at 116-17.

<sup>101</sup> *Id.* at 116-17; *see also* Meredith, *supra* n. 1, at 466 (suggesting that auto emissions themselves pollute nearby waters).

<sup>102</sup> *See Getz v. Pa. Dept. of Pub. Welfare*, 644 F. Supp. 26, 27 (E.D. Pa. 1985), *aff'd*, 802 F.2d 72 (3d Cir. 1986) (Saturday is "Jewish Sabbath," and begins at sunset of preceding Friday night); *see also* Tri-City JCC, *Shabbat for Families*, <http://www.tricityjcc.org/resources/shabbat.html> (accessed May 25, 2005) (Sabbath "ends Saturday night, one hour past sunset").

<sup>103</sup> *See Exodus* 35:2 (prohibiting work on Sabbath day); *Numbers* 28:18, 25, 29:1, 29:7, 29:12, 29:35 (prohibiting work during various religious festivals).

<sup>104</sup> Which, of course, is also prohibited. *See Getz*, 644 F. Supp. at 27 (Orthodox Jews may not work on holy days or Sabbath); *see also* Rachel F. Calabro, *Correction Through Coercion: Do State Mandated Alcohol and Drug Treatment Programs In Prisons Violate The Establishment Clause?*, 47 DePaul L. Rev. 565, 575 (1998) (Jews do not work on Sabbath).

<sup>105</sup> Orthodox Union, *The Thirty-Nine Categories of Sabbath Work*, <http://www.ou.org/chagim/shabbat/thirtynine.htm> (accessed May 25, 2005); Alan H. Greenberg, *A Misguided Analysis of a Free Exercise Claim*, 55 Brook. L. Rev. 653, 656 n. 8 (1989).

<sup>106</sup> *Exodus* 35:3.

<sup>107</sup> *See* David Bloom, *Rocky Road For Valley Rail Line*, L.A. Daily News N1 (Dec. 15, 1996) (Orthodox Jews do not use "cars or other mechanized vehicles on Saturday, the Sabbath day of rest, forcing walking to religious services.").

<sup>108</sup> *See* Orthodox Union, *supra* n. 105 ("An automobile engine works by burning gasoline. Turning on the ignition and stepping on the accelerator causes it to burn."); Rabbi Hayim Donin, *To Be a Jew* 93 (Basic Books 1972) ("[T]he prohibition of driving is an extension of the Biblical prohibition of kindling fire and burning" on the Sabbath.).

“work” under Jewish law.<sup>109</sup> Similarly, drivers often must handle and use money in order to purchase fuel, thus violating the rule that money should not be spent or handled on the Sabbath.<sup>110</sup> Accordingly, Orthodox Jews,<sup>111</sup> and even a few members of more permissive Jewish denominations,<sup>112</sup> do not use automobiles or other vehicles on the Sabbath or other holy days.<sup>113</sup>

However, several features of suburban sprawl make it very difficult for Jews to walk to synagogue or anywhere else. First, many American neighborhoods and suburbs are so thinly populated that very few Jewish residents live within walking distance of a synagogue.<sup>114</sup> Modern suburbia is characteristically low density,<sup>115</sup> a result explained not only by consumer demand, but also by zoning rules that heavily restrict density.<sup>116</sup>

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<sup>109</sup> *Id.*; Rabbi David Golinkin, *Riding to the Synagogue on Shabbat*, [http://www.responsafortoday.com/engsums/4\\_3.htm](http://www.responsafortoday.com/engsums/4_3.htm) (accessed May 25, 2005).

<sup>110</sup> *Id.*

<sup>111</sup> See *Orthodox Minyan of Elkins Park v. Cheltenham Township Zoning Hrg. Bd.*, 552 A.2d 772, 773 (Pa. Cmmw. 1989) (“Orthodox Jews do not drive on their Sabbath day of worship or on Jewish religious holidays.”); *Landau v. Township of Teaneck*, 555 A.2d 1195, 1199 (N.J. Super. L. Div. 1989) (“Orthodox Jews do not drive on the Sabbath and accordingly must walk to services.”).

<sup>112</sup> American Conservative rabbis have ruled that Jews may generally drive on the Sabbath only if they live far away from a synagogue and make no stops along the way. Golinkin, *supra* n. 109. Thus, the most observant Conservative Jews avoid driving on Friday nights and Saturdays if at all possible. See Alex Ginsberg, *Jews Rip Church Parking Proposal*, N.Y. Post 24 (Mar. 18, 2004) (proposal to require off-street parking for synagogues opposed by “Orthodox Jews, who are forbidden to drive on the Sabbath, and Conservative Jews, many of whom observe the rule as well”); Sherry Jacobson, *No One Brought Baggage*, Dallas Morning News 1G (Mar. 27, 1999) (“Some Conservative Jews shun the use of cars and home appliances and spending money from sundown Friday to sundown Saturday.”). The most liberal Jewish denominations, Reform and Reconstructionist Judaism, generally allow driving on Saturdays. See Jonathan A. Romain, *Faith and Practice: A Guide to Reform Judaism Today* 134 (Reform Synagogue of Great Britain 1991) (although Reform Judaism does not prohibit driving, “[c]hoosing to walk might also be a way of differentiating the Sabbath from other days of the week, and so for these reasons . . . walking should be considered as an option”). See generally Youdovin, *supra* n. 10 (discussing differences between Jewish denominations with regard to Sabbath observance and other issues); *There’s Jewish and There’s Jewish*, Washington Post C2 (Apr. 20, 1997) (describing denominational differences generally).

<sup>113</sup> *Id.* See also Bloom, *supra* n. 107.

<sup>114</sup> *Infra* nn. 115-125 and accompanying text.

<sup>115</sup> See e.g. Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. Pa. L. Rev. 873, 874 (2000) (defining sprawl as “low-density, land-consuming, automobile-dependent . . . development”).

