Redevelopment Redefined: Revitalizing the Central City with Resident Control

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REDEVELOPMENT REDEFINED: REVITALIZING THE CENTRAL CITY WITH RESIDENT CONTROL

Benjamin B. Quinones*

Introduction ........................................ 691

I. Preliminary Considerations ..................... 694
   A. What Is a City? .................................. 694
   B. Why Revitalize the City? ...................... 696
   C. Defining Community Control ................. 698
   D. Resident Power, Elite Power .............. 699

II. Redevelopment Backdrop ......................... 700
   A. Sponsoring Redevelopment:
      From Federal to Local Programs ........... 700
   B. The Redevelopment Process ................. 708
      1. Agency Powers ............................. 708
      2. Tax Increment and Tax Abatement
         Financing .................................. 710
      3. Site Assembly: Eminent Domain and
         Blight ..................................... 712
   C. Forces Driving Use of Redevelopment ...... 715

III. Common Criticisms ............................... 718
   A. Libertarian Critique ......................... 718
   B. Market Liberal Critique ..................... 721
      1. Lack of Accountability .................. 721
      2. Economic Power Controls Political Power 723
      3. Ideological Dissonance .................. 727

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C. Left Critique .................................... 729
   1. Distrust of Blight Designation .......... 730
   2. Depriving the Poor of Resources ....... 734
   3. Displacement and Housing Destruction .. 736
   4. Poverty Concentration .................. 739

D. Lost Opportunity Costs ....................... 742
   1. Flawed Industrial Policy ............... 743
   2. Residents Are Not Clients ............. 745
   3. Unequal Risk and Reward ............... 750

IV. Recommendations for Reform ................. 752
   A. Resident-Controlled Redevelopment: The Dudley Street Example ............... 753
      1. Community Plan ....................... 756
      2. Community Land Trust ................. 757
      3. Financing ............................ 757

   B. Resident-Control Resolves Major Criticisms 759
      1. Libertarian Critique ................. 759
      2. Market Liberal Critique ............. 759
      3. Left Critique ....................... 760
      4. Opportunity Costs ................... 760

   C. Difficulties Raised by Resident Control . 761
      1. Determining Boundary Areas and Establishing Project Areas ............... 762
      2. Establishing Front-End Financing .... 764
      3. Gaining Technical Assistance ........ 765
      4. Negotiating with Private Capital .... 765

V. Fostering Community-Controlled Redevelopment 765
   A. Federal Tax Code Revisions .............. 766
   B. State Enabling Legislation .............. 767
   C. Local Political Action ................. 768

VI. Imagining Resident-Controlled Redevelopment 768
   A. Bring the Suburbs Home .................. 769
   B. Blue-Collar-Based Redevelopment ........ 769
   C. Green Redevelopment .................... 770
   D. Mini-Redevelopment ..................... 770

Conclusion ..................................... 771
“Ah yes,” sighed a visiting Frenchman late Sunday. “Detroit. I like it. Wonderful architecture. All this glass. But then, . . . the rest, it's like Pakistan.”

INTRODUCTION

After four decades of Detroit's efforts to revitalize itself through government-sponsored redevelopment, the quotation above is a fitting epitaph for a failed experiment. Government-sponsored redevelopment efforts also have failed in most other cities across the nation. For example, even with Baltimore's vaunted harbor and downtown redevelopment program, the city "neighborhoods continue to deteriorate, city dwellers have been unable to secure quality employment, and city space has been increasingly restructured to meet the various interests of developers, tourists, and upper-income consumers." Likewise, Los Angeles has created a glistening downtown worthy of the opening credits of the now-defunct television program, L.A. Law, while "South-Central has gotten very little good and a whole lot bad from [Los Angeles Community Redevelopment Agency] policies and priorities." The presence of new stadiums, convention centers, retail centers, and office towers created by federal and later local redevelopment efforts have been abject failures in revitalizing the economies of metropolitan central cities. They have not arrested blight; they have not refilled the

1. Catherine S. Manegold, A Meeting Fit for Detroit's Contrasts, N.Y. TIMES, Mar. 16, 1994, at D2. This quotation is submitted as an example only. No slur is intended on the residents or governments of either Detroit or Pakistan.


3. Fred Seavey et al., Reflections from the Field: Redevelopment's Role in the L.A. Uprising, REDEVELOPMENT ADVOC., Summer 1992, at 1,3 (excerpting a 1990 Los Angeles Times editorial by Mark Ridley-Thomas). The initial opinion piece, written by now City Councilman Mark Ridley-Thomas, was published on January 29, 1990, over two years before the civil disturbances in Los Angeles. Mark Ridley-Thomas, It's Easy to be Overlooked When You're Not Even Included in the Picture, L.A. TIMES, Jan. 29, 1990, at B5.

Unfortunately it is likely that this type of office tower and retail arcade development created in Los Angeles would have occurred with or without redevelopment because market conditions supported those projects. The Embarcadero Center in San Francisco is another example of such development.

4. To a certain extent, describing these efforts as failures is a harsh judgment. Very often individual projects did succeed on their own terms. Unfortunately, the goals of these projects had little to do with improving the quality of life for residents
city's coffers; they have not revitalized the local economy; and above all they have not improved the life chances of inner-city residents.

There are two explanations for this failure. First, the projects that were carried out had little, if anything, to do with improving the economic opportunities of the local poor. Rather, redevelopment under the auspices of both federal and local jurisdictions pursued "downtown development." As will be shown below, this is a flawed development approach. The second explanation for redevelopment's failures flows directly from the first. The local and federal redevelopment efforts were generated, planned, and implemented by local elites. As might be expected, local elites produced projects that they perceived to be important. Unfortunately, these projects did not benefit the city as a whole and particularly did not benefit low-income residents of the city. Because the planning process was not open, and above all because the residents of project areas that were to be redeveloped did not participate in the redevelopment that took place, the redevelopment effort pursued goals that could not be expected to revitalize the city. The low-income residents of project areas were not the clientele that this entrepreneurial offshoot of government served. In many ways, the story of redevelopment in the United States is the story of local political elites ignoring the needs of low-income residents and pursuing development policies that had little likelihood of benefitting the broader city. In this way, redevelopment has been a contributing factor in the decline of major American cities.

Although to date these policies have failed to revitalize inner cities, redevelopment powers are some of the few arrows left in the quiver of cities which must fend off economic decline.

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5. "Downtown development" does not have a stable definition, yet it is obvious when one sees it: convention centers, office towers, luxury hotels, festival shopping plazas, stadiums, and the like. One unifying characteristic is that downtown development is devoid of any obvious connection to the lives and livelihood of the majority of city residents. Throughout this Article the phrase "downtown development" shall be used to note this form of redevelopment.

6. See infra note 18 for the definition of "elites" as used in this Article.

7. See infra Part IV for a discussion of one successful project in Boston.
Moreover, they are exceptionally powerful tools for changing land use and real estate development and thereby subsidizing and locating favored forms of development. This Article argues that a fundamental shift in redevelopment priorities and projects must take place, and that such a shift would strengthen redevelopment and forge it into a significant tool in the effort to revitalize cities. Part I presents a brief discussion of preliminary considerations that are important to any discussion of redevelopment or city revitalization. Part II provides a description and history of the transition from federally funded redevelopment to locally funded redevelopment, and summarizes the general features of local redevelopment efforts as currently practiced. Part III explores the many criticisms, problems, failures, and disappointments of these powers as they are practiced. Part IV sets forth suggestions for reform based on restructuring the power and decision-making relationships in urban redevelopment. Most importantly, redevelopment must be planned and implemented by the residents of the redevelopment area.

Part V further elaborates upon three likely approaches for pursuing community-controlled redevelopment. First, the federal tax code should be revised so that tax-exempt bonds may not be issued for redevelopment projects except under the circumstances suggested here. Second, state enabling legislation should be altered to mandate project area resident control of the redevelopment process. Third, community groups should act politically to demand that the city grant them these powers regardless of whether state or federal legislative changes are forthcoming. Finally, Part VI outlines promising directions resident-controlled redevelopment might pursue.

Misguided redevelopment has been both a symptom of, and a means for achieving, inappropriate urban development goals. Requiring resident control will improve the redevelopment process itself, and simultaneously redirect the development goals towards which it channels its energy. One hopes that by shifting control of the redevelopment process, we also would shift the goals that redevelopment would pursue and the development forms it would take. Presumably this would result in urban development designed to benefit residents of the urban core.
I. PRELIMINARY CONSIDERATIONS

The topic of this Symposium—revitalizing America's cities—spans a breathtaking array of concerns. Any single Article must slight critical questions in the broader concern. This Article advocates, as one small step towards revitalization of central urban cores, resident-controlled redevelopment. Redevelopment is a process focused largely on land use and real estate development. As such, it cannot address many of the other critical issues that must be considered to truly revitalize urban cores. For example, redevelopment would not easily foster entrepreneurship so as to create—rather than locate—jobs, nor does it invest in human capital, reduce crime, or reduce discrimination. As one step towards this broader goal, however, reforming redevelopment could have significant impacts.

At the outset, it is important to define some terms and to clarify motivations. This section briefly discusses the definition of a city, power in the city context, why we should concern ourselves with revitalizing a city in the first place, and the meaning of the words “local” and “community” in the redevelopment context. These preliminary discussions will set the stage for the substantive inquiry into resident-controlled redevelopment that follows.

A. What Is a City?

A city is a political jurisdiction defined by a geographical area over which it exercises some governmental powers. Within that broad definition, it is important to recognize the myriad sizes, shapes, and characteristics of cities. Often we suffer from a genericism of language where “the city” as a phrase is meant to conjure up crumbling urban cores fraught with high-crime, unemployment, disinvestment, redlining, declining sales and property tax bases, and a crushing lack of opportunity for disadvantaged residents. Of course, the governmental powers historically associated with major cities have been dispersed well beyond these cities to hundreds, indeed thousands, of smaller suburban cities. These smaller cities, such as Indian Wells in California—largely a walled fortress of rich suburbanites—possess all the powers of any other city, but so far as one
can tell, Indian Wells does not need revitalization in any form.\(^8\)
In discussions of urban decay, the juxtaposition of "suburban" life and "city" life is commonplace. This juxtaposition is misleading because most suburban dwellers live within the geographical boundaries of political jurisdictions called cities.\(^9\)
"The political autonomy of places, as well as the planning power this entails, reproduces and exaggerates the inequalities between places rather than leveling them. Local control and the planning apparatus . . . becomes a Trojan Horse in the American City."\(^10\)

This observation is more than a petty concern over sloppy discourse. Cities are arenas for political and economic competition—on both an intermural and intramural basis. Cities are also sites of political conflict over land use and development. This conflict takes many forms and involves many competing interests and motivations. In addition to revenue considerations, political concerns of every stripe enter into the complex equation of redevelopment approaches and decisions. These include everything from serving powerful interests to removing poor residents from a jurisdiction, to pleasing wealthy residents by accommodating their entertainment preferences,\(^11\) to

\(^8\) There are other examples: "Cities like Palm Springs, Santa Barbara, and Belmont have designated their most valuable and booming areas as redevelopment zones; the city of Indian Wells, with one of the highest per capita incomes in the world, made all land within its city limits (even wilderness) an official redevelopment area." JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 174 (1987).

\(^9\) Within this fragmentation, race and income play critical roles in determining quality of life.

\(^10\) Jurisdictional fragmentation has made segregation economically and socially functional for metropolitan businesses and residents. Firms and families intent on reducing contact with African-Americans and other minorities, by . . . actually moving to jurisdictions where they are diminished or absent, secure several distinct advantages. . . . They are often subject to lower taxes by not having to share the costs of servicing the costly infrastructure of older business districts or the social needs of poor minority residents. . . . [T]hey make themselves eligible for local services like education and parks that are better funded. . . . [They] can exercise land use regulatory powers. . . . This means that once middle- and high-income households manage to isolate themselves in the sanctuary of a suburb, they have the power to resist and thwart the metropolitan-wide economic and social forces that would normally make even outer communities more economically and residentially diverse.


\(^11\) A particularly obnoxious rationalization for this preference is to equate
competing with neighboring jurisdictions, to fostering political aspirations of office holders, to maintaining the property values of residential neighborhoods, to fostering certain types of industrial development. In short, the development actions of "cities"—be they suburban or central core—have important effects far beyond their borders.

To foreshadow later arguments, given the diffused decision making of a multiplicity of cities, the competition between those cities, and the similar pressures cities face, city managers frequently use redevelopment to pursue development goals that harm the poor. Though local decisions, cumulatively they have national scale. City managers face difficult fiscal issues and must, to a certain extent, run their city as a business. They also act on the widespread, though debatable, belief that "lower-income populations contribute much less to revenue than they do to expenditures" for a local jurisdiction.12 Given this basic fiscal preoccupation, identical development goals manifest themselves in city after city: the ideal city population contains several large sales tax generators, but no low income population.13 After all, "a city is, in legal terms, a municipal corporation, and like any other corporation it will be anxious to exchange a losing line for a profitable one."14 These combined forces create a race to the bottom which results in a development policy that harms the urban poor.

B. Why Revitalize the City?

Of course, one must ask what is the virtue of revitalizing the city anyway? Revitalizing the city primarily takes on entertainment choices, from upscale shopping malls to theaters and symphony halls, with middle-class popular tastes. This argument appropriately dismisses the post-modern office tower and other forms of architecture as hopelessly out of touch with the aesthetic choices of the vast majority of urban residents. Unfortunately, the argument then proceeds to adopt a middle-class populist attitude against those elite tastes as a justification for city funded programs which systematically harm the poor. See Bernard J. Frieden & Lynne B. Sagalyn, Downtown Inc.: How America Builds Cities 208-13, 239-41 (1989).


13. In this way, city managers' ideal city mirrors many law professors' ideal work situation: grants which fully fund research obviate the need for pesky students.

importance in the context of increasing the quality of life and opportunity of central city residents.\textsuperscript{15}

There is no particular virtue in maintaining the governmental entity called Detroit. To the author, the desire to revitalize the city stems from a desire to improve the life chances and opportunity of the impoverished—the majority of whom live in central urban cores.\textsuperscript{16} Redevelopment controlled by residents would seek to revitalize the city by focusing on improving the life chances and opportunities of these groups. This unremarkable proposition is in fact quite unusual in the standard explanation for the need to revitalize cities generally, or for the use of redevelopment as a tool to that end. Rather, standard justifications for revitalization only vaguely connect increased investment with a generalized improvement in the quality of life for city residents.

\textsuperscript{15} Commentators have suggested other justifications for preserving central urban cores. For example, Jane Jacobs suggests that vibrant city regions are critical to the economic life of a nation. She concludes: "Societies and civilizations in which the cities stagnate don't develop and flourish further. They deteriorate." \textit{JANE JACOBS, CITIES AND THE WEALTH OF NATIONS} 232 (1984). Thus one may want to revitalize urban cores to maintain long-term economic vitality. On another tack, Larry Bennett argues that central urban cores, densely populated with diverse ages, races, and classes of people are valuable because they provide us with a space and context for "surprise, tolerance, innovation, and participation." \textit{LARRY BENNETT, FRAGMENTS OF CITIES: THE NEW AMERICAN DOWNTOWNS AND NEIGHBORHOODS} 13 (1990). He then decries how governmental policies have both inadvertently and purposefully promoted the "physical restructuring of the post-World War II American city [which] has impinged on these special virtues of cities." \textit{Id.} at 13–14. Likewise, in quaintly dated language, William Alonso describes the agglomeration benefits of dense cities:

[The central city] is the center of power, where a new enterprise may be conceived over lunch; . . . here one may find a shop that specializes in stringed instruments or clothing for six-foot women . . . an agency that can supply the names and addresses of a few thousand street railway enthusiasts or likely opponents of the death penalty . . . Let the size of the downtown area drop below the necessary critical mass and dissolution will follow. There will not be enough six-foot girls coming downtown for there to be a shop especially for them.

\textit{Alonso, supra} note 14, at 449–50.

\textsuperscript{16} William Julius Wilson notes that between 1969 and 1982 poverty increased nationwide in terms of real numbers and as a percentage of the population, that metropolitan areas endured the greatest growth in poverty, and that "central cities accounted for most of the metropolitan increase in poverty." \textit{WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY} 172 (1987). He writes: "Accordingly, to say that poverty has become increasingly urbanized is to note a remarkable change in the concentration of poor people in the United States . . . ." \textit{Id.} (emphasis omitted). As shown below, urban redevelopment played a significant, though little mentioned, role in fostering such concentration.
C. Defining Community Control

Because language is fuzzy and words such as "community" have been abused beyond pulp into liquefaction, one must distinguish very carefully the difference between the sort of redevelopment advocated here and redevelopment as currently practiced. Redevelopment is frequently described as "local" and "community driven." These, however, are deceptive terms. Redevelopment and urban renewal were "local" in the context of our federal system. Redevelopment today is "community driven" when one considers the "community" to be Los Angeles, St. Louis, Las Vegas, or Chicago. Yet, on the ground, within the geographical areas over which redevelopment agencies exercise their powers, standard redevelopment is not "local" or "community driven" at all. Standard redevelopment is planned and implemented by local elites—often at the behest of powerful local and nonlocal entities—to achieve results that those elites deem important. The people who live where redevelopment happens, the people who have the most to lose, generally have no say in this "local" and "community driven" process. On a good day, project area residents can block particularly egregious redevelopment proposals. On worse days, the project area residents can gain concessions from a plan that otherwise did not consider them or their needs. Never do project area residents comprise the driving force behind the creation of a plan.