<sup>116</sup> See Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law*, § 4.13, 90 (2d ed., West 2003) (noting minimum lot size laws is a common means of reducing density); Richard Briffault, *Our Localism: Part I—*

In 1950, America's urbanized areas contained 5,391 people per square mile.<sup>117</sup> By contrast, the average density of post-1960 American development, most of which has been located in suburbs,<sup>118</sup> is only 1,469 people per square mile.<sup>119</sup> If a neighborhood has only 1,500 people per square mile, and most people will walk no more than a quarter-mile to a synagogue,<sup>120</sup> then in such a neighborhood only 375 people live within walking distance of the synagogue. Even heavily Jewish neighborhoods are predominantly non-Jewish,<sup>121</sup> and only about a quarter of American Jews attend synagogue regularly.<sup>122</sup> Therefore, even in a heavily Jewish,

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*The Structure of Local Government Law*, 90 Colum. L. Rev. 1, 41 (1990) (in Connecticut's Fairfield County near New York City, 89% of all lots were once zoned for one acre per lot or more); Bernard H. Siegan, *Non-Zoning in Houston*, 13 J.L. & Econ. 71, 102 (1970) (Houston's minimum lot size of 5,000 square feet per dwelling is not unusual in a large city). In addition, other zoning restrictions indirectly reduce density. For example, cities commonly require houses to be surrounded by front, side, and rear yards, thus reducing the amount of buildings that can be placed on a piece of land. Juergensmeyer & Roberts, *supra*, at 90-91.

<sup>117</sup> Rusk, *supra* n. 2, at 8.

<sup>118</sup> *Id.* (Between 1950 and 2000, "more than 75 percent of the newly developed land and more than 80 percent of the added population were located in suburbs outside central cities.").

<sup>119</sup> F. Kaid Benfield, Matthew D. Raimi & Donald D. T. Chen, *Once There Were Greenfields* 12 (Nat'l. Resources Def. Council 1999).

<sup>120</sup> Numerous commentators have suggested that normal "walking distance" to a place is one quarter-mile, or about a five-minute walk. See e.g. Brian W. Ohm & Robert J. Sitkowski, *The Influence of New Urbanism on Local Ordinances: The Twilight of Zoning?*, 35 Urb. Law. 783, 784, 787 (2003) (Ordinances authorizing pedestrian-friendly "new urbanist" styles of development typically provide that neighborhood "focal points" be "within a five-minute walking distance (or one-quarter mile) of the majority of residents."); Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 Fordham Urb. L.J. 1445, 1447 (2002) ("If urban areas were oriented around the mobility pattern of the pedestrian, the neighborhood unit would be organized within a quarter mile radius.").

<sup>121</sup> See Donovan Slack, *Synagogue Sues Newton After Standoff*, Boston Globe B1 (Jan. 6, 2004) (Newton, Massachusetts "has long been known as a heavily Jewish suburb" because 33% of its residents are Jewish).

<sup>122</sup> See e.g. J.J. Goldberg, *A Portrait of American Jews*, The Jewish J. 30 (May 5, 2000) (Zogby International finds "just under one-quarter of the Jews polled said they attend services at least once a week, while more than half said that they attend on 'special occasions only.'"); *Jewish High Holy Days* (PBS Sept. 10, 1999) (TV broadcast) (Bob Abernathy states, "[a]lthough fewer than 20 percent of Jews regularly attend synagogue, between 80 percent and 90 percent are expected at synagogue to observe the high holidays."); United Jewish Communities, *Jewish Life*, [http://www.ujc.org/content\\_display.html?ArticleID=60346](http://www.ujc.org/content_display.html?ArticleID=60346) (accessed May 25, 2005) (National Jewish Population Survey 2000-2001 reports that 32% of ages 35-44, 33% of ages 45-54, and 25% of ages 55-64, attend synagogue monthly or more); Simple to Remember, *Guess*

low-density area, no more than a few dozen-synagogue patrons can conveniently walk to a synagogue.<sup>123</sup> In some regions, there are no heavily Jewish neighborhoods<sup>124</sup> and almost no Jews have the opportunity to walk to synagogues. Thus, the low density of suburban America impedes observance of the Sabbath and other holy days.<sup>125</sup>

A second characteristic of American land use patterns that impedes walking to synagogue is the separation of land uses, which is the division of neighborhoods into residential areas and recreational or commercial areas.<sup>126</sup> In most American cities and suburbs,<sup>127</sup> zoning laws require that

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*Who Doesn't Believe In God?*, <http://www.simpletoremember.com/vitals/JewsDontBelieve.htm> (accessed May 25, 2005) ("Jews are least likely to go with 16 percent saying they go to synagogue once a month or more.").

<sup>123</sup> See Sandi Dolbee, *Study Finds Most Local Jews Don't Belong to Synagogue*, San Diego Union-Tribune E4 (Sept. 11, 2003) (explaining that even though San Diego has 89,000 Jews, it has no "Jewish capital neighborhood").

<sup>124</sup> *Id.*

<sup>125</sup> In addition, the low density of American suburbs may also lead to intermarriage by scattering the Jewish community. See Jonathan Tobin, *Are The Suburbs Bad For The Jews?*, Jewish World Rev. 2 (Dec. 17, 2001) (available at <http://www.jewishworldreview.com/cols/tobin121701.asp>) ("[B]ecause it takes a critical mass of Jewish people to build the sort of infrastructure that a thriving community needs, such as synagogues, schools, kosher food stores and community centers . . . [r]ates of assimilation and intermarriage are always exponentially higher outside of the city limits."); Marian Morton, *Seeking a Unifying Identity for Jews*, Balt. Sun 1B (Apr. 30, 2001) (In "suburban Jewish communities across the country . . . intermarriage between Jews and non-Jews are higher than in cities."); Greer Fay Cashman, *Future of Jewish Identity Probed*, Jerusalem Post 6 (July 10, 2000) (American Jews often "move away from areas of (Jewish) concentration to new suburbs, away from each other and from Jewish affiliation" leading to "assimilation and intermarriage."). However, no empirical data is on point; thus, the link between suburbanization and intermarriage is still largely conjecture.

<sup>126</sup> See Juergensmeyer & Roberts, *supra* n. 116, § 4.2 at 69 (The division of land by allowed use is "the primary tool that local governments use to regulate land-use."). For additional discussion, see *infra* notes 128-130 and accompanying text.

<sup>127</sup> See Jerry L. Anderson, *The Environmental Revolution at Twenty-Five*, 26 Rutgers L.J. 395, 426 (1995) (Suburban zoning separates land uses "to the greatest degree possible" placing "concentrations of residences at substantial distances from jobs, shopping centers, and places of recreation."); Philip Weinberg, *Public Transportation and Clean Air: Natural Allies*, 21 Env'tl. L. 1527, 1530 (1991) (Due to restrictive zoning laws, "a large share of U.S. suburban residences and workplaces have been developed in large, homogenous neighborhoods, beyond walking distance of convenience retail and services."). Zoning codes mandating separation of uses often govern cities as well as suburbs. Cf. Lee Anne Fennel, *Homes Rule*, 112 Yale L.J. 617, 624 n. 29 (2002) (Houston is the only major American city without zoning).

residences be separated from every other form of land use.<sup>128</sup> This system of “single use zoning”<sup>129</sup> effectively prohibits many Americans from living within walking distance of any nonresidential structure.<sup>130</sup> Municipalities sometimes consider synagogues to be “nonresidential” structures and hold that they may not be established in residential zones.<sup>131</sup>

Even in mixed-use areas, walking often is inconvenient or dangerous due to anti-pedestrian street design. Many streets lack sidewalks,<sup>132</sup>

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<sup>128</sup> See Jerry Frug, *The Geography of Community*, 48 Stan. L. Rev. 1047, 1091 (1996) (virtually all current zoning laws “mandate the separation of different areas by function”).

<sup>129</sup> See Terry J. Tondro, *Sprawl and its Enemies: An Introductory Discussion of Two Cities’ Efforts to Control Sprawl*, 34 Conn. L. Rev. 511, 514 (2002) (uses “single use zoning” to describe “the designation of separate land areas for different uses”); Lewyn, *supra* n. 1, at 331 (finding in most suburbs, “every activity demands a separate zone of its own; people cannot live within walking distance of shopping, and offices cannot be within walking distance of either”) (citation omitted).

<sup>130</sup> See Anderson, *supra* n. 127, at 426 (finding because of single use zoning “the typical suburbanite must drive everywhere—to work, to the store, or to a baseball game”).

<sup>131</sup> See e.g. *Lakewood, Ohio Congregation of Jehovah’s Witnesses v. Lakewood*, 699 F.2d 303, 309 (6th Cir. 1983) (upholding municipality’s right to exclude houses of worship from “exclusive residential districts”); *but see Congregation Kol Ami v. Abington Township*, 309 F.3d 120, 139 (3d Cir. 2002) (noting split of case law on issue). It could be argued that such ordinances are now illegal under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc (2000), which prohibits land use regulations that impose “a substantial burden on the religious exercise of a person, including a religious assembly or institution” unless the burden is “the least restrictive means of furthering [a] compelling governmental interest.” *Id.* at § 2000cc(a)(1). However, the scope and constitutionality of RLUIPA is unclear. See *Elsinore Christian Ctr. v. Lake Elsinore*, 291 F. Supp. 1083, 1096-1104 (C.D. Cal. 2003) (holding that RLUIPA violated Fourteenth Amendment and Commerce Clause); *Midrash Sephardi, Inc. v. Town of Surfside*, 2004 WL 842527 (11th Cir. Apr. 21, 2004) (holding that exclusion of a synagogue from a neighborhood did not exact “substantial” burden on congregants’ religious exercise, despite their need to walk to synagogue, and declining to reach constitutionality of RLUIPA and that such exclusion was nevertheless illegal where synagogues treated less favorably than other nonresidential land uses). *But see U.S. v. Maui*, 298 F. Supp. 2d 1010, 1016-17 (D. Haw. 2003) (upholding constitutionality of RLUIPA); Beckett Fund For Religious Liberty, *RLUIPA*, <http://www.rluipa.com> (accessed May 25, 2005) (listing RLUIPA decisions with varying results, as well as pro- and anti-RLUIPA commentary).

<sup>132</sup> See Robert Puentes, *First Suburbs in the Northeast and Midwest: Assets, Challenges, and Opportunities*, 29 Fordham Urb. L.J. 1469, 1471 (2002) (noting newer developments often lack sidewalks, unlike older suburbs, which were “built when sidewalks were the rule, not the exception”); Mark Fina & Leonard Shabman, *Some Unconventional Thoughts on Sprawl*, 23 Wm. & Mary Envtl. L. & Policy Rev. 739, 744 (1999) (noting suburban streets “may or may not be bordered by sidewalks”). This problem is not limited to suburbs. See Bill Bush, *Lack of Sidewalks Questioned*, Columbus Dispatch 6B (Aug. 2, 2004) (stating 60% of Columbus, Ohio streets lack sidewalks); Brad Branan,

forcing pedestrians to share those streets with cars.<sup>133</sup> Many areas even have wide streets designed to encourage cars to drive at high speeds.<sup>134</sup> Such high-speed traffic discourages walking, because a pedestrian is more likely to be killed or severely injured by a fast-moving vehicle than by a slow-moving vehicle.<sup>135</sup> In addition, suburban residential areas are often dominated by dead-end or cul-de-sac streets.<sup>136</sup> Because dead-end streets by definition do not connect with each other,<sup>137</sup> residents of such streets often cannot walk from one residential street to another unless they wish to walk on busier roads.<sup>138</sup>

In sum, sprawling suburbs are typically characterized by very low population densities, separation of residences from other land uses, and anti-pedestrian street design. All of these aspects of suburban sprawl impede Jewish observance by making it difficult for Jews to avoid driving on Sabbaths and holy days.

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*Back to Basics Neighborhood Fix-Ups*, Tuscon Citizen 1A (July 21, 2004) (quoting similar figures for Tuscon, Arizona); Rebecca Cantley-Falk, *City OKs 'Watered-down' Safety/Anti-drug Initiative*, Asheville Citizen-Times 1 (June 24, 2004) (stating 75% of Asheville, North Carolina streets lack sidewalks); Kim Eckart, *Tacoma Not Alone in Battle of Sidewalks, Sewers*, Morning News Tribune (Tacoma, Wash.) A12 (July 9, 2000) (stating 50% of Portland, Oregon streets, and 30% of Seattle, Washington streets lack sidewalks).