Simply put, the difference between reacting to amend the margins of a proposal that you had no part in creating, and starting from scratch to create a plan that addresses concerns you consider paramount, is vast. This difference makes all the difference. The form of redevelopment advocated in this Article will be dubbed "resident-controlled redevelopment" to indicate control, planning, and implementation by residents of the project area at issue. This structure would require a regularly elected redevelopment agency board two-thirds of which is composed of project area residents exercising full decision-making authority and elected for that sole purpose. No other form of redevelopment can be considered resident-controlled regardless of how "local" or "community driven" it may be.¹⁷

¹⁷. Obviously, some jurisdictions attempt to pursue redevelopment that is perceived by elites to be in the best interests of the residents of the project area. These
D. Resident Power, Elite Power

“Power” in the local political context has been much debated and discussed.\(^\text{18}\) This Article will not enter this broad debate except to point out that urban redevelopment—when controlled by local residents rather than local political and economic elites—would be likely to reduce and diffuse the power of elites.\(^\text{19}\) Resident control of redevelopment powers has the ability to short-circuit traditional power structures in a dramatic fashion. By placing low-income residents in control of significant governmental powers, the rules of the game will be altered fundamentally and the arena in which the game is played will have changed as well.\(^\text{20}\) Just as city-sponsored redevelopment now functions as a national development policy, so it is likely that a series of resident-controlled redevelopment projects could also create a new national policy based on serving a new client.

With these preliminary issues informing the discussion, this Article now proceeds to discuss the history and substance of jurisdictions should be congratulated. The existence of rare counter-examples, however, does not deflate the argument or policy prescriptions of this Article. Those jurisdictions that already are pursuing resident-centered redevelopment should have no problem formally adopting the policies prescribed here. They also should welcome the leveling of the playing field that requiring similar behavior of all jurisdictions would bring.


Throughout this article, “elite” will be used to refer to political leaders of a local jurisdiction and business leaders who hope to impact the political decision-making process.

19. This would be true whether those elites are produced as a symptom of who governs, an indicator of who controls the systemic hierarchy, or as a product of historic decisions made within the context of a systemic hierarchy.

20. See Patrick Dunleavy, An Issue Centered Approach to the Study of Power, 24 POL. STUD. 423, 429–30 (1976). Dunleavy presents the indisputable notion that local government is not merely an arena over which groups attempt to exercise power, but that this arena may itself limit decision-making possibilities and thereby systematically burden certain actors. Although couched in obscure terminology, Dunleavy shows that the state always is implicated in the exercise of power, regardless of the particular dispute, lack of dispute, or result in a particular case. We are well past the naive stage at which one can assume that the state, whether through the Federal Reserve Bank or the Supreme Court, simply sets neutral rules that govern an arena in which we all compete equally—whether for economic or political goods.
redevelopment, and the many criticisms levied against it as traditionally practiced.

II. REDEVELOPMENT BACKDROP

A. Sponsoring Redevelopment: From Federal to Local Programs

Redevelopment began as a federally driven, but locally implemented, program with the Housing Act of 1949. Though created under the auspices of a housing act, redevelopment was never a housing program. Housing expert Catherine Bauer explained that "the disparate alliance supporting the 1949 U.S. Housing Act, and in particular its provisions for urban redevelopment, had coalesced because '... different groups of people, like the blind men feeling the elephant, made entirely different assumptions as to the essential nature and purpose of this legislation.'" Housing advocates thought it would result in additional affordable housing, while developers saw it as an economic opportunity. Local jurisdictions viewed it as a mechanism to clear eyesores and build developments that they perceived to be important, largely on the federal dime.

From the outset, indications showed that any optimism for additional affordable housing was misplaced. For example, Senator Bricker of Ohio expressed his all-too-typical concerns in response to an early proposal, "'I am in favor of the slum elimination section. I am opposed to the public housing section.'" The Housing Act of 1949 contained a massive loophole that also should have alerted housing advocates that redevelopment would not serve their goals. The original legislation required that redevelopment be practiced in a "slum area or a deteriorated or deteriorating area which is predominantly residential in character," yet the legislation did not require

22. BENNETT, supra note 15, at 25 (citing MARK I. GELFAND, A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA 156 (1975)).
that the housing which was to be torn down be replaced.\footnote{24} As Lawrence Friedman has noted, "high-cost housing, it was thought, eliminated blight and slum conditions just as efficiently as low-cost housing, and perhaps a good deal more so."\footnote{25} Thus, the original redevelopment legislation could not be considered a housing construction bill. The original legislation was predicated on the notion, apparently held in good faith, that by destroying slum housing, government was not only straightening out its balance sheet, but benefitting the former residents of that housing.\footnote{26}

The essential elements of federally sponsored redevelopment—and the locally sponsored redevelopment which continues today—are: eminent domain in the service of site assembly,\footnote{27} property tax increment financing combined with tax-exempt bonds to cover the local jurisdiction's share of project cost,\footnote{28} land "write-down" of cost to private developers,\footnote{29}


\footnote{25. LAWRENCE M. FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION 151 (1968).}

\footnote{26. As noted \textit{infra} Part III.C, one of the primary criticisms of redevelopment as practiced over the years is that it has displaced the poor. Ironically, that was in fact the original intent of redevelopment.}

\footnote{27. STEVEN D. MESSNER, A \textit{BENEFIT-COST} ANALYSIS OF URBAN REDEVELOPMENT, 28 (Indiana Business Report No. 41, 1967); see \textit{infra} Part II.B.3.}

\footnote{28. The tax increment provision could not be mandated by federal legislation but rather was included in most state-enabling legislation. States that did not allow tax increment utilized tax abatement policies. Wilton S. Sogg & Warren Wertheimer, \textit{Legal and Governmental Issues in Urban Renewal, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY, supra} note 14, at 126, 136–38 (citing Note, \textit{Urban Renewal}, 72 HARV. L. REV. 504 (1959)). Sogg and Wertheimer set forth the problems cities faced in trying to finance their share of project cost. Municipal debt limitations often barred borrowing by the city, and general obligation bonds were deemed too risky to the city's credit rating. Thus tax increment financing was the tool of choice. \textit{Id.} See \textit{infra} Part II.B.2 for a discussion of tax increment financing.}

\footnote{29. Under the original slum clearance notion, the governmental component of a project's cost was the cost of the land with the existing buildings included, plus the cost of razing those buildings and providing any necessary infrastructure to support the subsequent development. Housing Act of 1949, Pub. L. No. 81-171, ch. 338, tit. I, § 110, 63 Stat. 420–21 (originally codified at 42 U.S.C. § 1460 (1988)), \textit{omitted by} Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. I, § 116(a), 88 Stat. 633, 652 (current version as amended at 42 U.S.C. § 1441 (1988)). Under the Act, the agency would purchase the land, demolish the structures and augment it with any necessary infrastructure such as new roads, curbs, gutters and sewers, and then sell the land for its value after these efforts. "Write down" refers to the difference between the cost of purchasing and augmenting the land, and the actual (lower) price
and the requirement that the project area suffer from "blight."\textsuperscript{30}

Throughout its history, federal redevelopment was characterized by a great degree of local control, and remarkable compliance by the federal government to local pressure. Originally, federal grants and loans covered up to two-thirds of the governmental component of local project costs.\textsuperscript{31} Over time that proportion grew to a maximum of three-fourths,\textsuperscript{32} while the universe of activities that would count as the local jurisdiction's share increased. Although the Act was renamed "Urban Renewal" in 1954 to suggest a greater emphasis on rehabilitation rather than clearance, little of substance changed.\textsuperscript{33} The program remained a system for funding development projects demanded by the politically powerful within local jurisdictions, and it became much more generous as well. "By 1968 the federal government was collecting only twelve cents of every

that the developer pays for the cleared land. This practice was supported by the theory that tax increment funds received from the new development would more than cover the local jurisdiction's loss in subsidizing the developer's purchase. The federal government then paid the remainder of these expenses. The difference between that amount and the cost for the vacant land was the "write down" subsidy to the private developers. \textit{Id.} However, even where the write down subsidy is zero, significant subsidies flow from the simple exercise of government site assembly powers on behalf of the proposed development.


William Slayton, a former commissioner of the Urban Renewal Administration, explained that "the growth and persistence of blight has its roots in the inability of private enterprise to rebuild without aid the deteriorating parts of the city's structure to meet changing needs and functions of urban areas." William L. Slayton, \textit{The Operation and Achievements of the Urban Renewal Program, in Urban Renewal: The Record and the Controversy, supra} note 14, at 189, 191. He identified two basic obstacles: first, the "problem of assembling a number of parcels, under diverse ownerships, in order to create a tract large enough to support efficient modern development and at the same time withstand the effects of adjacent blight," \textit{id.} at 191, and second, the tremendously high cost of assembling the site. \textit{Id.} He added that remedying these two basic obstacles became the principal goals of the original redevelopment statutes. \textit{Id.}

local matching dollar in cash; the rest was all public works and similar credits.\textsuperscript{34}

Meanwhile, the federal government continually relaxed the housing link. Again, this was the result of extensive pressure from local political officials. For example, under the original legislation, projects could only involve clearance of a slum area that was "predominantly residential in character" or clearance of other land to be developed for "predominantly residential uses."\textsuperscript{35} By 1965, thirty-five percent of federal grants could be spent in non-residential areas and for non-residential projects.\textsuperscript{36} As Friedman and others have noted, over time these amendments created greater local discretion in the types and goals of projects funded with federal outlays, and were simultaneously the product of intense local lobbying of federal officials.\textsuperscript{37}

These amendments resulted in the emergence of redevelopment that truly could be defined as downtown development because that is the development local elites wanted to achieve. Frieden and Sagalyn conclude that, like the federal highway program, federal redevelopment programs "were pliable enough to invite cities to define them according to their own needs."\textsuperscript{38} This fluidity, linked with local political and economic pressures, resulted in redevelopment serving downtowns almost exclusively. The evidence is compelling: "over the entire twenty-five-year life of the program . . . 82 percent [of all urban renewal funds went] for projects within two miles of [the city center].\textsuperscript{39}

Finally, with Richard Nixon's "new federalism" in 1974, formal federally sponsored redevelopment ended. The Community

\textsuperscript{34} FRIEDEN & SAGALYN, supra note 11, at 27. The extravagance of federal support led to many projects which, in fact, were utterly devoid of market reality. Because the local jurisdiction often pursued projects designed merely to "clear" undesirable areas, and because economically speaking the project was a free "put" on a real estate option market, the local jurisdiction had no incentive to tailor the property to development needs.


\textsuperscript{36} FRIEDEN & SAGALYN, supra note 11, at 24. In a sense, this slackening of the housing focus was a blessing for low-income communities, because it no longer required the destruction of housing to pursue redevelopment.

\textsuperscript{37} See FRIEDMAN, supra note 25, at 163–66.

\textsuperscript{38} FRIEDEN & SAGALYN supra note 11, at 22.

\textsuperscript{39} Id. at 25.
Development Block Grant (CDBG) program, however, picked up where redevelopment left off. The CDBG process represented a shift from prior “single purpose or categorical grants to a more flexible concept of block grants, so that recipients [could] expend funds on a myriad of local activities according to locally developed priorities.” CDBG provided even greater local discretion than the redevelopment program had before. Although used for many purposes, CDBG grants always have had a primary role in funding downtown redevelopment projects. With the 1977 amendments, and the addition of the Urban Development Action Grant (UDAG) program, federally funded redevelopment remained in vogue.

Although the federal program called “redevelopment” or “urban renewal” disappeared in 1974, slum clearance and redevelopment still were authorized under the new CDBG legislation. Under the CDBG and UDAG programs, creative city officials could jerry-build local property tax increment financing—or tax abatements—with federal funds to create redevelopment projects that satisfied local political and market demands. In the meantime, with the formal demise of categorical grant programs, local discretion increased both within and outside the law. A report by the Government Accounting Office condemned the Housing and Urban Development’s (HUD’s) monitoring practices.


41. MANDELKER ET AL., supra note 33, at 450–51.

42. Though couched in terms of increasing local control and returning power to the people, New Federalism and similar allocations of money or power to local discretion must be viewed as extremely regressive strategies. In short, the lower the level of office, the smaller the voter turnout and the less legitimate the representation can be considered. Because older, better educated, and wealthier people vote more frequently, their vote is magnified at the local level more than it is at the federal level. Meanwhile, in the context of local development decisions, cash grants with local control must have been viewed as manna from heaven by powerful developers and footloose corporations that would manipulate these programs to force various jurisdictions to compete to provide sites for new facilities. See infra note 132.


44. MANDELKER ET AL., supra note 33, at 431.

45. “The bulk of UDAG grants have gone to central business districts, ironically for civic center improvement, sports stadia, and luxury hotels, the principal beneficiaries of urban renewal under the old categorical grant programs.” Id. at 481.

46. GENERAL ACCOUNTING OFFICE, CED-78-160, MANAGEMENT AND EVALUATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM NEED TO BE STRENGTHENED, at i–ii,
Although UDAG funding has disappeared and CDBG funding has declined, redevelopment has continued. Though now more locally driven and controlled than ever, a critical federal funding mechanism remains. The latest federal incarnation consists of the interest income deduction on tax-exempt bond financing.\footnote{47}

When an agency issues tax-exempt bonds, the interest income paid to the bondholder is not taxed by the federal government. Therefore, the bondholder will accept a lower rate of interest than for fully taxable bonds. By failing to tax interest income, the federal government and all federal taxpayers are subsidizing the project funded with those bonds. Sagalyn conservatively estimates that the subsidy attached to one year's tax-exempt bond borrowings in 1984 would have been about $1.2\footnote{48} billion.\footnote{49} "In contrast, over the 25-year life of its urban renewal program, the federal government spent, on average, $520 million annually." This "back door\footnote{50} subsidy exceeds the value of direct federal outlays under the old programs.

As direct federal subsidies were removed, project feasibility began to be determined by capital markets rather than by federal criteria. "Since [bond] marketability was paramount, Wall Street's technical standards for underwriting, guarantees, reserve funds, and disclosure—rather than public policy criteria—determined project acceptability.\footnote{51} Inevitably, these new constraints limited the power of city decision makers in negotiations with developers and bond issuers.

The new power of capital markets has been a mixed blessing. These new public/private partnerships are less ambitious and more circumspect, as they must operate without federal subsidies which formerly covered over sixty-six percent of the public

\footnote{11–15 (1978) (indicating that HUD neither collected the necessary data nor created appropriate standards to assure itself that federal funds were being distributed in compliance with the law). In addition, Mandelker et al. comment, "HUD has historically ignored citizen administrative complaints and has generally resolved all disputes in favor of grant recipients." MANDELKER ET AL., supra note 33, at 507.}

\footnote{47. For a further explanation of the federal deduction's impact on financing, see infra Part II.B.}

\footnote{48. Lynne B. Sagalyn, Explaining the Improbable: Local Redevelopment in the Wake of Federal Cutbacks, 56 AM. PLAN. ASS'N J. 429, 432 (1990).}

\footnote{49. Id.}

\footnote{50. This is a "back door" subsidy because, rather than providing a direct subsidy, the government makes a tax "expenditure" by not taxing the income earned as interest from these bonds.}

\footnote{51. Sagalyn, supra note 48, at 433.}
These projects are tailored more closely to private developers' requests. This increased responsiveness to market forces is somewhat of an improvement. On the other hand, the removal of federal direct redevelopment outlays has reduced whatever incentive to devote redevelopment efforts to public uses that previously may have existed. That is, without federal subsidies, project managers became much more insistent that developments pay for themselves. This results in redevelopment which is more and more driven by development and capitalistic elites. The post-federal projects are smaller and less dramatic in the scope of displacement they require, but they also are removed further from the possibility of achieving benefits for low-income residents. The increase in power of capital markets has further removed project area residents from the picture.

The detailed workings and criticisms of redevelopment will be discussed further below. At the outset, however, it is important to understand that the fundamental tools of redevelopment have been adapted and implemented by local jurisdictions with great fluidity in the face of changing market pressures and evolving federal and state programs. Redevelopment programs have continued over the intervening years while changing names, shape, and details because the basic tools are extremely valuable to local real estate development and related economic development goals of local elites. As Friedman presciently noted, redevelopment will not go away.

52. See supra note 31 and accompanying text.

53. Frieden and Sagalyn claim that, by the end of the 1970s, "the days of big clearance projects were over." FRIEDEN & SAGALYN, supra note 11, at 56. This statement is either wrong or is based on a cramped definition of "big" clearance. For example, in the past year, the author personally has worked to stop or amend two separate projects (one is the Gateway 101 redevelopment project area in East Palo Alto, California, and the other is a proposed redevelopment project for "Highway City" in Fresno, California). Based on a working knowledge of the area, the author estimates that each one of these projects could displace over one thousand people—in each case overwhelmingly Latino populations. Destroying the housing and community of over one thousand people must be considered "big" clearance.

54. Lawrence Friedman wrote in 1968 that:

[Urban renewal is here to stay. . . . Urban renewal, after all, despite its political troubles, has many ways to disarm opposition. It makes enchanting promises to solve urban problems and holds out glittering visions of the City Beautiful; . . . in any given case, urban renewal can appeal to strong economic or political interests. Not least of all is its bureaucratic power . . . in the hundreds of local agencies created in states, cities, and villages—agencies which will fight for their life with great passion. The program, then, may be wounded or altered; . . . it may change names; but it will not die.

FRIEDMAN, supra note 25, at 171–72.
It also is important to note that as direct, visible federal involvement waned, so too did the scrutiny of redevelopment. When up-front federal financing of urban renewal disappeared, the only source of oversight for these projects disappeared along with it. Abused though they were, the federal relocation, local participation, and housing planning requirements were at least potentially effective tools for resident input concerning redevelopment. At a minimum, they provided plaintiffs with federal causes of action by which they could gain hearings with federal judges who were removed from the political pressures of state courts. With the removal of up-front federal funding, the lightning rod of visibility also was removed, leaving local jurisdictions to proceed in relative quiet.