<sup>133</sup> See Bush, *supra* n. 132 (noting where sidewalks are absent, pedestrians face "dangerous walk in the street").

<sup>134</sup> See Fina & Shabman, *supra* n. 132, at 744 (finding suburban streets are typically wide); Stephen H. Burrington, *Restoring the Rule of Law and Respect for Communities in Transportation*, 5 N.Y.U. Env'tl. L.J. 691, 700-01 (1996) (noting transportation agencies often "widen, straighten, and flatten" roads to speed up traffic).

<sup>135</sup> Burrington, *supra* n. 133, at 704 (noting that a pedestrian has a 83% chance of being killed when struck by a car traveling forty-four miles per hour, as opposed to a 3.5% chance of being killed by a car traveling fifteen miles per hour); see also *Donavan v. Jones*, 658 So. 2d 755, 765 (La. App. 2d Cir. 1995) (finding "a wider roadway takes longer to cross thus increasing the amount of time a pedestrian is exposed to traffic").

<sup>136</sup> See O.K. Carter, *City Planning Dead-ends at Cul-de-sacs*, Fort Worth Star-Telegram 1 (Jan. 20, 2003) (describing cul-de-sac concept); Tim Swift, *Cul-de-Sacs Meet the Square; New Urbanism: Suburban Planners Introduce a Grid System for Streets, Sidewalks, and Stores in the Community*, Balt. Sun 1L (Sept. 29, 2002) (noting dominance of cul-de-sac design).

<sup>137</sup> See Margaret Taus, *Quiet, Safe Side Streets Fall Out of Favor With Some*, Seattle Post-Intelligencer B1 (Aug. 22, 2001) (noting cul-de-sacs were initially used on "terrain that wouldn't allow streets to connect").

<sup>138</sup> See Swift, *supra* n. 136 (explaining cul-de-sacs typically "rely on a single entrance and exit"); Taus, *supra* n. 137 (noting, for example, residents of one Seattle-area cul-de-sac must drive 2.5 miles to school only 0.5 miles away; because no streets connect neighborhood with school, cul-de-sac residents must go in the opposite direction from school to reach the major street that connects with the school).

### III. WHAT IS TO BE DONE?

#### A. *Should Jews Do Anything?*

It could be argued that sprawl is basically a secular issue, and therefore is an inappropriate subject for lobbying by Jewish organizations. This argument lacks merit because, as noted above, low-density, single-use land use patterns affect not just Jewish values, but Jewish observance as well.<sup>139</sup>

Moreover, Jewish groups have already taken public positions on land use and environmental issues. For example, Jewish groups supported<sup>140</sup> the 2000 enactment of the Religious Land Use and Institutionalized Persons Act (RLUIPA),<sup>141</sup> which prohibits land use regulations that unfairly burden synagogues, churches, and other forums of religious practice.<sup>142</sup> Jewish groups are also involved in environmental lobbying. The Coalition on the Environment and Jewish Life (COEJL), an environmental advocacy group,<sup>143</sup> is sponsored by twenty-nine organizations representing all major Jewish denominations.<sup>144</sup> COEJL's 2005 *Environmental Policy Platform*<sup>145</sup> includes opposing oil and gas drilling in environmentally sensitive areas, phasing out reliance on fossil fuel technologies, abolishing subsidies for logging and mining on public lands, increasing vehicle fuel economy standards, and reauthorizing the Endangered Species Act.<sup>146</sup> COEJL even supports "land-use and transportation policies which would contain urban sprawl, promote the redevelopment of cities, and protect open spaces."<sup>147</sup> However, COEJL's

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<sup>139</sup> *Supra* nn. 102-138 and accompanying text.

<sup>140</sup> See Kris Banvard, *Exercise in Frustration? A New Attempt by Congress to Restore Strict Scrutiny to Governmental Burdens on Religious Practice*, 31 Cap. U. L. Rev. 279, 310 (2003) (noting that Jewish groups "hailed" passage of RLUIPA).

<sup>141</sup> Pub. L. No. 106-274, 114 Stat. 803 (2000); 42 U.S.C. § 2000cc.

<sup>142</sup> See *supra* n. 131 (describing RLUIPA in detail).

<sup>143</sup> COEJL, *About COEJL*, <http://www.coejl.org/about/> (accessed May 25, 2005).

<sup>144</sup> COEJL, *Participating Organizations*, <http://www.coejl.org/about/partorg.php> (accessed May 25, 2005) (sponsoring groups include United Orthodox Jewish Congregations of America, United Synagogue of Conservative Judaism, Religious Action Center of Reform Judaism, and Reconstructionist Rabbinical Association).

<sup>145</sup> COEJL, *COEJL's Environmental Policy Platform: March 2005*, <http://www.coejl.org/about/policy0305.php> (accessed May 25, 2005) [hereinafter *Environmental Policy Platform*].

<sup>146</sup> 16 U.S.C. §§ 1531-1544 (2000).

<sup>147</sup> *Environmental Policy Platform*, *supra* n. 145.

involvement in land use issues is minor; their *Platform* includes just one paragraph on “Urban and Community Planning.”<sup>148</sup>

### *B. If So, What?*

Given that sprawl is to some extent a Jewish issue, Jewish groups and politically active Jews should support solutions targeting the problems created by sprawl. First, as noted above, single use, anti-density zoning prevents significant numbers of Americans, and thus some Jews, from living within walking distance of houses of worship or other nonresidential structures.<sup>149</sup> In addition to fighting zoning laws that directly limit placement of religious facilities in residential neighborhoods,<sup>150</sup> Jewish groups should also oppose zoning laws that preclude medium<sup>151</sup> and high-density, pedestrian-friendly neighborhood design. For example, Jews should support the loosening or the elimination of minimum lot size ordinances that artificially limit density by limiting the number of houses per acre,<sup>152</sup> and should support developers who seek to build walkable neighborhoods near Jewish facilities.

Density alone is not enough to make a neighborhood walkable. As noted above, people may be unwilling to walk through even a fairly dense area if it is designed for dangerously fast automotive traffic, lacks sidewalks, is not within walking distance of nonresidential land uses such as synagogues, or is dominated by dead-end streets that are not connected to those land uses.<sup>153</sup> The New Urbanists,<sup>154</sup> a group of planners,

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<sup>148</sup> *Id.*

<sup>149</sup> *Supra* notes 115-138 and accompanying text.

<sup>150</sup> *Supra* notes 140-142 and accompanying text (discussing Jewish support for RLUIPA).

<sup>151</sup> The author notes that appropriate densities can be “medium” because vibrant Jewish communities need not have urban-style densities. For example, Pikesville, Maryland, a heavily Orthodox suburb of Baltimore, has 2,348 people per square mile, less than one-third the density of Baltimore. See Hillary Leila Krieger et al., *Hoop Dreams*, Jerusalem Post 12 (May 9, 2003) (stating Pikesville is “a largely Orthodox suburb of Baltimore”); Nation Master, *Encyclopedia: Pikesville, Maryland*, <http://www.nationmaster.com/encyclopedia/Pikesville,-Maryland> (last updated May 25, 2005) (listing Pikesville’s density); *Statistical Abstract*, *supra* n. 48, at 35 (noting that Baltimore includes 639,000 people in about eighty square miles, or just under 8,000 people per square mile).

<sup>152</sup> See generally *supra* n. 116 and accompanying text (describing such ordinances).

<sup>153</sup> *Supra* nn. 126-138 and accompanying text (describing a variety of anti-pedestrian features of many American neighborhoods).

<sup>154</sup> New Urbanism is an urban design movement that began in the late 1980s and early 1990s. New Urbanists believe that the best way to reduce how long people spend in traffic, to increase the supply of affordable housing, and to rein in urban sprawl is to aim for reform in all aspects of real estate development by making neighborhoods walkable



architects, and developers devoted to designing communities “for the pedestrian and transit as well as the car,”<sup>155</sup> have proposed a variety of additional steps to make neighborhoods walkable. These steps include: (1) narrower lanes to slow traffic;<sup>156</sup> (2) wider and more frequent sidewalks to encourage pedestrian activity;<sup>157</sup> (3) on-street parking to create a buffer between auto and pedestrian traffic;<sup>158</sup> (4) a grid-like network of streets, so that pedestrians have multiple routes to every destination;<sup>159</sup> and (5) nonresidential land uses within neighborhoods, so that neighborhood residents can walk to civic uses (such as synagogues).<sup>160</sup> Jews should favor developers’ rights to build walkable “New Urbanist” neighborhoods that include these elements because these neighborhoods will be places where synagogues and other Jewish facilities can easily be reached on foot. Communities can encourage New Urbanism either through abolition of existing anti-walkability zoning laws or through new codes that encourage pedestrian-friendly development by limiting street widths and lot sizes, requiring streets to be interconnected with each other and lined with sidewalks, and allowing residences to be within walking distance of nonresidential land uses.<sup>161</sup>

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with a diverse range of housing and jobs. Congress for the New Urbanism, *Charter of New Urbanism*, <https://www.cnu.org> (accessed May 25, 2005) [hereinafter CNU].

<sup>155</sup> Meredith, *supra* n. 1, at 451; see also Ohm & Sitkowski, *supra* n. 120, at 784 (quoting charter of Congress of New Urbanism, “the main advocacy organization for new urbanism”).

<sup>156</sup> See generally CNU, *supra* n. 154, at <http://www.cnu.org/aboutcnu/index.cfm?formAction=charter>. See also Meredith, *supra* n. 1, at 481; Martha A. Lees, *Expanding Metropolitan Solutions Through Interdisciplinarity*, 26 N.Y.U. Rev. L. & Soc. Change 347, 363 (2000-2001) (New Urbanists urge “narrowing streets and adding sidewalks”).

<sup>157</sup> *Id.*; see also Ohm & Sitkowski, *supra* n. 120, at 792 (emphasizing importance of “independent network of sidewalks”).

<sup>158</sup> See generally CNU, *supra* n. 154, at <http://www.cnu.org/aboutcnu/index.cfm?formAction=charter>. See also Meredith, *supra* n. 1, at 481.

<sup>159</sup> See generally CNU, *supra* n. 154, at <http://www.cnu.org/aboutcnu/index.cfm?formAction=charter>. See also Ohm & Sitkowski, *supra* n. 120, at 787.

<sup>160</sup> *Id.* Ohm and Sitkowski explain that one tenant of New Urbanism is that alternative housing should be combined with other civic uses. Although they do not specifically mention synagogues, the same goal of pedestrian-friendliness that justifies placing “employment centers and open space areas” or “public spaces such as squares or plazas” within walking distance of residences, also justify placing synagogues within walking distance of residences. Ohm & Sitkowski, *supra* n. 120, at 787.

<sup>161</sup> *Id.* at 791-93 (describing a New Urbanist zoning code). See also generally CNU, *supra* n. 154.

Second, as noted above, the division of metropolitan areas into poor cities and wealthier suburbs means that lower socio-economic classes get less from government than the more affluent classes.<sup>162</sup> To combat this inequity, Jewish groups should support state legislation making it easier for cities to merge with counties or to annex their suburbs.<sup>163</sup> Today, most states allow municipal annexation,<sup>164</sup> but only in very limited circumstances.<sup>165</sup> For example, some states allow annexation only with the consent of the voters of the area to be annexed or with the consent of county governments.<sup>166</sup> This ensures that in counties where suburban voters outnumber urban voters, wealthy suburbs can refuse to be annexed by nearby cities.<sup>167</sup> Only fourteen states authorize city-county consolidation, thus causing poor cities to be encircled by wealthier suburbs in the same county.<sup>168</sup> Jewish groups should lobby for the abolition of these anti-annexation laws, so that cities can encompass their entire region instead of just the region's low-income areas.<sup>169</sup>

A less radical solution, "municipal tax-base sharing," has been implemented in the Minneapolis/St. Paul region. Under Minnesota law, 40% of the increase in all communities' commercial property values goes into a common pool and is distributed among all local government entities, thus narrowing the gap between the region's wealthiest suburbs and its poorer communities.<sup>170</sup> Without tax base sharing, the disparity between the tax bases of the richest area communities and the poorest would be

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<sup>162</sup> *Supra* nn. 30-41 and accompanying text.