As a tool for revitalizing the city, redevelopment is often sloppy, irrational, and cumbersome. Nevertheless, it is also extremely powerful in many ways. Redevelopment must be considered in any discussion of revitalizing the city because it is so prevalent across jurisdictions. Further, local action will likely become continually more important to the issue of revitalizing central cities as federal programs retract from addressing city concerns. Meanwhile, of course, redevelopment implicates tools that are historically local in nature and exercise: property taxes, land use, and eminent domain.

55. On one count, this reduction in concern was entirely natural: every state had slightly different enabling legislation and redevelopment procedures. To maintain expertise in all 50 states, and to monitor what few reporting requirements individual states imposed on redevelopment efforts, would be a Herculean task. In short, the spreading and diversifying of new federalist redevelopment achieved one of the goals of new federalism—reduced scrutiny of regressive policies that are pursued nationwide, yet no longer are national.


59. See, e.g., Tenants in Opposition to Redevelopment v. United States Dep't of Hous. & Urban Dev., 406 F. Supp. 1024, 1030 (N.D. Cal. 1970) (ruling, inter alia, that residents of a redevelopment project area had standing to sue under the Federal Housing Act (FHA)); see Western Addition Community Org. v. Weaver, 294 F. Supp. 433, 440-41 (N.D. Cal. 1968) (ordering a preliminary injunction compelling HUD to comply with its own regulations regarding relocation of residents); CHESTER W. HARTMAN, YERBA BUENA: LAND GRAB AND COMMUNITY RESISTANCE IN SAN FRANCISCO 123-57 (1974) (discussing the factual and political context of federal court litigation concerning inadequate relocation plans for displaced residents of San Francisco redevelopment project area). In particular, Hartman shows the connection between the Western decision and the decision to proceed in the Yerba Buena litigation. Id. at 123-24.
B. The Redevelopment Process

In comparing the locally\textsuperscript{60} controlled and funded redevelopment programs discussed here with earlier federal urban redevelopment and urban renewal programs, significant practical differences emerge. The similarities in approach, theory, and result, however, overwhelm any differences. Significantly, the criticisms presented in this Article concerning local redevelopment efforts were levied over twenty-five years ago regarding the federal programs.\textsuperscript{61} These criticisms have been presented cogently and calmly—as well as in a scattered and hysterical manner—again and again over that period with little or no resultant change in the programs. This observation indicates that a fundamental concern stifles reform: redevelopment's constituent powers are simply too significant in the eyes of local political and economic elites to disappear.

1. Agency Powers—To begin redeveloping, the local jurisdiction must first establish a redevelopment agency under state enabling legislation. Although legally a redevelopment or urban renewal agency is a distinct entity from the city or county that sponsors it, in reality the city council or the county board of supervisors often serve as the agency.\textsuperscript{62} In other cases, the agency is a quasi-private corporation given public powers, usually under the nominal control of local government.\textsuperscript{63}

\textsuperscript{60} More recent manifestations of redevelopment are essentially local, except for the federal subsidy through tax-exempt bonds and occasional mixing of CDBG and other federal funds (notably highway or transit funds) into redevelopment projects. \textit{See supra} notes 44–46 and accompanying text.

\textsuperscript{61} The reader will note that a great many of the sources cited in this Article were originally critical of the earlier federal programs. This bibliography has been chosen advisedly. In subsidizing the wealthy, excluding the poor, or writing law review articles, there is very little new under the sun.

\textsuperscript{62} \textit{See, e.g.,} \textit{CAL. HEALTH \& SAFETY CODE} § 33200 (West Supp. 1994) (stating that "the legislative body may . . . declare itself to be the agency" upon a finding that such an action is in the public interest).

\textsuperscript{63} For an example, see Pennsylvania’s Urban Redevelopment Law:

There are hereby created separate and distinct bodies corporate and politic, one for each city and one for each county in the Commonwealth, as herein defined. Each such body shall be known as the Redevelopment Authority of the city or the county, as the case may be, but shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function.

Though the two are closely related, an agency and its sponsoring local government are distinct corporate entities with very different legal powers and obligations. For example, the additional property tax revenue generated in a project area does not revert to the general fund of the sponsoring city until the project ends. Instead, the agency keeps the money to repay the bondholders and carry out redevelopment purposes.\(^64\) Only when all those bonds have been retired will the tax revenue revert to the sponsoring jurisdiction. Because of this division, the agency cannot use its newly generated tax revenue to fund, for example, local city police and fire services, while the city must continue to provide those services. Conversely, the city cannot issue bonds without voter approval and generally cannot sell land for less than the price for which it was purchased, while the agency may do both of these things and is created for just these purposes. Thus, while it is a convenient shorthand to describe redevelopment projects as city efforts, this reference is incorrect both legally and practically.

Once created, the agency then identifies a zone within its jurisdiction in which to encourage development,\(^65\) and adopts a redevelopment or renewal plan for that zone. Once approved, the redevelopment plan is a broad charter of authority for the agency to conduct redevelopment activities within the geographic boundaries of the project area. Although plans usually will specify some project or projects that are the goal of the redevelopment effort, typically these projects are extremely general and are not mandated by the plan. Thus, the redevelopment agency maintains broad discretion over real estate development within the redevelopment project area for many years. Redevelopment plans frequently will limit this authority only in the most general terms by, for example, capping the amount of tax increment the agency can receive from the project area over the life of the plan, limiting the use of eminent domain after a fixed amount of time has passed, or establishing a time limit on the project area. These limitations typically are mandated by state enabling legislation.\(^66\)


\(^{65}\) The criteria used to select a zone is significant and complex. A critique of this method could comprise a separate article itself.

\(^{66}\) See, e.g., CAL. HEALTH & SAFETY CODE § 33333.2 (West Supp. 1994) (establishing a time limit of 12 years for the use of eminent domain and 30 years for the effectiveness of the redevelopment plan).
Within the zone—usually called the “project area”—the agency’s powers are immense. Agencies can and frequently do: take property by eminent domain for site-assembly; issue bonds without voter approval by pledging revenue from leases, property and sales taxes, and a variety of other funding streams as a guarantee for repayment; sell property at less than fair market value; conduct toxic abatement; pay for infrastructure, parking, lighting, sewers, and grading; provide direct financial assistance including outright grants, loan guarantees, and low-interest loans; provide land use benefits such as density bonuses and easing of other land use regulations of general application; and encourage any sort of development or uses that it deems fit.

2. Tax Increment and Tax Abatement Financing—

Agricultural land, mines, even whole states, may fall victim to technological change and population movements, but not central business districts. Ponce de Leon’s fountain of eternal youth was supposed to apply to them even though the fountain had to be found in the federal treasury.68

—Norton E. Long

With the demise of direct federal outlays, redevelopment agencies found a new fountain of youth in Tax Increment Financing (TIF). TIF provides an independent funding source for the redevelopment agency of a municipality that seeks to subsidize local development.

The TIF scheme itself is simple. In a typical community, property taxes are paid to the county assessor semi-annually. The county assessor then allocates this tax money to public schools, the county, the city, and any other local governmental entity or special districts—mosquito abatement districts for example—with a claim on a property tax dollar generated locally. As an illustration, assume that a redevelopment agency has declared a project area consisting of four square blocks. Before the project area was declared, the annual property tax revenue from this area was $100,000. Once the project area is

67. A “density bonus” occurs where a jurisdiction grants a developer the right to develop at higher densities—i.e., more stories on the building—than is generally allowed by existing zoning.

declared, the redevelopment agency will receive all future property tax revenue from those four blocks which exceeds the $100,000. The agency receives this tax money for the life of the project area. Although the length of time varies by jurisdiction, frequently a project area will exist for forty years or longer. Meanwhile, for those forty years all the other governmental entities must continue to operate by dividing the original $100,000.

A closely related concept is tax abatement for favored development. A tax abatement occurs when the city offers to reduce the taxes of a specific entity in exchange for locating in a project area. Though related, tax abatement is different from TIF. The beauty of TIF is that property taxes, an inescapable cost of doing business, are used to pay for the developer's end product—the development itself. By contrast, tax abatements are accumulated over time and are not easily capitalized and converted into up-front investments in a development. A second benefit of TIF is that under TIF, the property owner continues to pay property taxes. For a development firm, state and local property taxes are deductible from federal income taxation. With the highest current federal corporate income tax

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69. California recently amended state enabling legislation to limit the life of a project area to 30 years—a 20 year limit on the time period in which an agency can incur debt plus a 10 year extension—and a 45 year limit on the time period in which an agency can receive tax increment from a project. This action was considered a major reform. CAL. HEALTH & SAFETY CODE § 33333.2 (West Supp. 1994).

70. See, e.g., NEV. REV. STAT. § 279.676 (1991) (allocating levied taxes in excess of the amount produced by the rate of the tax at the time the ordinance is passed to the redevelopment agency to fund its debts); OR. REV. STAT. §§ 457.420–460 (1993) (distributing ad valorem taxes among urban renewal agencies and providing that these agencies determine how much money must be raised). California, however, allows for pass-through agreements, whereby agencies will pass on some portion of the property tax increment to taxing entities within the zone, at the discretion of the agency. Recently, California law was amended to require pass-through payments to total approximately 20% of tax increments over the life of the plan. CAL. HEALTH & SAFETY CODE § 33676 (West Supp. 1994).

71. The agency sells bonds based on anticipated property tax revenue, and uses that money to assist the very developers who will pay the property taxes later. In essence, the agency loans developers their own tax money up front. Some states, rather than entitling an agency to incur debt based on its claim to future tax increment, MASS. GEN. L. ch. 40B, § 14 (1992), will simply empower the agency to give future property tax credits to developers. MASS. GEN. LAWS ANN. ch. 63, § 31A(f) & (j) (West Supp. 1994). This way the developer does not receive an initial subsidy, so the scheme can be less desirable from a developer's point of view, but the net effect is the same: the property taxes which the developer or subsequent owner pays as a normal cost of doing business actually are passed back to the developer.

72. Of course, with tax abatement, money remains in the developer's pocket.
rate at thirty-five percent, the property tax is deductible and the amount paid reduces federal income tax liability by thirty-five cents for every dollar of property tax. Thus, the developer not only has its property tax payment support up-front funding necessary to its development, but it also gets to deduct that payment from federal income taxes. With a local property tax abatement, neither of these benefits accrue. Finally, to the extent that it gratifies the developer, continuing to pay property taxes entitles the developer to grouse about tax and other local problems with the "business climate." The money gained from tax increment financing can be spent for redevelopment purposes at the discretion of the agency overseeing the redevelopment.

3. Site Assembly: Eminent Domain and Blight—The vast majority of statutes which authorize the allocation of TIF to local redevelopment agencies also authorize the power to assemble property using eminent domain. State enabling statutes typically then limit the use of both TIF and eminent domain to "blighted" areas.

Most analysts view eminent domain as the power of primary importance; it is more accurately viewed, however, as a subset of the overall site assembly and land write-down process. After all, the sponsoring city already had eminent domain powers. Eminent domain only becomes particularly controversial when it is used in combination with the agency's additional powers.

Eminent domain is the power of the government to take private property for a public purpose after payment of just compensation. In the redevelopment context, the key legal obstacle is to identify the public use which necessitates the taking. Here, the public use which justifies eminent domain

75. Land "write down" also flows from the original federal legislation. See supra note 29.
powers is the removal of blight. This issue is significant because the agency immediately will transfer the property to a private party who will develop and use the property for private gain. In *Berman v. Parker,*\(^7\) the Supreme Court upheld the constitutionality of Congress' redevelopment enabling legislation for the District of Columbia and determined that the redevelopment agency could take non-blighted property by eminent domain and transfer the property to other private parties without violating the constitution.\(^7\) The Court wrote, "[s]ubject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."\(^7\) Given that blight, as defined by statute, in fact exists, and given that Congress had determined that removing blight was a public purpose, removing blight was well within the traditional police powers of government. Once the purpose was upheld, the tools for achieving that goal were also for Congress to determine. Hence, eminent domain may be utilized across an entire area "rather than on a structure-by-structure basis"\(^8\) and it can be combined with private development.\(^9\) Congress believed that "the piecemeal approach, the removal of individual structures that were offensive, would be only a palliative. The entire area needed redesigning so that a balanced, integrated plan could be developed for the region . . . ."\(^9\) States were entitled to adopt the same approach in their enabling legislation and typically did so. The courts thereafter acquiesced without question to legislative determinations both that removing blight was a public purpose in the context of redevelopment and that the extraordinary powers of redevelopment were necessary to achieve that purpose.

Eminent domain typically is justified as necessary to enable quick and efficient site assembly.\(^8\) The agency will assemble

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78. Id. at 34.
79. Id. at 32.
80. Id. at 34.
81. After all, "[t]he public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude." Id. at 33-34.
82. Id. at 34.
83. For example, Charles Abrams has noted that:

[Ideally] the power of land assemblage makes possible the establishment of contiguity between plots and the bringing into use of land with unmarketable titles that have held up development of whole sections; it facilitates the
the necessary parcels, allowing the private developer to avoid negotiating separately with each individual property owner within a zone, thus escaping holdout problems. Eminent domain powers are justified as necessary—at least as a fall back threat—in order to secure the necessary parcels at an acceptable cost. This power is difficult to quantify, but it may provide the greatest subsidy to developers during redevelopment.

Blight is an extremely nebulous characteristic, although decision makers claim to know it when they see it. Born of the original Federal Housing Act of 1949, the blight requirement originally was intended to focus redevelopment efforts on slum clearance. The blight requirement was designed to ensure that extraordinary state powers will only be used in circumstances where, as California's statute states, "the redevelopment of blighted areas cannot be accomplished by private enterprise alone." The fact that an area meets the statutorily enumerated conditions that constitute blight justifies the presumption that private capital is unwilling to invest in the zone. Hence, the eminent domain assembly subsidy, and the subsequent write down in price, are justified by the need to make this parcel competitive in the market for development.


84. Observers have identified as major obstacles to private redevelopment of "slum" areas the large number of individually owned parcels in a typical project area and the probability that individual property owners would hold out and refuse to sell except at exorbitant prices. The Housing Act of 1949 sought to redress the difficulties of "private assemblage of tracts of land under diverse ownerships and the exceptionally high cost of assemblage due to inflated values by speculative holders of land." MESSNER, supra note 27, at 7. Eminent domain powers solved these perceived problems.

85. This plausible explanation for the necessity of governmental site assembly, however, does not resolve the issue. As noted infra in Part III.B.2, the economic effects of site assembly are not clear in terms of resource efficiency or distributive equity.

86. Blight is defined differently from state-to-state. New Jersey, however, is typical in requiring that proposed projects in the blighted area "would not be accomplished by private enterprise without public planning and assistance in . . . [site assembly]." N.J. STAT. ANN. § 52:27D-256(a)(4) (West 1986).


88. CAL. HEALTH & SAFETY CODE § 33037(b) (West 1973).
Cities turn to redevelopment because of a potent combination of political, fiscal, and economic pressures. Logan and Molotch identify the importance of “growth machines” to every community’s political and economic life, and Mollenkopf identifies progrowth coalitions as a central feature of local and national political life. Bennett also identifies elite coalitions comprised of business interests and local elected officials as instrumental to urban development in many cities. In each of these constructions local elite groups vie and compete over growth. In each case the competing groups turn to redevelopment to pursue their goals. Plainly, those who are well-connected, both politically and economically, drive this process and seek out the special development subsidies that redevelopment powers enable.

Moreover, the interests of these groups in pressing for redevelopment dovetail with the predominant explanations for city decline—a fiscal crisis born of faltering investment, shifting populations, disinvestment, and the perceived evolving economic role of the city in the national economy. Under this view, the elites were challenged with preparing their local jurisdictions for these economic changes. Local elites all

89. LOGAN & MOLOTCH, supra note 8, at 32–38 (explaining that local entrepreneurs coordinate among themselves to lobby for intensified “value-free development”).

90. JOHN H. MOLLENKOPF, THE CONTESTED CITY 4 (1983) (defining “progrowth coalitions” as “political entrepreneurs bring[ing] together widely different; competing, and even conflicting political actors and interests by creating new governmental bases for exercising new powers”).

91. BENNETT, supra note 15, at 20–21 (identifying “corporate caretakership” as one of these urban power arrangements).

92. For a discussion of black migration to urban centers and its effects on politics and urban demographics, see NICHOLAS LEMANN, THE PROMISED LAND 61–107, 225–305 (1991) which provides a historical case study of a few individuals’ move from Clarksdale, Mississippi to Chicago, Illinois during the 1940s and 1960s.

93. See, e.g., Nancy Christopher et al., Comment, Urban Redevelopment and the Fiscal Crisis of the Central City, 21 St. Louis U. L.J. 820, 826 (1978) (“Lured by the potential profits of vast new suburban markets, retail trade establishments also began to desert the central city . . . .”).

94. See Richard C. Hill, Crisis in the Motor City: The Politics of Economic Development in Detroit, in RESTRUCTURING THE CITY, supra note 12, at 80, 105 (discussing the prediction that the city would cease to be a manufacturing center and instead become a command and control center for the corporate economy).

95. See HARTMAN, supra note 59, at 44–73 (discussing control of urban development in San Francisco by its mayors and the San Francisco Development Agency); see also LOGAN & MOLOTCH, supra note 8, at 257–67 (discussing typology of cities which best perform as centers of corporate control).
responded with an identical strategy when faced with these crises: stimulate investment, usually in the form of downtown redevelopment. Thus, "[t]he variety of subsidy/compensation schemes is enormous. . . . [T]he idea that a better city can be achieved by more jobs, money, tax revenue, and so forth is entrenched in local economic development efforts." This framework places those with the capacity to invest firmly in control of the process. In the face of competition between cities, redevelopment subsidies are called upon to win scarce investment dollars.

Although many observers have noted that a significant component of the relative decline of central urban cores can be attributed to national policies that directly support suburban development—such as the interstate highway system, the home-mortgage interest deduction, FHMA lending criteria, the failure to address redlining and other discriminatory practices, and defense spending priorities—the response to urban decline was not to end suburban subsidies or redirect them to the central cities. Rather, the response of local jurisdictions was to further subsidize central cities thereby making them friendlier to investment. In particular, given the political and economic pressures, investment in downtown projects became the goal. Redevelopment in its various incarnations was and remains a critical component of this effort.

In addition, both TIF and tax abatements permit an agency to assist development with public money without an obvious tax increase. City officials typically suffer from the "edifice complex"—they seek development as evidence of accomplishments achieved by their administration to compete with neighboring jurisdictions, to place their town or city on the map, and to fulfill planning goals and visions. If the goal of

98. Id. at 602-03; see Harold A. McDougall, Affordable Housing for the 1990s, 20 U. MICH. J.L. REF. 727, 748-49 (1987) (explaining that revisions of the Internal Revenue Code have increased the significance of the home-mortgage deduction).
100. Id. at 566-71, 598-602.
encouraging development can be met without an obvious tax increase, the process builds compelling political pressure for the use of tax redevelopment.\textsuperscript{102} The prevailing argument that the private development encouraged by TIF subsidies may trickle down or spillover to benefit the rest of the city, or at least the neighboring communities, provides ideological support for subsidizing development.\textsuperscript{103}

Likewise, city decision makers furnish the argument that only by offering the subsidies will the city be able to lure greater capital investment from private funds. In the inter-jurisdictional competition for scarce development dollars, a city will find it difficult to justify refusing to spend twenty million dollars when such expenditure may induce fifty million dollars of private investment. Few politicians will walk away from such an opportunity.\textsuperscript{104} Fewer still are willing to risk disproving the hypothesis that downtown investment will benefit the remainder of the city.\textsuperscript{105} All these political forces militate for the use of redevelopment in the service of downtown development.

102. An excellent example of this syndrome at work is the current efforts of the City of Fresno to build a minor league baseball stadium in the heart of their downtown. The development group advocating the stadium does not have a baseball team lined up nor does it have necessary financing. See Jeff Davis, \textit{Group: Fresno Will Get a Team}, FRESNO BEE, Dec. 9, 1994, at C1. Fresno, however, has nonetheless committed $5 million of city and redevelopment money to the project. Plainly, logic and economics demand that the city not support this project, but the political pressures have overwhelmed these concerns. See Jim Wasserman, \textit{Don't Rob Southwest for Stadiunt Downtown}, FRESNO BEE, Oct. 18, 1994, at B1.


104. As Fainstein and Fainstein note:

\begin{quote}
In order to raise capital to promote commercial and industrial investment, cities . . . have sought to direct tax revenues toward specified ends rather than the general fund. . . . [T]hese various measures, justified as producing economic development and employment, undercut what was one of the original arguments for government-sponsored redevelopment projects—that they would add to the municipal tax base and thereby support the level of services required by cities with large dependant groups and fleeing middle-class populations.
\end{quote}


105. For a concise refutation of the notion that development inevitably, or even usually, benefits the city overall, see \textit{LOGAN & MOLOTCH, supra note 8}, at 85–98 (arguing that urban growth often has an adverse impact on many segments of the population as well as the environment).
Finally, and surprisingly, powerful downtown interests frequently meet in the proverbial "smoke-filled room" to devise and pressure for downtown development. In case study after case study, an elite downtown planning organization, usually operating in secret and invariably made up of prominent bankers, developers, and law firms, serves as the heavy in a project and pushes and directs redevelopment in accordance with the groups' needs. 106

III. COMMON CRITICISMS

The criticisms of redevelopment that have developed over the years are numerous and telling. This Part summarizes the most forceful of them. It is a tribute to the resilience of redevelopment as practiced under the control of local political leaders that the process has withstood compelling critiques from the libertarian, the market liberal, the left of the political spectrum, and more recently from the Community Economic Development perspective. Again, this resilience reflects the strength of the forces that push for redevelopment.

The purpose of this summary is to flesh out in detail the many problems with redevelopment as practiced. These criticisms both justify the reform that is so desperately needed and generate the criteria by which reform proposals may be judged.

A. Libertarian Critique

The first and most common criticism at the local level flows from the "small government" quasi-libertarian right. Its proponents are identified frequently with property taxpayer revolt movements such as the Jarvis/Gann organization in

106. Examples of such interest groups include "The Vault" in Boston, MOLLENKOPF, supra note 90, at 159 (acquiring its nickname "because it met in The Boston Safe Deposit and Trust Company boardroom"); SPUR in San Francisco, HARTMAN, supra note 59, at 37–38 (representing business interests of private institutions); the City Committee in Indianapolis, ROBIN P. MALLOY, PLANNING FOR SERFDOM 108–09 (1991) (having membership by invitation only and consisting of "[30] successful male executives"); and the Greater Baltimore Committee in Baltimore, Levine, supra note 2, at 106 ("controlled by an elite organization of 100 . . . corporate executives").
California, which spawned the property tax limit Proposition 13. These critics are outraged that government officials are entitled to take personal property under eminent domain, borrow money to pay for it, give the property to someone else at below cost, and use tax revenue to cover the loss.

The criticism proceeds along the following lines. It is wrong for an agency to use public tax dollars to benefit a private individual, notwithstanding the court opinions which claim that redevelopment serves a public purpose. Libertarian critics recognize that the TIF process requires hidden tax increases by forcing the municipality to continue to provide the same level of services while foregoing the property tax increment generated in the project area over time. These critics also recognize that these tax dollars may never revert to the general fund of the municipality. As noted above, the agency may receive tax increment funds to the extent it has a debt outstanding. The typical debt is a bond issuance. This bond will encumber the tax increment stream for a given period of time. It does not take a particularly creative bureaucrat, however, to refinance those bonds and thus indefinitely prolong the redevelopment authority's powers, financing, and existence.

Indeed, in California, after decades of redevelopment activity, "[a] 1984 survey identified only seventeen completed projects where the planned activities were finished, there was no further indebtedness, and the agency was no longer receiving property tax increment revenues." In order to remedy this imbalance, the sponsoring city and other taxing entities have two choices: (1) raise taxes to maintain the level of services or

107. By amendment of the state constitution, this proposition limited the level at which local jurisdictions could levy property taxes. CAL. CONST. art. XIIIA, § 1–6 (1978).
108. See supra notes 77–82 and accompanying text.
109. See supra Part II.B.3 for an explanation of the TIF system.
110. This fact has chagrined many early reviewers of the process who, in recognizing that tax increment financing very often would pay for a municipality's portion of a redevelopment project and then provide that municipality with greater revenue for its general fund, failed to recognize that the tax increment flowed to the redevelopment agency, not the municipality. Given that redevelopment agencies are bureaucracies, it is logical to assume that agencies would not willingly release extensive funding. This is, in fact, the case. Many projects extend well over 30 years. Thus, while tax increment funds pay for the agency's portion of the project cost, and in that sense the projects are "money-makers," the city itself does not see a cent of new property tax revenue to support the many services it must provide. Rather, the agency retains any annual surplus for further subsidies, its own operations, or to support its next project area.
(2) keep the tax level stable but decrease the level of services. In either event, the result is effectively an increase in taxes.\textsuperscript{112}

This criticism has been well justified empirically. Huddleston has studied the tax effects of tax increment financing in Wisconsin. His findings conclude that taxing jurisdictions which forego tax increments subsidize development in the sponsoring jurisdiction by losing tax revenue they otherwise would have received. He writes:

Bayside taxpayers, for example, would pay $50,000 in school tax increments for the Glendale TIF project (because Bayside is in the Glendale school district) and $552,100 in county tax increments for all nine TIF projects (because Bayside is in Milwaukee County)—even though Bayside itself does not have a TIF project.\textsuperscript{113}

Beginning with the premise that government is bad, the libertarian critics conclude that government in debt is worse.\textsuperscript{114} The crowning indignity is that redevelopment project areas frequently create miniature fiefdoms of economic power with the tax increment dollars under the control of the agency and without voter approval.\textsuperscript{115}


\textsuperscript{113} Id. at 195.

\textsuperscript{114} Unfortunately, libertarians often lose credibility and diffuse the significant strengths of their message with hysterical attacks that merge many issues in an uncertain jumble of outrage leveled at a vague cabal of government officials drowning in debt. For example:

We must not forget that the underlying financial backbone of redevelopment agencies are non-voter [sic] Tax Allocation Bonds which are indebting our property tax dollars on risky speculative ventures for many years to come. Remember, redevelopment is financed by debt, which must be piled on top of the national debt to appreciate its enormity, and which will be repaid by the same taxpayers who cannot afford to repay the national debt. We do not believe it is the government's purpose to risk the taxpayers [sic] monies on speculative growth. The prospects are disastrous for our American free enterprise economic system.

\textsuperscript{115} See \textit{supra} Part II.B.2 for a discussion of bond offerings. As one illustrative example, Boston's legendary Redevelopment Authority Director, Ed Logue, "built the BRA from a staff of seventeen and a budget of $250,000 into a 700-strong parallel government with an annual cash flow of $25 million by the time he left in 1967." MOLLENKOPF, \textit{supra} note 90, at 166.
A related but conceptually distinct criticism flows from the market liberal perspective. Over the past several years, by far the most eloquent proponent of this view has been Robin Malloy. In his recent work, *Planning for Serfdom*, he distills the market liberal critique into three compelling sub-arguments. First, government partnerships and co-financed development often entail a great deal of secrecy and a corresponding lack of accountability. The lack of information regarding benefits and costs prevents the political process from correcting bad decisions. Second, given little accountability, powerful economic actors are empowered to use the political process to cement and increase advantages already won in the market. Third, the development fostered by this process cannot be justified in a manner consistent with the prevailing marketplace rhetoric. Cities pursuing redevelopment are living a free market lie that is hidden from the public.

1. Lack of Accountability—Lack of accountability in redevelopment is the product of many forces. First, project planning and ultimate negotiations typically are carried out in secret. Further, the complexity of many of the partnerships masks the extent and degree of government funding for private projects.

116. MALLOY, supra note 106.
117. *Id.* at 126.
118. *Id.* at 25.
119. *Id.* at 72.
120. Malloy notes that the gleaming office towers and convention centers produced by redevelopment “are immediate and durable monuments to the people and political processes that made them possible.” *Id.* at 9. Yet, he claims these developments also reflect a negative revision of the philosophical underpinnings of our society which is “[n]ot so visible and seldom, if ever, discussed . . . . This [revision] involves an implicit rejection of important normative values concerning freedom, liberty, individualism, private enterprise, and democracy.” *Id.*
121. Malloy cites the secretive City Committee as the generator of many real estate projects in Indianapolis. “[T]he members of the City Committee were the politicians, Lilly Endowment officers, real estate developers, contractors, bankers, lawyers, and other professionals who eventually became primary actors in receiving, directing, and managing various public/private enterprises.” *Id.* at 108–09. It is almost gratuitous to note that the City Committee “included only one Black member and no women.” *Id.*
122. Sagalyn, too, notes example after example of city decision makers who either did not understand how much government support went into various deals or consciously misrepresented the facts. She writes:

In personal interviews, when we asked mayors and top city administrators how much they had put into their new retail centers, typical answers were “nothing
The availability of information concerning relative costs of certain actions is of course a prerequisite to efficient resource allocation. The diffuse mixing of public and private resources through largely secret decision making makes it impossible for the public to measure either the opportunity costs or amount of tax dollars their government spends. Malloy states that "[t]he troubling element ... is that legitimate and critical evaluation of government activity is being foreclosed." Governmental accountability and any likelihood of the political process correcting itself therefore are reduced. Malloy notes with particular disdain what a great many others have observed: the abject failure of the local press to present issues fairly or even intelligently. Naturally, this failure drops the level of discourse still further.

...at all" or "very little." Further questioning revealed that most mayors and administrators did not consider federal aid to be money the cities spent, nor did they count off-budget outlays as actual spending, and when project appropriations were spread over several years, they lost track of what had been spent in the past.

Sagalyn, supra note 48, at 433. Contrary to public officials' perceptions, in a study of major redevelopment projects in 38 cities, Sagalyn reports finding that "public direct spending . . . ranged from . . . 3 percent to 83 percent of total development cost . . . with a median of 31 percent." Id.

123. As Malloy observes:

It is relatively easy to point to the new office building or shopping center constructed in downtown Indianapolis. It is next to impossible, however, to determine which taxpayers actually paid for the project and, more important, which towns and people elsewhere in the state or country lost out on real estate projects or jobs because of the advantage Indianapolis gained from public funds.

MALLOY, supra note 106, at 115–16.

124. Id. at 12.

125. Id. Failure to understand redevelopment and lack of objectivity is apparently epidemic in the press. Malloy explains that even the conservative local Indianapolis Star tends to side with the cheerleading interests, while "presenting contrary views in minimal detail and frequently only after key decisions have already been made." Id.; see also HARTMAN, supra note 59, at 68–73 (outlining the shameless boosterism of local press in promoting redevelopment, ignoring critics, and failing to present accurately the facts of the situation). In addition, Hartman refers to a Boston critic's similar observations:

Herbert Gans' reports about press coverage of Boston's notorious West End urban renewal project show marked parallels with the Yerba Buena Center story: "... [T]he Boston press not only favored the redevelopment of the West End in repeated and enthusiastic editorials, but also covered the news only from the point of view of the Redevelopment Authority. . . . Features, moreover, depicted the West End as a vice-ridden set of hovels in which respectable human beings could not be expected to live . . . ."

Id. at 70 n.† (quoting HERBERT GANS, THE URBAN VILLAGERS 172 (1962)). Finally, the author's personal experience on numerous projects has been that the press rarely understands the issues involved or challenges official pronouncements.
2. Economic Power Controls Political Power—Redevelopment is a process whereby political criteria and values substitute for those of the market in locating development. Malloy presents the abuse of local political power for personal gain by the wealthy and privileged that redevelopment enables. In short, increasing political power over market activity is likely to buttress and reinforce the privileges gained from the market. In Indianapolis, “co-financing,” as Malloy dubs redevelopment efforts, favors a select few. For example, a single developer was selected for “at least two major office buildings, a downtown hotel, renovation of a theater and ballroom, and a downtown shopping store. The same developer is also involved with Market Square Arena . . . and is behind the city plan for $400 million in construction for a downtown shopping mall . . . .”

At its root, redevelopment substitutes political mechanisms for the market as a means for allocating resources. Malloy believes this substitution is wrong and creates inefficient development decisions. He suggests that if a project makes economic sense, developers will build, and if it does not make economic sense, they should not build. Though he concedes a role for local government in development, he believes this role should be limited. Government should only encourage development that is necessary for the public good and that the private market will not usually create.

126. A great many other observers confirm this conclusion. See Christopher et al., supra note 93, at 840 (summarizing the special support in St. Louis from the city’s Community Development agency for Ralston Purina, Washington University, and a former mayor turned developer). In this regard, these and other authors also note the failure of the successor federal program, Community Development Block Grants (CDBG). Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. I, § 101, 88 Stat. 633 (current version as amended at 42 U.S.C. §§ 5301–5318a(h) (1988 & West Supp. 1994)). In St. Louis, large portions of CDBG funds went to upper- and middle-income whites instead of benefitting the poor or assisting with housing construction for anyone. Id. at 840–41. As explained by Frieden and Kaplan, “[l]ocal diversions from the national purpose are not just occasional abuses, but rather form a pattern inherent in the [act’s] implementation.” Bernard J. Frieden & Marshall Kaplan, Urban Aid Comes Full Cycle, 9 Civ. RTS. DIG. 12, 23 (1977). These problems flow from the economically powerful using the political process to cement their economic gains.

127. MALLOY, supra note 106, at 104. As Adam Smith has written, “[p]eople of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public.” 1 ADAM SMITH, THE WEALTH OF NATIONS 144 (Edwin Cannan ed., 1976) (1776).

128. Id. at 124–25. Malloy writes: “[A]cceptable types of projects for urban development are limited and can be justified only when there is true market failure, and the government’s involvement in correcting the market failure is within the traditional,
After all, hotels, shopping centers, office buildings, and restaurants are not like dams or airports. The former are types of investments in which private enterprise always has invested. Thus, the primary objective of many current urban development and revitalization arrangements is not to encourage activities that otherwise would not occur, but rather to encourage these activities in locations apparently deemed undesirable for investment by private parties.129

This logic also can be applied to discredit redevelopment funding to subsidize development projects that the market would have built without subsidy. For example, the downtown office boom many jurisdictions enjoyed in the late 1970s and 1980s was largely a product of market forces in place before redevelopment assisted such projects—and many cities enjoyed an office construction boom whether or not it took place in redevelopment project areas.130 The market supported such development, so it happened. Likewise, Frieden and Sagalyn note that urban shopping malls developed successfully in the late 1970s in part because “the ripe development climate that had made suburbia an easy place to build new malls was changing at an accelerating pace.”131 Thus, the market drove limited confines of activity necessary to insure individual liberty.” Id. at 138. His prescriptions are, as proponents of critical legal studies movement would claim, “radically indeterminate.” For example, the market arguably fails to remove slum housing. Supporters of early redevelopment believed that clearing slum housing would increase the liberty of former slum dwellers. Others believed that clearing the housing would increase the economic competitiveness of the entire city: certainly eminent domain is an ancient civic power. Given these facts, removing substandard housing was a necessary social goal that justified governmental intrusion into local economies. This logic would support the original Federal Housing Act of 1949 which created redevelopment. Pub. L. No. 81-171, ch. 338, tit. I, § 2, 63 Stat. 413 (originally codified at 42 U.S.C. §§ 1451-1460 (1988)), omitted by Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. I, § 116(a), 88 Stat. 633, 652 (current version as amended at 42 U.S.C. § 1441 (1988)). Rather than philosophy guiding Malloy’s results, the results are governed by an evaluation of the facts and more fundamentally, by what one considers to be “the facts.”