<sup>163</sup> Rusk, *supra* n. 2, at 14-20, 108-110.

<sup>164</sup> *Id.* at 109 (noting forty-four states authorize municipal annexation).

<sup>165</sup> *Id.* at 108-110 (describing the variety of hurdles that deter annexation).

<sup>166</sup> *Id.* at 109.

<sup>167</sup> *Id.* For example, Minneapolis contains just over 382,000 of Hennepin County's one million-plus inhabitants, Buffalo has less than 300,000 of Erie County's 944,000 inhabitants, and Newark contains only about 273,000 of Essex County's 793,000 inhabitants. *See The World Almanac and Book of Facts 2003*, 403, 444-62 (Ken Park ed., World Almanac Educ. Group 2002) (listing population for cities and counties, as well as the latter's county seats).

<sup>168</sup> *See* Rusk, *supra* n. 2, at 101-07.

<sup>169</sup> It could be argued that allowing cities to engulf their suburbs would merely export urban problems to suburbs. But cities with ample annexation powers have in fact prospered: metropolitan areas where cities have been able to annex large chunks of the region's land are wealthier and have experienced higher income growth than metropolitan areas surrounding less elastic cities. *Id.* at 77, 86-87. This is not to say, of course, that urban annexation has caused the prosperity of these regions, merely that annexation has not been a significant drag on regional prosperity. *Id.*

<sup>170</sup> *Id.* at 99.

seventeen to one; the state's tax base sharing law narrows the gap to four to one.<sup>171</sup>

Third, as noted above, the automobile dependency caused by suburban sprawl isolates the young, the needy, and the disabled from jobs and other civic opportunities.<sup>172</sup> Jewish groups can urge state and federal legislators to combat this problem in several ways. Initially, Jewish groups should lobby for additional public transit service.<sup>173</sup> In particular, Jewish groups should support focusing public transit spending on areas that currently have minimal or nonexistent transit service.<sup>174</sup> Next, Jewish groups should oppose the construction of new and widened roads in areas with minimal or nonexistent public transit, as such highway spending encourages development in those areas and encourages the migration of jobs to areas without transit service.<sup>175</sup> A less automobile-oriented transportation policy is also consistent with Jewish environmental values—less highway spending means less transformation of countryside into automobile-

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<sup>171</sup> *Id.* Finally, Jews could also support a variety of policies designed to encourage middle-class Americans to repopulate cities. See Lewyn, *supra* n. 1, at 371-77 (discussing possible reforms of urban schools that would make such schools more attractive to middle-class families).

<sup>172</sup> *Supra* nn. 43-46 and accompanying text.

<sup>173</sup> COEJL already supports "increased development and use of mass transit." *Environmental Policy Platform*, *supra* n. 145, at <http://www.coejl.org/about/policy0305.php>. However, there is little evidence that mass transit is a priority item for Jewish groups. For example, a WESTLAW search for "COEJL" in WESTLAW'S ALLNEWS database (COEJL /20 (mass public) /1 (transit transportation)) found no matches. However, local Jewish groups have occasionally been active on this issue. See Melissa Kruse, *Prayer Vigil Backs Transit Millage*, Grand Rapids Press (Grand Rapids, Mich.) D3 (Oct. 15, 2003) (Jewish leaders joined interfaith coalition supporting maintenance of city's bus service); Rusk, *supra* n. 2, at 126-27 (describing similar interfaith activity in the Gary, Indiana region).

<sup>174</sup> See Michael Lewyn, "Thou Shalt Not Put A Stumbling Block Before the Blind": *The Americans with Disabilities Act and Public Transit for the Disabled*, 52 Hastings L.J. 1037, 1095, 1096 (2001) (suggesting that ideally, government could require that "most or all jobs [be] transit-accessible"—for example, by requiring that "every urban or suburban employer [of significant size] . . . be reachable by regular bus or train service"; proposal based on assumption that "hourly bus service to every employer with over 15 employees would cost only \$1 billion—less than 1% of total government transportation spending . . .").

<sup>175</sup> *Supra* nn. 47-64 and accompanying text (discussing link between transportation policy and automobile dependence); Lewyn, *supra* n. 174, at 1093-94 (proposing a "no roads without transit" state or federal statute which would "condition all road expansions in metropolitan areas upon transit improvements in commercial areas served by (and thus likely to develop because of) road improvements").

dominated suburbia,<sup>176</sup> which means fewer automobile-dominated neighborhoods,<sup>177</sup> less driving, and less pollution.<sup>178</sup>

Fourth, Jews should support regional land use policies that encourage development of older areas and discourage transformation of rural areas into auto-dependent suburbs. Perhaps the most radical example<sup>179</sup> of such a policy is Oregon's urban growth boundary system, which, like the greenbelts mandated by the *Torah*,<sup>180</sup> draws a boundary ring around the city of Portland and its older suburbs and reserves areas outside the ring for farming, forestry, wilderness, and recreation.<sup>181</sup> The growth boundary apparently has led to a revitalization of the city of Portland; after the growth boundary's creation in 1980, the city's poverty rate decreased, and the city's population grew as fast as its suburban populations, while city growth in other nearby regions lagged far behind suburban growth.<sup>182</sup> A more moderate policy was adopted in Maryland, which has declined to prohibit outer-suburb growth, but instead has shifted state infrastructure funding to "designated growth areas,"<sup>183</sup> areas that already are urbanized to a significant extent, as opposed to countryside.<sup>184</sup>

Fifth, in their private conduct, when planning institutions such as synagogues, community centers, schools, Jews should seek locations that are: (1) on streets with sidewalks and near significant clusters of

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<sup>176</sup> Cf. *supra* nn. 73-76 and accompanying text (noting that Jewish law has traditionally discouraged development of rural land).