129. Id. at 124-25.

130. For example, in San Francisco only one small section of the developed downtown is in the redevelopment project area. The vast majority of the office towers that have sprung up next to and surrounding purportedly blighted property were created in response to market pressures.

131. FRIEDEN & SAGALYN, supra note 11, at 81. Likewise, those authors describe at length the efforts of the Pasadena Redevelopment Agency to lure and create a downtown shopping mall, efforts which ultimately proved successful. However, current visitors to Pasadena will note that the thriving shopping district is not the mall and is not even in a redevelopment project area. Rather, it is in distinctive buildings in “old town” that began their renaissance as thrift stores, artist lofts, and other outlets
Revitalizing the Central City

urban mall development, redevelopment subsidies did not. Redevelopment subsidies both encourage construction that the market does not support and unnecessarily support development that the market would produce without interference. In either case, the reallocation is inefficient.\textsuperscript{132} A primary example of redevelopment subsidies being thrown at a form of development that would have happened without the subsidy is the stampede to trap sales tax. Communities will compete against each other for "big box retail" outlets\textsuperscript{133} with a track record of generating significant sales tax.\textsuperscript{134} Indeed, the competition is so fierce that until 1993, California law entitled a redevelopment agency to rebate a percentage of sales tax—the quest for which purportedly justified the expenditure of redevelopment subsidies in the first place—to a retailer as an added inducement to businesses shopping for a location.\textsuperscript{135}

for local creativity entrepreneurs who required low rent. As that area became more trendy and arty, the cache, expense, and desirability of the area continued to grow. For the most part this can be attributed to the quality and beauty of the old buildings in that zone. The market worked in that location without redevelopment.

\textsuperscript{132} Jones and Bachelor explain that \textquoteleft[t]he extraction of concessions by a corporation beyond what would be strictly necessary to attract the facility\textquoteleft is called \textquoteleftthe corporate surplus. This surplus is the result of a hidden hand of large-scale corporate capitalism superimposed on a patchwork of small territorial governments competing among themselves." Bryan D. Jones & Lynn W. Bachelor, \textit{Local Policy Discretion and the Corporate Surplus, in Urban Economic Development, supra note 96, at 245, 247.} Obviously, the amount strictly necessary to attract a facility often may be zero or even a negative amount.

\textsuperscript{133} "Big box retail" refers to the many types of retail entities that typically sell low cost goods out of glorified warehouse-type spaces. The store is in effect a big box. Typical examples include Home Depot, Costco, Wal-Mart, and K-Mart. Jurisdictions are particularly enamored of these entities because of their proven track record in generating significant sales tax revenue for the sponsoring jurisdiction. \textit{See Morris Newman, Nobody Plays the Redevelopment Game Better than Price Club, CAL. PLAN. & DEV. REP., Aug. 1991, at 12.}

\textsuperscript{134} Morris Newman describes Price Club as \textquoteleft[a]n affluent company, the self-styled \textquoteleftoriginal cash-and-carry membership store\textquoteright [which] pushes hard to make cities subsidize its land costs and other infrastructure. Financially creative, the retailer often demands and receives a sizable rebate of sales tax." \textit{Id.} at 10. Newman adds the observation that although Price Club demands redevelopment subsidies, Price Club development has nothing to do with proper redevelopment. "Instead of cities using incentives to lure companies into depressed market areas where those companies wouldn't otherwise locate, Price Club stakes out a market area and then plays all the cities in that market area off against each other." \textit{Id.}

\textsuperscript{135} \textit{See CAL. REV. & TAX. CODE § 7202.5 (West Supp. 1994).} This law recently has been repealed to bar this subsidy for new projects. 1993 Cal. Stat. 942 § 37. Like Price Club, Wal-Mart has factored in both property tax subsidies, i.e., up front redevelopment subsidies that serve as rebates on future property taxes, and sales tax rebates into its base-line financing for a project. Newman later reported almost identical tactics by Wal-Mart, in particular playing competing cities against one another. Morris Newman, \textit{Wal-Mart Takes a Page from Price Club's Book, CAL. PLAN. & DEV. REP., Dec.}
as practiced is inefficient because subsidies flow to a retailer which has already decided to locate somewhere in the general vicinity. The magnitude of subsidy dictates the exact location of development.

The decisions produced by redevelopment frequently are inefficient from a capital resource allocation perspective. Even if an office tower is fully occupied, it is possible that the new building has just taken non-subsidized occupants from neighboring sites. The TIF subsidies may have helped create a fully occupied Class A office tower. Meanwhile, the older Class B office towers nearby stand nearly empty. Did the city's economy gain anything from this? Similarly, a new retail mall will raid successful preexisting businesses in a community. As the number and quality of shops in the older shopping district decline, so too will the number of shoppers. The city expended resources, office workers work in nicer buildings, and shop owners have nicer stores, yet on a macroeconomic level the city gains nothing—because the agency expended subsidies on increasing investment in the built environment, rather than increasing investment on the firms that would inhabit the built environment.

Thus, Malloy creates an elegant vision of how redevelopment disturbs what he views as the proper balance between government and the market and thus enables government to benefit

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1991, at 12. Here he raises the reasonable question that given redevelopment’s purported purposes, rather than subsidizing Wal-Mart, “shouldn’t the cities really be subsidizing Wal-Mart’s [mom and pop] competitors in hopes of helping them survive?” Id. That would be the logical step if local decision makers viewed existing small merchants as their clients.

136. As a somewhat unusual example of this phenomenon, San Francisco recently has completed a new Museum of Modern Art in its Yerba Buena redevelopment project area. As a result, art galleries from trendy neighborhoods across the city are facing intense pressure to relocate nearer to the new museum and the perceived “hot market.” See Clifford Carlsen, Galleries Get the Picture: Renaissance Spells Profit, S.F. BUS. TIMES, July 15–21, 1994, at 13. Building the museum alone, however, cannot create more galleries. Rather, it relocates existing galleries.

Already, the fine arts gallery scene—traditionally centered tightly around Grant Street and the Union Square area—has moved south toward the new public venues.

“I moved here because of the new museum,” said Stephen Wirtz...

“The opening of Yerba Buena and the move of the Modern has further marginalized those that aren’t downtown,” [one proprietor] said. “I now feel a need to be downtown.”

Id. (emphasis added).
the powerful—in ways that are often very inefficient in economic terms. Economic power attracts governmental power for support, which in turn increases economic power ad infinitum.137

3. Ideological Dissonance—Finally, Malloy argues that the "can do" environment of governmental entrepreneurialism and city-booster politics creates a dissonance between the ideology of free market entrepreneurism and the reality of a development process channeled and subsidized by local state government on behalf of the powerful and the connected.138 He does not merely accuse redevelopment officials of hypocrisy. Rather, he plainly believes that free market entrepreneurism is a valuable ideological underpinning of our society and should be supported. He believes that redevelopment does violence to this ideal.139 Simultaneously, he argues that actions taken under redevelopment cause significant damage to the economy.140

Although these criticisms are compelling, three flaws inhere in the market liberal argument. First, the mere fact that government intrusion is apparently at odds with the existing ideological hegemony regarding the market, individualism, and freedom does not mean that the process is at odds with anyone's actual feelings about the market and individualism in reality.141 Indeed, to expect practice to change to fit the apparent dominance of ideology is naive. The better approach is to assume that practice will reveal our true ideological preferences. Thus, rather than controlling reality, the apparent

137. MALLOY, supra note 106, at 125.
138. Id. at 125–26.
139. Id. at 125.
140. Id.
141. Indeed, the business leaders most likely to espouse a free market ideology are most intimately involved in redevelopment as practiced. As Frieden and Sagalyn note:

Nobody can deny the central role of business executives in the rebuilding of downtown areas . . . . But where were these business leaders when Baltimore bulldozed the houses of 10,000 families, 90 percent of them black? . . . Or when Los Angeles pushed five freeways through its main Mexican-American neighborhood? . . . The answer must be that they were deeply implicated in these events. One of the federal officials who dealt with San Francisco's renewal program said of its director, Justin Herman: "Herman could move rapidly on renewal—demolition or construction—because he was absolutely confident that he was doing what the power structure wanted insofar as the poor and the minorities were concerned."

FRIEDEN & SAGALYN, supra note 11, at 56.
ideology serves to legitimize and camouflage a reality which would not enjoy widespread support if exposed.

Second, given reality as expressed by actual practice, it is plain that redevelopment under local jurisdictional control will serve those interests that local politicians view as their true constituency. No evidence supports the idea that local public officials would voluntarily limit their activity to areas that the market does not serve, as Malloy's philosophy would mandate. Malloy offers no mechanism, other than the force of his well-reasoned argument, that would implement his suggestion for reform.

In addition, even if, through some unknown process, redevelopment did "encourage activities that otherwise would not occur," redevelopment officials would not necessarily pursue projects different from those they pursue currently. From creating jobs to improving the tax base, to building a world-class city, local actors at least claim to believe that the development they strive to generate would not have occurred but for their help. Likewise, it does no good to argue that these local efforts only served to locate business activity in a particular jurisdiction which would have selected a nearby site in any event. This fact flows from the nature of jurisdictional competition and from the political pressures inherent in redevelopment. The only important fact to local decision makers is that the development ultimately located in their jurisdiction. In short, Malloy is entirely correct that redevelopment subsidies and efforts are usually economically inefficient and that development does not result in a net benefit to a region. This point also is entirely irrelevant to local decision makers. Local decision makers believe the result is beneficial to them, and that is all that matters.

Third, Malloy relies extensively on the market as the better allocator of resources and a better decision maker than government over time. This position is probably true. Yet, the market is imperfect in so many ways that to present it as a legitimate counter-position to government action is not defensible. As Malloy notes several times, a free market approach

142. Malloy, supra note 106, at 125.
143. It also is important to local decision makers that an "undesirable" project selected a site outside of their jurisdiction, in the case of affordable housing and other forms of development aimed at low-income individuals.
144. See also Sagalyn, supra note 48, at 433 (indicating that most mayors and development officials "did not consider federal aid to be money the cities spent").
can only be justified if it results in the promotion of individual freedom and expanded opportunities. In that regard, it is not a priori clear that resident-controlled redevelopment could not further those goals for poorer members of society whom the market ignores.

In short, from a low-income community perspective, the market has failed as miserably as the government—or, more accurately—the two have combined together to fail spectacularly. Simple reliance on the market will not address the needs of such communities. Thus, for such communities Malloy's prescription fails. Nonetheless, any revision of redevelopment must take into account the concerns about government accountability, political process, economic efficiency, and individual freedom that he raises.

C. Left Critique

The primary criticism from the left of the political spectrum proceeds as follows. Redevelopment serves as a funnel of resources from the low-income many to the already-rich few, very often with racial antagonism lurking just below the surface. Critics from this vantage point agree with Malloy

145. Malloy, supra note 106, at 81.

146. See, e.g., Kushner, supra note 97, at 583–98 (singling out federal-state urban renewal programs and suburban zoning regulations as significant contributors to continuing segregation); Levine, supra note 2, at 110–15 (demonstrating that Baltimore's African-American residents derived little benefit from the revitalization of Metro Center, while real estate developers, financiers, suburban professionals, tourists, and the urban gentry benefitted lavishly); Peter W. Salsich, Jr., Displacement and Urban Reinvestment: A Mount Laurel Perspective, 53 U. CIN. L. REV. 333, 369–71 (1984) (stressing the exclusionary effects of reinvestment upon long-term low-income residents who cannot afford the increased rents which “upper class housing values” impose); Christopher et al., supra note 93, at 822 (criticizing redevelopment programs that provide only “token” and therefore inadequate plans for low-income housing relocation while catering to private investment and business restoration); Louise LaMothe Wheeler, Note, Community Controlled Renewal in California: Some Proposals for Change, 23 STAN. L. REV. 148, 148 (1970) (depicting inadequate renewal programs that focus on beautification and ignore the pressing needs of the urban poor); see also Bennett, supra note 15, at 72 (claiming that locations for gentrification projects are sometimes based on racial composition of neighborhoods and citing Chicago's East Garfield Park as an example); Long, supra note 68, at 426–27 (lamenting that federal programs often aid the investments of those who can afford housing, and neglect to subsidize housing for the African-American urban poor, in order to attract political support); Derek Shearer, In Search of Equal Partnerships, in Unequal Partnerships: The Political Economy of Urban Redevelopment in Postwar America 289 (Gregory D.
that the agency expends its funds and exercises its powers on behalf of rich developers or upper-class users of downtown developments. Meanwhile, area residents and businesses suffer many uncompensated and undercompensated costs of relocation which allow a developer to reap the profits from the development.147 Meanwhile, the jobs which downtown development locates overwhelmingly go to upper-income residents of neighboring suburbs. According to this analysis, TIF and eminent domain, combined with the blight requirement, create a huge risk to low-income communities. This critique rolls several independent criticisms into one for effect. The following subsections separate out the constituent elements for clarity.

1. Distrust of Blight Designation—What Lawrence Friedman observed twenty-five years ago remains true today: "Finding blight merely means defining a neighborhood that cannot effectively fight back, but which is either an eyesore or is well-located for some particular construction that important interests wish to build."148 Flowing from this observation, it is

Squires ed., 1989) (concluding that review of case-studies warrants the "harsh judgment" that vaunted post-federal-redevelopment "partnerships" are nothing but "urban renewal by another name" resulting in "grossly unequal partnership[s] with inequitable outcomes" that pay little attention to "the benefits that might flow to the less fortunate urban residents or to their neighborhoods," and that equate progress with big construction while ignoring "the basic needs of most city residents"); Alan E. Harris, Comment, Urban Renewal in the Bay Area: The Need to Stress Human Considerations, 55 CAL. L. REV. 813, 820–26 (1967) (arguing that the goal of urban renewal should be to "improve urban life, not urban buildings" and advocating resident participation to meet that goal).

147. As Mandelker et al. note:

[If] agencies really did their homework and studied the available supply [of housing], it is likely that projects would be stalled, modified or stopped because the resources were not there. The ultimate impact would be that the real costs of public improvement projects would be reflected in the project budget rather than being hidden in the form of housing deprivation to displacees and its ultimate destructive impact on the community.

Mandelker et al., supra note 33, at 547–48. For general discussions of displacement and the typical inadequacies of relocation assistance, see Chester W. Hartman, Relocation: Illusory Promises and No Relief, 57 VA. L. REV. 745 (1971); Kushner, supra note 97, at 559–66; Salsich, supra note 146, at 333–70; James A. Kushner & Francis E. Werner, Illusory Promises Revisited: Relocation Planning and Judicial Review, 8 SW. U. L. REV. 751 (1976); Richard T. LeGates & Chester W. Hartman, Displacement, 15 CLEARINGHOUSE REV. 207 (1981); Christopher et al., supra note 93, at 832–36; Note, In the Path of Progress: Federal Highway Relocations Assistance, 82 YALE L.J. 373 (1972). This literature is extensive and depressing. Further, the author's experience with several redevelopment projects in California indicates that the "bad-old-days" are not behind us.

148. Friedman, supra note 25, at 159.
clear that blight either serves as a convenient incantation to justify the use of redevelopment powers for a project that was already planned, or alternatively, as a description of the environment that must be uprooted to preserve the city's self-image. With the collapse of federal funding, one would hope that clearance redevelopment is on its last legs. Unfortunately, because of racial and class animosity, this result is unlikely. These two archetypes of redevelopment engender different abuses in the blight-finding process.

(a) False Blight—When redevelopment is construction based, the possibility of falsely designating an area as blighted skyrockets. If an agency wants a specific building, or wants to locate a certain retailer in a particular location, then it can simply make the finding of blight to enable the subsidies redevelopment offers. To the extent true blight does not exist, or to the extent the development would have located there without government funding, designation as a blighted area is both illegal and a waste of taxpayer money. False blight, therefore, deprives the poor of governmental resources.

(b) Real Blight Without Concern for Residents—Blight often can be found in a low-income neighborhood. However, blight

149. This is sometimes called "construction redevelopment." Id. at 155.
150. This is sometimes called "clearance redevelopment." Id.
151. See supra Part II.B.3 for a discussion of the legal consequences of finding blight.
152. For example, a 1970 Wall Street Journal article explained that:

[T]he [San Francisco] redevelopment agency considerably broadened the meaning of the designation "blight" in order to achieve the current boundaries. Ironically, the project now bears a remarkable resemblance to a plan first suggested in 1954 by Benjamin Swig. . . . However, Mr. Swig's "San Francisco Prosperity Plan" was rejected by the redevelopment and planning agency in 1956 on the grounds that it "perverted" the basic reason for redeveloping the area in that there was no true blight.


153. FRIEDMAN, supra note 25, at 149–51 (noting an unfounded blight designation violated the Housing Act of 1949). Whether or not a project area is "blighted" is a fact determination based on the criteria set forth in state enabling legislation. If the criteria are not actually met and the area still is declared a blighted project area, and this designation goes unchallenged, all the subsidies are technically illegal. Most state enabling legislation and related civil procedure codes, however, provide for an extremely short window of opportunity in which a plaintiff would be allowed to challenge the finding of blight. See, e.g., CAL. HEALTH & SAFETY CODE §§ 33360–33363 (Deering 1986); CAL. CIV. PROC. CODE §§ 1250.350–370, 1260.110, 1260.120 (Deering 1986). If the blight findings are not challenged during the statutory period, the blight is presumed to exist whether in fact it does or not.
does not necessarily indicate the need for redevelopment or for clearance. Nor does the finding of blight in any way indicate a particular solicitude for the residents of that area on the part of decision makers. Indeed, more often than not, animosity is likely the emotion that fuels the process. Not only will the community have been forced to live with the unpleasant conditions which resulted in the blight designation, but after redevelopment it will often suffer from the redevelopment itself. Worse than blaming the victim, this process is criticized as punishing the victim in the name of progress.

(c) Irrationality of Blight Requirement—The left critique also believes that the blight requirement is a charade. The mainstream justifications for the blight requirement are unsatisfactory. Rather than serving a compelling purpose, today blight is a convenient incantation that justifies development subsidies on behalf of powerful interests: if you want redevelopment subsidies, first find blight. Under Berman v. Parker, once blight is determined, the courts presume a public purpose and thus justify the many subsidies that flow to developers from redevelopment.

In addition, the left critique notes that private capital’s refusal to invest in an area is an odd precondition for determining that an area is blighted. The gentrification phenomenon demonstrates that private capital is eager to invest in many

154. As an example of projects designed to clear away unwanted residents, Friedman cites one official who said: “Tennessee’s distinctive State capitol at Nashville once was surrounded by some really sorry slums. These now have been leveled, eliminating an eyesore that was increasingly difficult of explain to visitors.” Friedman, supra note 25, at 155 (quoting James W. Follin, Slums and Blight, A Disease of Urban Life, Address of the Urban Renewal Commissioner (May 3, 1955), in URBAN RENEWAL BULL. No. 2, at 1 (HHFA, n.d.)) (emphasis added). Friedman also cites “clearance” redevelopment in St. Louis that was driven by the fact that “people going and coming to work . . . are offended by the state of decay they witness. . . . Unfortunately, too, every visitor . . . by train is given a poor impression of St. Louis as he or she is transported . . . through such dismal districts.” George B. Nesbitt, Relocating Negroes From Urban Slum Clearance, 25 LAND ECON. 275, 275 n.2 (1949), cited in Friedman, supra note 25, at 156 (emphasis added). Friedman correctly notes that the “welfare of the residents in that particular area is not a central concern of the program.” Friedman, supra note 25, at 156.


156. 348 U.S. 26 (1954); see supra text accompanying notes 77–82.

157. The gentrification phenomenon refers to the displacement of low-income individuals by young affluent homeowners as they “discover” downtown residential areas, renovate homes, and thereby raise rents.
run-down areas if other conditions are met.\textsuperscript{158} Moreover, private developers often are the motivating force behind the creation of a redevelopment project area.\textsuperscript{159} This fact certainly suggests that private developers are eager to invest in such areas.\textsuperscript{160} Thus, the theory that justifies using redevelopment subsidies to lure reluctant capital to blighted areas is questionable. Proponents of redevelopment offer two explanations for the blight requirement, both of which fail.

First, the lower property values of "blighted areas" are evidence of the "prisoner's dilemma"\textsuperscript{161} caused by property owners' interdependence. Consolidating the site under one ownership will therefore reduce that market inefficiency and generate greater investment. Though appealing, this explanation does not withstand scrutiny. If the explanation for low investment is property owner interdependence, then one must ask why other neighborhoods within the same jurisdiction with greater or equal interdependence are not blighted as well. Even assuming that blight can be defined in any legitimate way, property owner interdependence is not a satisfactory explanation of its presence. Nor is slum clearance or redevelopment the indicated response to such a prisoner's dilemma. Property

\begin{quote}
\footnotesize
\textsuperscript{158} Very often redevelopment, by destroying older, higher-quality construction containing a certain degree of charm, makes gentrification impossible. Bennett writes:

One of the intentions of most urban renewal projects was to lure typical gentrifiers, young professionals and entrepreneurs... yet much gentrification has occurred in neighborhoods that were bypassed by urban renewal. The charm and historical resonance of such neighborhoods are, of course, at the opposite end of the aesthetic spectrum from the highrise communities built under the auspices of urban renewal.

\textbf{Bennett, supra} note 15, at 17.

\textsuperscript{159} In the author's experience, the vast majority of new redevelopment project areas have been driven entirely by private development interests. In already established project areas—which continue for perhaps half a century—it is ludicrous to assume that, if the agency was at all successful in the early years, private capital would not want to invest there in the later years without subsidy.

\textsuperscript{160} This fact also suggests that private developers, who pursue maximum profits, are eager to receive redevelopment subsidies whenever remotely possible—whether necessary for the development or not. Given the intense competition between jurisdictions, and the inequality of information and negotiating skill between the developers and city staff, it is likely, that redevelopment unnecessarily subsidizes many development projects. \textit{See} Jones & Bachelor, \textit{supra} note 132, at 262–63.

\textsuperscript{161} The prisoner's dilemma refers to the paradoxical scenario in which, if all members of a group cooperate they will achieve the most beneficial outcome for all. The paradox arises because, despite the possible benefit, each individual has an incentive to sell out the other because she does not believe the other members will cooperate. Thus, all members sell out, and everyone is worse off.
\end{quote}
owner association covenants, increased code enforcement activity, and tightened zoning are all cheaper to implement and well within historical city powers. In addition, blight is not relevant to the possibility of higher economic use through the reduction of property owner interdependence. In many instances, the highest level of investment and the highest economic return for investment in land would come from the redevelopment of areas that are already wealthy, expensive, and highly invested.

A second proffered explanation for requiring blight is the social benefit—which purportedly can be measured in terms of economic welfare—of “slum clearance” and removal. This explanation, however, is patently false and historically wrong. The simple fact is that when slums are razed, the low-income people who lived there must move somewhere else. Housing segregation on race and income lines, as well as the chronic shortage of affordable housing, limit their options. Moreover, the redevelopment that takes place does not generate jobs for these people—they remain a low-income class. The left critique claims that the social benefits simply do not materialize.\(^\text{162}\)

2. Depriving the Poor of Resources—Given limited fiscal budgets, the left critique adds that it is simply a misallocation of scarce public sector resources to target funding at the rich and away from the needy.\(^\text{163}\) Redevelopment subsidies actually can serve to increase poverty by reducing services. A recent study of redevelopment in Baltimore demonstrates that even through the TIF projects were widely viewed as successful, Baltimore’s economy performed worse than most comparable cities during the years of its “renaissance.”\(^\text{164}\) Poverty worsened as well: “In 1970, 9.7% of city neighborhoods had high concentrations of poor residents. ... By 1980, that figure had increased to 16.6%.”\(^\text{165}\) It is morally questionable to allocate scarce tax dollars to developers when the result harms the poor.\(^\text{166}\)

\(^{162}\) See infra Part III.C.3.

\(^{163}\) See, e.g., Hill, supra note 94, at 109 (“The corporate-center strategy imposes a redistribution of public resources between classes within the Detroit political economy. Elected officials offer tax breaks and social investment subsidies to business to succor investment, while reducing social consumption services to residents in Detroit’s neighborhoods.”).

\(^{164}\) Levine, supra note 2, at 111.

\(^{165}\) Id. at 112.

\(^{166}\) In addition, it can be argued that such misallocation of resources is economically inefficient as well. See infra Part III.D.
Proponents of redevelopment commonly respond to this criticism with the argument that tax increment resources are generated by increases in property tax values within the zone: *but for* agency subsidies, development would never have happened. They argue that the poor were not benefited before the redevelopment, and therefore have lost nothing by not receiving the tax revenue that flows from it. This response to the left critique deserves some analysis, but generally cannot withstand scrutiny.

First, to the extent that additional taxes are raised or services are reduced elsewhere in the jurisdiction over the life of a project area, this argument is simply wrong. Those resources have been diverted by the project.\(^{167}\)

Second, to the extent that tax increment revenues are part of broader real estate inflation in the market generally, the argument is wrong and measurably so. The degree to which this is a factor will depend on the local real estate market and inflationary pressures. For example, in California in the 1970s and 1980s, it is clear that real estate inflation—not agency effort—created a huge portion of tax increment across the state.\(^{168}\)

Third, it simply is impossible to know what sort of development would have occurred without redevelopment and diversion of taxes to developer subsidies under a regime in which that process is not possible. Developers will seek out the greatest subsidy consistent with other market and financial parameters. In a regime that offers the powerful subsidies of redevelopment, a developer would be foolish to develop outside a project area if other concerns were equal.\(^{169}\)

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168. See *CALIFORNIA ALMANAC* 193 tbl. 21.1.93 (James S. Fay ed., 6th ed. 1993). Obviously, any increase in taxable valuation that resulted from broader market inflation would not be “earned” by the agency. In addition, one must subtract from the tax increment revenues deemed to be “earned” by the agency any buildings that were committed to build in the project area before adoption of the redevelopment plan as well as any increase in taxable valuation triggered by resale of an existing building that was not impacted by redevelopment. *See infra* note 169.
169. As set forth quite elegantly by P. Wallin and C. E. Dilkes, the true measure of tax increment “earned” by a redevelopment agency requires that several components of tax increment first be subtracted out:

The appropriate formula for determining the contribution of redevelopment to increases in assessed valuation on a City, regional, or State level, is a ‘net, net, net’ computation derived as follows:
Thus, agencies do not have proof that they have “earned” tax increment kept from other entities. An agency earns tax increment if its subsidies are necessary for development. Yet, what if they could prove it? To the extent subsidies are necessary for the sort of development that downtown powers seek, the market is signalling that such development is not needed, and social welfare and the displaced community send the same signal. Ironically, the fact that the developments pursued may need subsidies bolsters the lesser argument that tax increment could not have been generated without agency activity, while it undercuts more fundamentally the very legitimacy of agency action—except in that rare instance where the resident poor are the primary beneficiaries of development which so fights the market.

3. Displacement and Housing Destruction—Due to the federal precursor legislation’s preoccupation with slum clearance, and due to local indifference or hostility to low-income

Total assessed valuation:
- Less base year assessed valuation;
- Less assessed valuation increases attributable to inflation;
- Less assessed valuation from development which was already committed prior to the adoption of the redevelopment plan;
- Less assessed valuation from development which would have been developed elsewhere in the City, Region or State, but developed instead in the project area because of project subsidies;
- Less assessed valuation which would have developed in the project area notwithstanding redevelopment;
- Less assessed valuation reduction in existing developments in the City, Region or State competing with the project development, and declining in value because of the impact of subsidized competition.


170. See Malloy, supra note 106, at 131.
171. Id.
172. Id. at 131–33. At most, these proponents of redevelopment can claim that a particular sort of development would not have taken place in a particular spot but for redevelopment subsidies. Of course, this claim is not the same as “development would not have taken place.” Moreover, this form of subsidy fosters generic cookie-cutter development that has strong adverse opportunity costs to our economy. By catering so diligently to the demands of developers and major corporate end users, redevelopment serves to genericize the built environment across the nation. This stifles creativity and economic adventure.
residents, housing and redevelopment must be discussed in tandem. A resident of a "blighted" area that becomes a redevelopment project and who has no control over the redevelopment plan can expect redevelopment to displace him from his home. In addition, destruction of housing and forced displacement likely will result in overcrowding and increased rents in neighborhoods just outside of the project. This occurs because displaced individuals do not move far from where they used to live, and because of the regional tightening of the low-income housing market generated by wholesale destruction of housing units through redevelopment, highway construction, and gentrification.

The deleterious effects of destruction of housing stock and forced displacement of poor individuals, families, and communities were recognized many years ago. Displacement brings

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173. See, e.g., Friedman, supra note 25, at 151. Friedman observed that the federal urban renewal statute was not focused upon the urban poor, but upon the urban slum; high-cost housing, it was thought, eliminated blight and slum conditions just as efficiently as low-cost housing, and perhaps a good deal more so. Not that anybody deliberately set out to disguise as a low-cost housing program one which was secretly intended to build apartments for the rich; but the act was a planners' and businessmen's act, with nods to the housing worriers.

174. LeGates & Hartman, supra note 147, at 229; see supra Part III.C.1.

175. Hartman, supra note 59, at 89.

176. "Once all or part of the low-cost housing units in an area disappear, owners of surrounding low-cost units raise their rents in response to the increased demand. The displaced persons therefore not only lose their homes, but generally wind up paying increased rents for housing of the same or lower quality than that which they lost." Molho & Kanner, supra note 169, at 635. See also infra note 227 and accompanying text (describing conditions for successful rent control in a gentrifying market).

177. See LeGates & Hartman, supra note 147, at 210; see also Marc Fried, Grieving for a Lost Home: Psychological Costs of Relocation, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY, supra note 14, at 380, 396, 402 (suggesting that relocation brings about feelings of grief, distress and helplessness due to the disruption of interpersonal relationships and spatial identity); Chester W. Hartman, The Housing of Relocated Families, in URBAN RENEWAL, supra note 14, at 293, 321–22 (concluding that relocation results in increased housing costs without significant improvement in housing quality); Basil Zimmer, The Small Businessman and Relocation, in URBAN RENEWAL:
a great and unsought upheaval into the victims' lives. This upheaval disproves the stereotypical characterization of the poor as "skid row" transients.\textsuperscript{178}

Moreover, logic and economics dictate that many residents of low-income neighborhoods are long-term residents. Homeowners may have invested to an extent that prohibits leaving. In addition, because rents tend to be lower in these areas than elsewhere in the city, economic factors strongly discourage—if not totally prohibit—renters from moving out of the neighborhood. Finally, over time, economic establishments spring up in the neighborhood that can earn an equilibrium return with a low-income clientele: low-price restaurants, bars, and service establishments arise and further reduce the incentive to move.\textsuperscript{179} Naturally, informal social support networks also develop, and are critical to the residents' quality of life. Ripping out these supports can wreak havoc in a community and on human lives.\textsuperscript{180}

For a time, proponents thought "filtering" would provide housing to replace destroyed units. Filtering described the idea that through a chain of interactions, high-end construction would free up existing units for use by the low-income displacees.\textsuperscript{181} The filtering theory has been criticized heavily.\textsuperscript{182}

\textsuperscript{178} A 1971 survey of the Yerba Buena project area in San Francisco found that "more than half of the persons interviewed had lived in the same hotel for at least six years, and one-third had lived in the same hotel for ten years or more." HARTMAN, supra note 59, at 119. Even that survey undercounted because it did not include those who had lived in the same area for a long time but had changed hotels frequently. \textit{Id.}


\textsuperscript{180} As anecdotal evidence of this phenomenon, the author helped to stop a proposed redevelopment project that would have displaced over 1000 residents from the Highway City neighborhood of Fresno, California. The area was described by the developer and city staff as transitory and blighted. In fact, many of the residents were low-income homeowners who had lived there in excess of 30 years.


\textsuperscript{182} See, e.g., \textbf{Gary Sands, Housing Turnover: Assessing its Relevance to Public
and even those who believe that it may work in theory have asserted that it has harmful effects on the urban poor in reality.\footnote{Policy,} The record is plain: many thousands more units have been destroyed by redevelopment than have been constructed, and of those units constructed, only a small portion have been affordable to low-income residents.\footnote{Downs, supra note 181, at 127.} Filtering has not even remotely made up the difference.\footnote{Downs, supra note 181, at 127.}

4. Poverty Concentration—A final crushing criticism from the left is that uprooting one set of poor people and destroying their homes neither remedies poverty nor solves urban crises.\footnote{Caro presents a haunting vision of the creation of new slums neighboring Robert Moses’ federal urban redevelopment projects.} Rather, the displaced residents move to another low-income neighborhood. Increased demand for low-income housing results in rising rents and overcrowding, and soon creates an even worse slum given the multiplier effects of concentrated poverty.\footnote{See, e.g., Bennett, supra note 15, at 53, 54 (“Urban renewal also demolished more housing units than it built . . . . The resulting residential dislocation accelerated decay in adjoining neighborhoods as dislocated residents of renewal areas squeezed into whatever housing was available.”); Caro, supra note 186, at 963–65; Hartman, supra note 59, at 99–102; Messner, supra note 27, at 69–71; Fainstein & Fainstein, supra note 12, at 47–49. William Julius Wilson has presented, with great force, the deleterious effects of concentrated poverty which result in the lack of role models, absence of employment networks, and dysfunctional schools thus creating an “ecologically and economically” degraded living space. Wilson, supra note 16, at 60–61, 103.}
The internal pressures of the redevelopment process, the combination of TIF with site assembly powers, and the requirement that these powers be exercised only in blighted communities unite to form an unholy trinity. In essence, the powers and internal pressures create a mandate to gentrify selected areas, resulting in a de facto concentration of poverty elsewhere, preferably outside the decision makers' jurisdiction.

Numerous past experiences indicate that the process has been driven by racial animosity as well as by bias against the poor. The net result is that a neighborhood of poor people is replaced by office towers, luxury hotels, or retail centers. The former low-income residents, displaced by the bulldozer or an

188. See supra Part I.B.
189. See supra Part I.B.2 regarding tax increment financing and the goals of city elites.
190. See supra Part I.B.3.
191. See, e.g., MIKE DAVIS, CITY OF QUARTZ 226–32 (1991). In addition, in the terribly poor and overwhelmingly minority city of East Palo Alto on the San Francisco Bay peninsula, the redevelopment agency adopted a project that was miserable for the city in every sense, except that it would have replaced a low-income neighborhood with office towers. A community activist has told the author that city leaders were heard to support the project, in spite of its flaws, because it would remove some of the poorer members of the community from a community that was already “overburdened” with the poor. Telephone Interview with an anonymous community activist in East Palo Alto, California (Dec. 19, 1994).
192. For example, Frieden & Sagalyn quote Miles Lord, who, as the Attorney General for Minnesota, helped to oversee land takings for highway construction in the 1950s:

We went through the black section between Minneapolis and St. Paul . . . and we took out the home of every black man in that city. And woman and child. [sic] In both those cities practically . . . . Nice little neat black neighborhood, you know, with their churches and all and we gave them about $6,000 a house and turned them loose onto society.