<sup>177</sup> Newer "outer suburbs" tend to be automobile-oriented for two reasons. First, many suburbs have minimal or nonexistent public transit service. *Supra* nn. 54-65 and accompanying text. Second, newer areas tend to be more thinly populated, which means their residents can reach fewer destinations by walking. *Supra* nn. 115-125 and accompanying text.

<sup>178</sup> *Supra* nn. 87-95 and accompanying text (noting link between auto use and pollution).

<sup>179</sup> This approach perhaps may be too radical as some commentators assert that the growth boundary has increased housing costs. See *supra* n. 82 (citing commentators on both sides of issue).

<sup>180</sup> *Supra* nn. 73-76 and accompanying text.

<sup>181</sup> See Rusk, *supra* n. 2, at 96 (describing system briefly); Lewyn, *supra* n. 82, at 5-8 (discussing system in detail).

<sup>182</sup> Lewyn, *supra* n. 82, at 25-26 (Both city and regional populations in Portland grew by 40-50%; by contrast, in Denver, Seattle, and Salt Lake City, city populations grew 5-19% despite similar regional growth).

<sup>183</sup> J. Celeste Sakowicz, *Urban Sprawl: Florida's and Maryland's Approaches*, 19 J. Land Use & Envtl. L. 377, 411 (2004) (discussing state manipulation of funding); *id.* at 415 (noting that the state does not prohibit "sprawling development" funded by local governments or private sector).

<sup>184</sup> *Id.* at 413. Maryland's growth policies were implemented in the late 1990s; thus, it is too early to judge their success or lack thereof. *Id.* at 417.

residences (so a substantial number of Jews can walk to them), and (2) near public transit service (so users and employees can reach those facilities by bus or train as well as by car).<sup>185</sup>

#### IV. THE LIBERTARIAN OBJECTION

Even commentators who admit that sprawl impairs Jewish observance sometimes assert that sprawl is inevitable. For example, one Jewish journalist writes that despite the problems caused by sprawl, sprawl is an inevitable result of

freedom [because] . . . American Jews will continue, like their neighbors, to range far from downtowns. . . . Though we would like them to stay in the city or at least the inner suburbs, we must make our peace with the fact that they have the right to make this choice.<sup>186</sup>

This argument is based on two assumptions: (1) that sprawl is the result of the unregulated free market (or, in the aforementioned journalist's words, "freedom"); and (2) that what the free market has put together, no one may tear asunder.<sup>187</sup> The first assumption is factually incorrect, and the second ignores Jewish law and tradition.

##### *A. Sprawl vs. Freedom*

American-style sprawl is the result not only of the free market, but also of massive governmental intervention on behalf of suburban expansion. Government has encouraged migration from city to suburb in a variety of ways, including:

**Massive highway spending.** As noted above, government at all levels spends over \$100 billion annually on highways,<sup>188</sup> and new highways facilitate sprawl by making it easier for people to live "further from where they work, shop, and engage in other activities, which spurs development on the fringes of existing communities and necessitates increased driving distances and frequency . . . [as well as] opening previously inaccessible areas to development."<sup>189</sup>

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<sup>185</sup> Placement of synagogues must still be consistent with the limits imposed by Jewish settlement patterns. For example, it obviously makes no sense to site a new synagogue in an urban neighborhood where few Jews live. *See generally* Lewyn, *supra* n. 82.

<sup>186</sup> Tobin, *supra* n. 125.

<sup>187</sup> *Id.*

<sup>188</sup> *Supra* n. 48 and accompanying text.

<sup>189</sup> Pollard, *supra* n. 92, at 1533; *see also supra* nn. 47-53 and accompanying text.

**Federal Housing Administration (FHA) mortgage insurance.** Since 1934, the FHA has insured mortgages against default.<sup>190</sup> For many years, FHA guaranteed home loans only in “low-risk” areas.<sup>191</sup> FHA guidelines defined “low-risk” areas as areas that were thinly populated, dominated by newer homes, and lily-white—in short, suburbs.<sup>192</sup>

**Federal public housing policies.** Public housing for the poor generally has been concentrated in cities due to federal laws that give suburbs veto power over public housing within their boundaries<sup>193</sup> and mandate that only areas with substandard existing housing could build new public housing.<sup>194</sup> Thus, even the suburbs that wish to participate in the public housing program are excluded if they are new enough not to have a significant supply of dilapidated housing.<sup>195</sup> Because poor people generally dominate public housing,<sup>196</sup> and poverty-packed neighborhoods tend to be more crime-ridden than other areas,<sup>197</sup> it follows that federal public housing policies have caused cities to be more impoverished and more crime-ridden than suburbs.<sup>198</sup> These conditions make cities less attractive to middle-class families.<sup>199</sup>

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<sup>190</sup> Lewyn, *supra* n. 47, at 278.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* See also Gillham, *supra* n. 81, at 37-38, 134-35. Although FHA’s pro-suburb policies no longer exist, their effects may continue to the present day. By encouraging middle-class migration to suburbia, FHA policies ensured that suburbs were dominated by the middle class while cities were dominated by the poor, which meant that city neighborhoods and schools continue to be less desirable. *Infra* nn. 196-204 and accompanying text (noting adverse effects of concentrated poverty upon neighborhood safety and schools).

<sup>193</sup> Gillham, *supra* n. 81, at 136.

<sup>194</sup> Lewyn, *supra* n. 47, at 279. See also Briffault, *supra* n. 116, at 41 (in all areas, suburban localities sought to exclude public or publicly subsidized housing).

<sup>195</sup> *Id.*

<sup>196</sup> Lewyn, *supra* n. 47, at 280 (most public housing residents must earn less than 30% of regional median income) (citation omitted).

<sup>197</sup> See Gillham, *supra* n. 81, at 136 (noting public housing projects are often “some of the most dangerous places to live in the city”); Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. Pa. L. Rev. 1203, 1215 (1995) (noting, other factors being equal, crime higher in areas with high poverty); *Patrolmen’s Benevolent Assn. v. City of N.Y.*, 74 F. Supp. 2d 321, 336 (S.D.N.Y. 1999) (equating “high-crime” areas with “low-income” areas).