FRIEDEN & SAGALYN, supra note 11, at 28–29 (quoting the transcript of remarks at the U.S. Justice Department Condemnation Seminar, Virginia Beach (Oct. 30, 1979)).
193. For example, in June, 1971, the San Francisco Examiner felt obliged to editorialize concerning the current Yerba Buena residents stating:

“Neither do we believe that such people should have the right—in the absence of some compelling reason deeply rooted in the public good—to delay and quite possibly kill a major public project of profound importance to the economic well-being of a city that is not really their home community, that they have built no stake in, that they make no attempt to adorn, and to which they are on the whole an unsought burden.”

equally effective increase in rents, must relocate into another area they can—perhaps—afford.\textsuperscript{194}

The entire process can be viewed as a strategy of poverty concentration and geographical containment to protect the property values—and entertainment choices—of downtown elites.

One of the key planning concepts applied under Justin Herman was the "protected environment." In essence, the idea is to create a \textit{cordon sanitaire}: surround the central development of a renewal project with peripheral construction that will provide an effective physical barrier to deter former residents from moving back into or adjacent to the area.\textsuperscript{195}

This concept has been followed in innumerable subsequent projects. Thus, redevelopment policies within central cities have served to buttress and reinforce the segregationist policies pursued by suburbs\textsuperscript{196} which have resulted in the spatial and economic segregation of the poor and minorities. Student authors predicted in 1978 that: "[r]edevlopment policies which, in essence, amount to ghetto relocation, promote a race

\textsuperscript{194} Excluding the poor is built into the design of redevelopment. For example, James C. Mao thought redevelopment efforts should seek "a superior pattern of resource allocation" which would result from

one or more of the three transformations of land use: (1) Transformation in income class—land is transferred from low-income to high-income users. (2) Transformation in density—land is transferred from low to high density uses.

... (3) Transformation in activity—land transferred from residential to industrial or commercial use, or vice versa.


\textsuperscript{195} HARTMAN, supra note 59, at 89 (footnote omitted); see also Dashka Slater, A Tale of Two Cities: Emeryville, Oakland, and the Swiftly Changing Face of East Bay Commerce, EXPRESS: EAST BAY'S FREE WKLY., May 20, 1994, at 20. This article cites a geographer from the University of California explaining that redevelopment in downtown Oakland served to create a

visual wall between downtown and East Oakland . . . “Essentially they walled off all of downtown from the trouble areas. This was the redevelopment plan for downtown Oakland” . . . . Diagram after diagram envisions the old structure of the city being ripped out, literally bulldozed, and the new fabric protected and separated from the rest of Oakland by what even the plans themselves sometimes describe as a wall of office buildings, parking structures, or apartments.

\textit{Id.}

\textsuperscript{196} See infra text accompanying note 273.
and class segregation which severely limits the opportunities of both poor African-Americans and poor whites and perpetuates a social pathology which foreshadows the creation of a garrison state." Any proposal for reformed redevelopment must address these criticisms from the left of the political spectrum.

D. Lost Opportunity Costs

The final vein of criticism flows from the community-based perspective of the Community Economic Development (CED) field. This criticism has emerged only recently in the CED field and explains that redevelopment, as controlled by elites who pursue downtown development, generates massive opportunity costs.198

In the area of physical construction, these lost opportunity costs are usually enormous. Redevelopment imposes opportunity costs because construction precludes future construction that may be better suited to the residents' needs, and the development wastes money that could have been used for more appropriate projects. A building constructed during redevelopment will not be torn down anytime soon: if a luxurious office tower is constructed on a certain site, the agency is blocked from building a youth center there. Similarly, if a project establishes jobs for lawyers and bankers at a site, the low-income community will be shut out of the jobs located there. Moreover, when an agency builds a hotel or retail center, the jobs housed there are low-skill, low-wage service sector jobs. As long as the building stands, those jobs, and only those jobs, will be available at that site. What if, instead, a manufacturing plant had been built?

An additional opportunity cost is the lost time and effort of governmental actors pursuing misguided redevelopment. In the author's experience, adopting a redevelopment plan requires one year at a minimum. City and redevelopment agency staff

197. Christopher et al., supra note 93, at 881; see also Wheeler, supra note 146, at 148 ("The record shows that in the majority of cases the energies of urban renewal are not directed toward the vital needs of the poor, and when they are, the efforts are minimal and the outcome unsatisfactory to the persons of the target area.").

198. Opportunity costs represent the cost of taking one course of action which precludes another, possibly more valuable, course of action.
must review plans, compile environmental impact statements, hold public hearings, review project feasibility, and retain and monitor any number of consultants. Negotiations with private developers also are extensive and time-consuming. In all, a phenomenal, and usually uncounted, cost in terms of staff time must be expended to pursue redevelopment projects. Staff pursue misguided redevelopment rather than fostering entrepreneurship, helping existing local businesses meet environmental requirements, ensuring excellence in job training activities, generating networks of firms in the jurisdiction, and working to improve the education of the youth in the jurisdiction. Staff's inability to focus on development alternatives that would benefit the central-city poor is another uncounted cost beyond the real cost of salaries.

Three additional opportunity costs are created by redevelopment as currently practiced. These opportunity costs are far less obvious than the others but in many ways are much more significant. The opportunity costs flow from redevelopment because it: (1) constitutes a flawed industrial policy, (2) fails to serve low-income residents as clients, and (3) creates skewed risk and reward alignments.

1. Flawed Industrial Policy—As a huge additional opportunity cost, redevelopment has served as a national industrial policy—albeit one that is remarkably inefficient and ineffective. Although this observation is unusual, redevelopment carries all the hallmarks of a national industrial policy. First, redevelopment pursues industrial development on a national scale. Second, because of the "lemming" mentality of city development efforts, and because so many cities face the same pressures and have adopted the same strategies in response to these pressures, redevelopment picks the same winners in city after city. Although this happens jurisdiction by jurisdiction, rather than by fiat of one national bureaucrat, the results are every bit as stultifying as a formal national policy. Redevelopment has focused on developing the downtown and on attracting corporate headquarters as well as the finance, insurance and real estate (FIRE) industries. More recently, redevelopment has pursued convention centers, luxury hotels and, in fewer regions, high-tech industrial parks.199 Even more recently,

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redevelopment has pursued the "big box" retailers that provide extensive sales tax revenue,200 and redevelopment will soon serve to locate and subsidize casinos nationwide as it already does in Las Vegas and Atlantic City.201 Finally, having picked a winner, redevelopment supports that winner and subsidizes what are the normal costs of doing business for other industries which are not so favored.

The evaluation of these efforts is grim on two counts. First, in pursuing the sorts of downtown industries that redevelopment traditionally has favored, redevelopment has fostered significant economic inefficiency. In most cities, redevelopment subsidies have not been successful in overcoming the market and the subsidies have been wasted.202 Where the market favored office tower development—such as Boston, San Francisco, and Los Angeles—office towers were developed, but redevelopment subsidies were not necessary for such development to occur. Second, even though some individual projects were successful, the economic development aspects of these downtown projects did not benefit the broader economy.

In addition, even though nearly every major jurisdiction has pursued corporate headquarters as part of redevelopment strategies, over time the dispersal of corporate headquarters remains limited. From 1969 to 1989, dispersal only increased from eight to fourteen metropolitan areas containing fifty percent of Fortune 500 companies.203 Some dispersal has occurred. Yet, many metropolitan newcomers to the list, such as San Jose,204 gained prominence because economic activity, such as Silicon Valley growth, generated new additions to the Fortune 500 list that had grown indigenously, independent of redevelopment incentives.

Similarly, the effectiveness for the regional economy of a strategy that pursues corporate headquarters and FIRE industries must be suspect. Logan and Molotch explain that from 1969 to 1979 the Northeast states "lost virtually none of their dominance in industrial, banking, and insurance headquarter

200. See supra notes 133–35 and accompanying text.
201. See Peter Passell, The False Promise of Development by Casino, N.Y. TIMES, June 12, 1994, at F5.
202. Witness the downtowns of Fresno and Oakland, California, and innumerable other cities that lack the locational cachet of cities such as Boston, San Francisco, and Los Angeles.
204. Id.
activities." Simultaneously these Northeastern cities became synonymous with urban decline. Just as luring such headquarters does not create a thriving city, maintaining such headquarters does not necessarily result in a healthy economy. According to a report by a respected economic consulting firm, in 1992, after years of extensive focus and subsidy for Los Angeles' downtown, the FIRE industries located there accounted for only eight percent of Los Angeles' employment. Manufacturing, neglected and despised, continued to account for twenty-four percent. Elites use redevelopment to plan and locate ventures and employment that they deem important. Rarely will this also benefit the low-income and disadvantaged. Los Angeles' economy might be very different if redevelopment effort and spending had focused on manufacturing rather than on the FIRE industries.

In Boston a similar result is evident. After twenty-five years of intense international competition, the shoe industries there have been ravaged. Government has, in turn, focused on high-tech economic development strategies in addition to downtown office development. Yet, in 1993, the shoe industry accounted for one-third more employment in the Boston area than all high-tech industries combined. The industrial policy pursued by redevelopment in both Boston and Los Angeles has focused on downtown development and has not benefited the broader city.

2. Residents Are Not Clients—Standard explanations for the crisis in urban central cores indicate that cities face a fiscal crisis stemming from white flight to the suburbs, with employment and retail opportunities following. From this observation come several prescriptions. First, a fiscal crisis requires a fiscal response: the city must increase its tax base and lure private investment. Second, the city must either lure in, or lure back, wealthy white residents. For example,

205. LOGAN & MOLOTCH, supra note 8, at 260.
207. Id.
208. Mier, supra note 103, at 38.
209. Id.
210. Id. at 34.
211. Even given these explanations and observations, the prescription is absurd in the redevelopment context because every single jurisdiction—including suburban enclaves—was entitled to use the same "extraordinary" powers. Moreover, the gall in promoting this blatantly racist policy prescription is astounding.
redevelopment planning in Boston was designed to pursue what are entirely typical goals: increase the tax base of the city and lure back middle-class and wealthy whites. The Boston Redevelopment Authority’s 1965–1975 General Plan for the City of Boston proclaimed the policy to be “increasing the diversity of [Boston’s population] so that it more nearly reflects the composition of the Region’s population as a whole. This would, of course, entail a reversal of present trends towards increasing proportions of low-income groups and non-whites in the core City.” Thus, in spite of nice sounding bromides from city officials, the city wanted to plan with like-minded people, mainly middle-class homeowners, while planning displacement for low-income residents. None of these standard prescriptions view the current resident as the “client” of city redevelopment activity.

This failure is evident and grotesque. Yet, many believe revitalizing the tax base and luring back white residents will provide jobs for poor residents and enhance the city’s fiscal posture. Would this result not enable the city to provide greater services to the poor? Following this straw argument, redevelopment policies favor investments based on the assumption—often untested and usually unproven—that investment will lead to more jobs. For example, the “reduction of the job problem to an investment problem was almost an article of faith” at the 1983 Cities’ Congress on Roads to Recovery.

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213. Id. at 29–30.

214. Mayor John Collins explained that he hoped redevelopment would be a product of “planning with people instead of planning for people.” Id. at 30 (citing The 90 Million Dollar Development Program for Boston, reprinted from the City Rec., Sept. 24, 1960, at 1, 2).


216. One obvious reason for the common shape of redevelopment projects is that private market sponsors present compelling arguments of sustainable development. This simple observation has significant repercussions. City governments cannot be faulted for trying to attract large-scale producers of jobs and tax revenue and making them sustainable in the marketplace. A governmental income supplement to a disadvantaged person is not sustainable. The economy may cease to support that expenditure, or more likely, political will may shift and the expenditure will be reduced or removed as quickly as it was offered. To the extent that a government expenditure can, instead, induce another party to hire an individual in a competitive job which can be sustained in the market, the choice for government is clear—especially because the latter choice is probably cheaper.

217. Mier, supra note 103, at 34.
attendee of this congress complained that "most of the shared success stories focused on capital investment, usually in real estate, and assumed that jobs naturally follow from such investment." In essence, will not redevelopment benefits trickle down to the real parties in interest?

Little evidence supports the contention that this result is an actual goal any longer, and even less indicates this goal has been successfully achieved. The logic fails in both circumstances for the same reason. The connection between giving the third party an initial outlay and the end result is too tenuous. In this context it is trickle-down that fails. That it fails so obviously is further evidence that residents are not the clients of current redevelopment. This trickle-down approach, and the opportunity costs it imposes on low-income city residents, deserves a detailed evaluation.

Trickle-down theory assumes that by helping directly already-wealthy person X we will in fact help disadvantaged person Y in a more sustainable manner than by helping person Y directly. This theory is valid only to the extent the connections between the original outlay and the legitimating result are strong.

The fact that poor urban residents are not the clients of redevelopment—even in a trickle-down context—is underscored by the actions jurisdictions have not taken. For example, many current legal structures could either reduce the harm to the poor from redevelopment or increase the benefit. Local jurisdictions, however, rarely, if ever, pursue these efforts. If agencies manage to pursue these efforts, they do so in a haphazard and ineffective fashion. Concerned jurisdictions

218. Id. at 32–33 (noting that such fundamental failures of logic are commonplace and indicate that residents are rarely the true "client" of development efforts).

219. In the past, this logic justified the original federal investment in urban renewal, anticipating that a substantial up-front federal outlay would generate cities that were sustainable because of population characteristics and revenue production and would therefore cost the federal government less in the long run.

220. This passage assumes without discussion that there are some trickle-down approaches that work.

221. See supra note 216.

222. For example, the job for person Y should be guaranteed up front or else the claimed benefits of the trickle-down approach will not be realized. On the other side of the coin, the efforts and the expenditure to person X must be calculated to do no harm or at least do less harm to person Y than would result from doing nothing. Here harm must include the opportunity costs of not making the direct outlay to person Y or other reasonably likely uses of the tax revenue at issue.

223. For example, a recent employment linkage program conducted by the Community Redevelopment Agency of Los Angeles was summarized, "[e]ven in the guarded
can fight housing displacement with community land trusts, limited equity housing cooperatives, and rent control for redevelopment project areas or nearby neighborhoods. While rent control is controversial, many of the legitimate concerns about its use are obviated in the redevelopment context. This is true because redevelopment project areas normally become gentrifying markets. A concerned jurisdiction could also step up tax delinquency and housing code enforcement penalties to take dilapidated apartment buildings and transfer them to tenants at reduced cost and with subsidized loans for rehabilitation. Still more directly, a concerned jurisdiction could build replacement housing before clearance and displacement takes place.

To address negative effects on employment, local preference hiring would be much more effective in assisting disadvantaged project area residents—for employment located by

words of individuals responsible for implementing portions of the linkage program . . . [as] 'unsuccessful.'" Fred Seavey, L.A.'s Employment Linkage Program Offers Potential Community Benefits, REDEVELOPMENT ADVOC., Winter 1993, at 4. This article further explains that applicants referred by the agency after a rigorous screening process "were selected to fill only eight of 243 positions during the first phase of the hiring process!" Id.


225. See generally David H. Kirkpatrick, Cooperatives and Mutual Housing Associations, ABA J. AFFORDABLE HOUSING & COMMUNITY DEV. L., Spring 1992 (describing different kinds of cooperative and mutual housing association options).


227. In a gentrifying market—which a redevelopment-altered neighborhood inevitably becomes—for rent control to adequately protect existing low-income residents it must include actual rent control, warrant of habitability protection, eviction restrictions, a moratorium on condominium conversions, and residential zoning restrictions to maintain residential uses for land. Id. at 1841.

Indeed, if government intervention and intrinsic imperfections in the housing market impose costs such that the equilibrium rent is higher than in a perfectly competitive market, by lowering economic rents the proposal [for rent control in a gentrifying market], rather than causing people to waste space, may reduce overcrowding and result in a more efficient allocation of space.

Id. at 1852.

Critics have attacked rent control housing policy, however, on economic grounds. Their economic efficiency arguments do not provide a compelling basis for rejecting rent control. Most of the economic criticisms are mistaken or are accurate only when applied to rudimentary forms of rent control or to rent control in a non-gentrifying market. Id. at 1855. For example, in gentrifying markets, rent control prevents high-income consumers from outbidding low-income consumers, thereby keeping high-income consumers out of the low-income market. Id. at 1848.

228. For a definition of gentrification, see supra note 157.
redevelopment—than could comparable race-based measures.\textsuperscript{229} Outside of broad statutes a concerned agency could mandate hiring of disadvantaged individuals through contracts with subsidized developers and their tenants. Similar preferences for local businesses also would be possible.

Finally, a concerned redevelopment agency would actively seek to address social service problems caused by its diversion of tax increment funds. This concern might require dissolving project areas in order to allow the tax revenue to revert back to the sponsoring jurisdiction.\textsuperscript{230} Alternatively, this concern could require portions of the tax increment funds that an agency receives be used to subsidize social service providers. Although redevelopment has been construed as tied strictly to bricks and mortar development of buildings, such a construction is not necessary. If providing social services is necessary to redress blight—the fundamental justification for all redevelopment powers\textsuperscript{231}—then such expenditures should be allowed.\textsuperscript{232}

Agencies have not pursued these issues with any vigor. When one compares the creative legal interpretations agencies have produced concerning relocation payments, and the creative flair—indeed verve—agencies typically exhibit in finding blight, or identifying an area as "predominantly residential" under the federal programs, it is clear that when an agency wants to pursue a goal, very little can stop it. The fact that agencies generally have not pursued the simple goals set forth above indicates that agencies do not care to achieve those beneficial results.