<sup>198</sup> Gillham, *supra* n. 81, at 136; see also 42 U.S.C. § 11901 (2000) (official federal finding that “public and other federally assisted low-income housing in many areas suffers from rampant drug related or violent crime”).

<sup>199</sup> See e.g. Vicki Been, *Comment on Professor Jerry Frug’s The Geography of Community*, 48 Stan. L. Rev. 1109, 1110 (1996) (“When I talk to the mothers and fathers of my children’s friends about their inevitably impending move to the suburbs, they talk

**State and local educational policies.** Under most states' laws, students are assigned to public schools based on their home addresses.<sup>200</sup> Urban students must attend school within an urban school district, while suburban children must attend school in suburbia.<sup>201</sup> Because students from low-income households tend to achieve less in school (other factors being equal)<sup>202</sup> than students from high-income households, and urban school districts tend to have more low-income families,<sup>203</sup> urban school districts will continue to be less prestigious than suburban school districts as long as school assignments are based solely on jurisdictional lines.<sup>204</sup>

**Local zoning regulations.** In addition to encouraging Americans to move to suburbs, government also makes those suburbs as automobile-dependent as possible through local zoning regulations. As noted above, local zoning ordinances typically require land uses to be segregated, preventing residences from being located within walking distance of offices or stores.<sup>205</sup> Furthermore, because zoning laws often dictate low

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about the higher standard of living they will enjoy there . . . [including] the savings of writing one check for property taxes rather than one for property taxes and another for the private school tuition."); Kristin Kovacic, *New Century, Same Place*, Pitt. Post-Gazette A19 (Jan. 1, 2000) ("Our children were fast approaching school age. The rational response appeared to be moving to a suburban area with a good school district. Many city families we know were starting to move to these [suburbs] for the schools alone."); Lewyn, *supra* n. 47, at 281-82 ("It follows that schools packed with low-income children will usually be less prestigious than middle-class schools. Thus, so long as state and local laws require urban children to attend schools packed with low-income children, urban schools will have bad reputations that drive away middle-class parents.").

<sup>200</sup> See Kern Alexander & M. David Alexander, *The Law of Schools, Students, and Teachers in a Nutshell* 9 (West 2003) ("most state laws require children to attend school in the district in which the student resides").

<sup>201</sup> Lewyn, *supra* n. 47, at 281.

<sup>202</sup> See *Reed v. Rhodes*, 1 F. Supp. 2d 705, 738, 739 (N.D. Ohio 1998) ("[S]ocioeconomic status (SES) and family background influence a student's achievement in school" because children in low-SES households "tend to be less intellectually stimulated and, consequently, tend to be less prepared for school.").

<sup>203</sup> *Supra* nn. 33-35 and accompanying text (discussing economic gap between cities and suburbs). See also Katz, *supra* n. 38, at 5 ("Older suburbs are experiencing the same challenges as cities: failing schools, persistent crime, and the loss of jobs and businesses to other, further out suburbs. Even suburban areas that are developing rapidly are finding that explosive growth has its drawbacks, especially in the form of overcrowded schools, but also in long commutes and the inability of local governments to pay for new roads, sewers, and other infrastructure.").

<sup>204</sup> See Lewyn, *supra* n. 47, at 282.

<sup>205</sup> *Supra* nn. 126-131 and accompanying text.

population density,<sup>206</sup> houses are so far apart from each other, shops, and jobs that many Americans must “drive everywhere for everything.”<sup>207</sup>

In sum, government spending and government regulation have encouraged suburban migration, discouraged urban living, and made city and suburb alike far more sprawling and auto-oriented than a free market would require.

### *B. Judaism is About More than Just Property Rights*

Even if suburbia in its present form was purely a result of the free market,<sup>208</sup> this alleged condition would not place sprawl outside the realm of Jewish concern. Judaism does not enthrone unregulated individual choice as the supreme good. Instead, Jewish law mandates that individuals' property rights be balanced against community needs.<sup>209</sup>

As noted above, the *Torah* directly prohibits unfettered urbanization of rural land by mandating that certain cities be surrounded by undeveloped greenbelts.<sup>210</sup> The *Torah* also limits private use of land in a variety of other ways, such as by requiring Jews to let land lay uncultivated every seventh year,<sup>211</sup> and by requiring land to be returned to its original owners every fifty years.<sup>212</sup> Further, as noted above, post-*Torah* Jewish law intricately regulates land use in order to restrict pollution.<sup>213</sup>

Of course, the laws of the *Torah*, Mishnah, and Talmud cannot be applied chapter and verse to a secularized, industrial society. However, these laws do suggest that Jews need not give total obedience to laissez-faire theories of land use regulation, because the notion of unfettered property rights is completely alien to Jewish tradition.<sup>214</sup>

## V. CONCLUSION

In sum, Jews have both idealistic and practical reasons to seek solutions to sprawl, reasons based on Jewish ideals of charity, environmental protection, social justice, and concerns about the survival

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<sup>206</sup> *Supra* n. 116 and accompanying text.

<sup>207</sup> Pollard, *supra* n. 92, at 1534.

<sup>208</sup> See generally Tobin, *supra* n. 125.

<sup>209</sup> *Supra* nn. 14, 73-76.

<sup>210</sup> *Supra* nn. 73-76 and accompanying text.

<sup>211</sup> *Leviticus* 25:1-6.

<sup>212</sup> *Leviticus* 25:10.

<sup>213</sup> *Supra* nn. 84-86 and accompanying text.

<sup>214</sup> *Supra* nn. 73-76; *Leviticus* 25:1-6, 25:10.



of Jewish observance. Jews can thus comfortably oppose sprawl from within a traditional Jewish value structure. Rather than dismissing sprawl as inevitable, Jewish organizations should support anti-sprawl policies in their roles as political actors and seek to locate their facilities in areas accessible by foot, bus and train, as well as by automobile.