\textsuperscript{229} Richmond v. Croson, 488 U.S. 469 (1989), effectively bars any meaningful racial preferences by a local government under the Fourteenth Amendment. In contrast, a local preference does not implicate the Fourteenth Amendment's equal protection concerns. Instead, local preferences implicate the Sixth Amendment's privileges and immunities concerns. These concerns are far less fundamental and do not trigger strict scrutiny as do race-based preferences. See, e.g., United Bldg. & Constr. Trades v. Camden, 465 U.S. 208, 222 (1984) (implying that a well-tailored ordinance which required contractors working on city projects to employ a minimum percentage of city residents might not violate the Privileges and Immunities Clause); cf. White v. Massachusetts Council of Constr. Employers, 460 U.S. 204, 214-15 (1983) (holding that a city expending funds under its control—in whole or in part—on public construction projects is a market participant, and thus does not violate the Commerce Clause when it requires all city-funded construction to be performed by a workforce of at least half city residents).

\textsuperscript{230} See supra text accompanying note 70.

\textsuperscript{231} Berman v. Parker, 348 U.S. 26 (1954); see supra text accompanying notes 77–82.

\textsuperscript{232} Each of these options has legal uncertainties and difficulties in the redevelopment context: each would justify its own law review article.
That the inner-city residents are not the clients of agency redevelopment efforts represents an additional huge opportunity cost of redevelopment as practiced currently. Redevelopment as practiced currently pursues results that cannot be expected to benefit inner-city residents in spite of claims towards revitalizing the tax base or creating jobs. Plainly, if redevelopment constituted projects designed to increase the quality of life and the opportunity of inner-city residents, the projects would be very different.

3. Unequal Risk and Reward—Finally, redevelopment, as practiced under the federal regime and as practiced currently under local efforts, will not benefit the urban poor because it promotes and relies upon unfair distribution of risk. This unfair distribution of risk under standard redevelopment imposes additional opportunity costs on low-income city residents.

The risk and reward ratios of participants in redevelopment are skewed on two axes. First, the distribution of risk and reward between the jurisdiction and private developers is out of alignment. This flows, in part, from the fiscal crisis view of urban decline and the preferred response of giving private investment advantages to encourage it to locate in certain areas.

The second risk-reward disalignment stems from the fact that the majority of social costs caused by redevelopment are borne by the urban poor, often minorities. The poor face

233. See Friedman, supra note 25, at 157.

The only conditions under which the project made sense were that GM would build its plant, have two shifts on line in the very near future, and backfill operations at the Clark and Fisher plants. Yet nowhere in the process [did] the city propose performance constraints to ensure net benefits before the project [was] actually undertaken. The people of the city of Detroit assumed all the expenses and took all the risks.

Id. at 114. Of course earlier decisions limited the parameters of “possible” actions for future decisions. “The first issue, production decisions affecting the city as a whole, was controlled solely by the internal accounting practices of GM. Clearly, . . . the result of the first issue strategically placed constraints on, and limited, the range of outcomes to subsequent issues.” Id. at 115. “The subjective interests of the people of Detroit centered on the idea that the city could not afford to lose the GM plant. While this was in fact true, it also could not afford to embark on the particular path chosen by the mayor and the [Community and Economic Development Department].” Id. at 119.
unsought displacement and inadequate relocation. The poor face the destruction of affordable housing units. The poor face reduced job opportunities because many local small businesses are displaced and closed by redevelopment. The poor watch redevelopment create jobs they will never attain. The poor bear the risk of misallocated tax dollars being squandered on unnecessary subsidies for development. The poor suffer as redevelopment is used to exclude them from suburban cities and their schools and opportunities. Aside from inadequate relocation payments which provide little assistance in a housing market with a chronic shortage of affordable units, the poor receive no compensation whatsoever for the massive risks—and true costs—the jurisdiction foists upon them.

There are two responses to these unfair allocations of risk: (1) remove the risk or (2) reward the risk fairly. Risk is zero sum in the redevelopment context—either the developer bears the risk, the residents bear the risk, or the jurisdiction bears the risk. Under the present regime, the residents bear the brunt of the risk. Indeed, the rules of the game are so skewed that frequently resident groups can merely ask for mitigation of the bad effects of redevelopment. In turn, the agency will generate only the revenue to support the mitigation if the redevelopment project is successful. This fact helps to explain why the developer's success often becomes paramount—even to those people who oppose the project on the whole. In other words, if the decision to remove an individual's home can be compensated fully, but the compensation of replacement housing will only materialize as a result of future tax-increment funds, then, because potential displacees cannot stop the projects, they are subject to powerful incentives to give developers everything they ask in order to improve the development's chances of success.

235. Via the Securities and Exchange Commission we have an entire federal apparatus funded with tax dollars to protect the risk of those who invest in corporate equities, yet we have no structures to protect economic actors who, voluntarily or otherwise, assume significant "real" risk.

236. The jurisdiction's decision makers and staff bear risk but in a diffused and relatively painless way. If development does not proceed, the funding was off-budget and, given the general lack of accountability, no one in particular will suffer.

237. See infra note 239.

238. Such a decision would meet the "potential Pareto-optimality," or Kaldor-Hicks measure of economic efficiency. This criterion is met if all parties support a decision because those who benefit from a decision fully compensate those who suffer as a result of the decision. See Michael Graetz, Legal Transition, 146 U. Pa. L. Rev. 47, 66-68 (1978) and authorities cited therein.

239. Similar examples of this scenario include the construction unions that support
With every jurisdiction across the country pursuing the same policies and competing for the same types of users of redevelopment, it is inevitable that the risk of development will be borne by the low-income residents. Bearing this risk generates a huge burden for the low-income city residents. Resident-controlled redevelopment would completely reverse this state of affairs. By changing the rules of the game and giving project area residents control over redevelopment, the risk and reward structure would be radically revised.

IV. RECOMMENDATIONS FOR REFORM

Given the criticisms presented above and the apparently hydraulic inevitability of the abuse that flows from the process, one well might question whether the redevelopment "beast can be tamed." Can the allure of the phenomenal powers that redevelopment offers actually be harnessed to serve the low-income communities where it is implemented and in whose name the powers are justified? The answer is "yes, within limits." This Article proposes a program for reform based on

any public works project that will create jobs for their membership regardless of the harm the construction does to communities that share many interests with the union membership and regardless of the waste of tax dollars involved.

Hartman recounts the tragic change of heart within organized labor in San Francisco from strong concern over the types of redevelopment pursued to utter capitulation. HARTMAN, supra note 59, at 65–66. Initially, labor argued against the Yerba Buena project and its proposed creation of convention halls and sports arena with the

"loss of millions of square feet of industrial space [that] can only extend unemployment, suffering and poverty . . . .

In addition to the many workers who will lose their jobs, we wonder if the policy makers of this City have thought of the social and economic effect on over 3,000 single persons, a third of them aged, who will be displaced in the area without realistic provision for relocation . . . .

What [the Agency is] not obstructing are the special interests of certain groups. The Agency and Mr. Herman must be reminded of their obligations to the rest of the citizens of San Francisco. The Yerba Buena issue is a good place to start."

Id. at 65–66 (quoting SAN FRANCISCO LABOR COUNCIL, Official Bulletin, Nov. 3, 1965). Yet later, organized labor made the incredible statement that "We are in favor of building with no respect to where it is and how it is." Id. at 66 (quoting Weinstein, supra note 152, at 12). This is an example of one route to political and social oblivion.

240. I borrow this phrase from conversations with Mary Lee, an attorney with the Legal Aid Foundation of Los Angeles.
promoting resident-controlled redevelopment as the exclusive means of conducting redevelopment.

This Article presents these recommendations—as opposed to outright abolition of redevelopment—for two reasons. First, taking into account the many criticisms just cited, redevelopment is a structure crying out for reform on moral and economic grounds. Yet, redevelopment has not disappeared. It is unlikely to die in any foreseeable time frame. If it will not die, we must change it. Second, redevelopment could be a tool of civic revitalization on many fronts. Reformed redevelopment with residents in control will pursue different goals using different processes. These goals and procedures could benefit the fiscal posture of cities, the physical environment of cities, the local economy, and the life chances of residents.

A. Resident-Controlled Redevelopment:
The Dudley Street Example

[Th]ere must come a time in any community’s life when the interests of the total community must dominate those of the neighborhoods. At such times, in my judgment, a [neighborhood] veto is not in the interest of having a desirable community.241

No little popular group is going to put together a multimillion dollar project. They aren’t going to stop one either.242

—Justin Herman

Time after time resident groups have proved the first of Herman’s predictions false. Only recently have local groups and Community Development Corporations proved the second prediction false as well.243

241. MOLLENKOPF, supra note 90, at 193 (quoting Justin Herman, Renewal Official Responds, 36 J. HOUSING 602, 602 (1969)).


243. Community development corporations (CDCs) have emerged over the last two decades as vital local responses to economic decline. CDCs are the foot soldiers in the
By far the best known example of resident-controlled redevelopment is the Dudley Street neighborhood in Boston. 244

The Dudley Street Neighborhood Initiative (DSNI) is the first community-based organization to be granted some of the powers traditionally reserved for redevelopment agencies. DSNI has successfully used these powers along with a comprehensive plan generated by community residents, and adopted by the city, to take control of development in their neighborhood. The project required community groups with vision, a foundation that was willing to fund a risky proposal, and the cooperation of city decision makers. 245

By the middle of the 1980s, "disinvestment and a wave of insurance-related arson left half of the land in Dudley Street’s residential areas . . . idle and vacant." 246

According to the Dudley Street Neighborhood Initiative Revitalization Plan: A Comprehensive Community Controlled Strategy, the area was also “ripe for the picking” to real estate speculators, developers, and investors due to the completion of a major mass transit project nearby, the

community economic development movement. The following is a brief bibliography of important documents regarding community economic development:


244. The following discussion relies heavily on interviews with relevant actors in the Spring of 1993 (see infra notes 248–250); see Medoff & Sklar, supra note 215; D. Malcolm Carson, Dudley Street Neighborhood Initiative: Positive Redevelopment, Redevelopment Advoc., Spring 1993, at 1. The Medoff and Sklar book is an excellent and thorough analysis of the many problems confronting a community-based organization attempting to take control of its development future.

245. Carson, supra note 244, at 1.

246. Id. at 1, 6.
overall "hot" real estate market in Boston, the proximity of the neighborhood to the booming downtown area, and the large amount of vacant land.247

In 1984, the Boston Redevelopment Authority (BRA) had recognized these circumstances as well and announced plans for the redevelopment of neighboring Dudley Square. The Dudley Street neighborhood feared the typical results of redevelopment—gentrification and displacement. DSNI began when the Riley Foundation met with La Allianza Hispana, a local agency, to explore funding a community-based coalition to prevent displacement and to revitalize the neighborhood. According to Sue Beaton of DSNI, the Riley Foundation took the position that "if the community was willing to work toward a vision of life, they would be faithful,"248 a position to which Riley remains committed. Beaton emphasizes that Riley has been a "wonderful asset" because of its willingness to "allow the community to craft its agenda and work towards community control, while bringing much-needed resources to the table."249 In addition, Riley actively sought city and other foundation support.250

Initially, the model for DSNI was typical: social service agencies acting as intermediaries between funders and area residents. However, at a February 1985 community meeting, residents of the neighborhood rejected the proposed structure of the organization, and instituted a direct election system for the organization's Board of Directors, allotting seats to African-Americans, Latinos, Cape Verdeans, whites, and representatives of non-profit agencies, CDCs, small businesses, and religious organizations.251 A majority of the thirty-one seats currently are held by neighborhood residents.252 From this

247. Id. at 6.
248. Telephone Interview with Sue Beaton, Deputy Director, DSNI (May 27, 1993) [hereinafter Beaton Interview] (notes on file with the author).
249. Id.
250. Telephone Interview with Newell Flather, Administrator, Riley Foundation (May 26, 1993) (notes on file with the author).
251. MEDOFF & SKLAR, supra note 215, at 52–56.
252. Id. The actual composition of the Board is as follows: 12 community members from the core area equally divided between African-Americans, Cape Verdeans, Latinos, and whites; 5 representatives of nonprofit agencies from the health and human service fields; 2 representatives of community development corporations; two representatives of small business from the core area; 2 representatives from the broader business community; 2 representatives from the religious community in the core area; 2 other members whose identity is determined based on skill or represen-
point on, community organizing, participation, and control have been the foundations on which DSNI's success has been built. Sue Beaton points out that "good, old-fashioned organizing is the backbone of DSNI; without that we would be nothing."253

1. Community Plan—With extensive involvement by the community, DSNI formulated a comprehensive 200-page community development master plan that addressed land-use, housing, economic development, and human services in the neighborhood.254 Developing the master plan required meetings between residents and subcommittees of the board, workshops and working groups, knocking on doors, focus groups, community-wide meetings, and organizing around concrete short-term issues.

The plan was organized around three areas: housing, human services, and economic development. In order to achieve their objectives, DSNI outlined thirteen specific revitalization strategies, including:

• the development of 2000 units of affordable housing;

• the creation of an urban village with a commons providing space for retail enterprises and recreation areas;

• the development of programs to stop the displacement, re-orient the provision of social services, address drug and crime problems, provide child care and create business opportunities for entrepreneurs;

• the development of alternative financing methods;

• the mobilization of the neighborhood and strengthening of racial, ethnic, and cultural identity and diversity;

• the creation of employment, training, and educational opportunities for residents; and

• the development of neighborhood-based businesses.

253. Beaton Interview, supra note 248.

254. The plan, entitled the Dudley Street Neighborhood Initiative Revitalization Plan: A Comprehensive Community Controlled Strategy, is on file with the author.
In addition, DSNI achieved a unique accomplishment: their community plan was adopted as the city's plan for the neighborhood, and the BRA subsequently granted them the power of eminent domain under Chapter 121A of Massachusetts law. An agreement between the City of Boston and DSNI defines the process by which eminent domain, as well as the transfer of city-owned vacant land, will occur. Massachusetts does not have a law authorizing the use of tax increment financing, so the city could not transfer that power as well. As a result of the planning process, however, the city donated many parcels of city-owned land for DSNI's purposes. The critical fact here is that these redevelopment powers are a tool for achieving broader goals identified by residents.

2. Community Land Trust—Keeping with the resident-controlled approach, one of the first DSNI projects was the creation of a community land trust to fight gentrification and displacement. The Plan provided that all of the land acquired by DSNI was to go into a community land trust—a private, non-profit corporation affiliated with, but legally distinct from DSNI—called Dudley Neighbors Inc. (DNI). DNI will use ninety-nine-year ground leases to make land available for the construction of affordable housing, community facilities, and open space. Under the ground lease, DNI will own the land and the residents will own the buildings, either as individual or as cooperative units. To keep the housing affordable, DNI reserved the power to cancel the ground lease and force the offending resident to leave his or her premises. The land trust is governed by a locally-controlled board of directors, the majority of whom are chosen by DSNI and accountable to its members.

3. Financing—DSNI has thus far assembled over $50 million in financing commitments from a wide variety of sources, including:

• a $2 million investment at 1% interest from the Ford Foundation;

• a $1 million line of credit from the Consumers United Insurance Corporation;

256. MEDOFF & SKLAR, supra note 215, at 119. See id. at 121–44 for a description of the process leading to DSNI's acquisition of this power.
257. See id. at 12-27, 158-59 for a description of DNI.
• $1 million building loan from the City of Boston;
• $2.5 million from HUD for construction of low-income housing;
• $15 million from Local 26 of the Hotel and Restaurant Workers Union for development of low-income housing; and
• a portion of a $500 million commitment made by area banks to the Community Investment Coalition (of which DSNI is a member).^{258}

On Saturday, March 20, 1993, DSNI held its first groundbreaking ceremony for construction of thirty-eight affordable, single-family homes. Other projects are nearing the construction phase. DSNI has now entered the period where the long years of organizing and planning will pay off in tangible results.

DSNI represents a radical departure from conventional redevelopment models. Instead of powerful outside forces representing downtown elites forcing development on a neighborhood, a community took control of its own future, created a common vision, and assembled the tools to realize that vision. It is important to note that redevelopment powers were but a few of the many tools for revitalization DSNI marshalled together. Other similar efforts—with varying degrees of outright resident control—are underway elsewhere across the country.^{259}

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258. Carson, supra note 244, at 9.
259. Telephone Interview with Jeff Gibney, President, South Bend Heritage Foundation (Mar. 28, 1994) (notes on file with the author). The South Bend Heritage Foundation (SBHF), a community-based CDC with a board comprised half of community residents and half of residents from the city at large, is pursuing a redevelopment project in South Bend, Indiana, including significant affordable housing development in a distressed neighborhood. Like DSNI, they have cobbled together many funding sources to get their project off the ground. Also like DSNI, the city has cooperated. Jeff Gibney, president of SBHF, attributes this cooperation to the fact that the area was so controversial that the city would not have become involved without community support, and to the fact that the city had tried other approaches and failed. In 1993, the SBHF completed a strategic plan for a notorious existing business district, hired consultants and a community organizer for the district, and decided to tear the buildings down and build 29 duplexes and triplexes for rental. The project was declared a redevelopment project area with SBHF providing staff support for planning and neighborhood people implementing the plan. Id.

In addition, the author is assisting a community group in Los Angeles and the Legal Aid Foundation of Los Angeles in negotiating significant resident control of a proposed redevelopment project area in South Central Los Angeles.
B. Resident-Control Resolves Major Criticisms

Resident-controlled redevelopment would address all the major criticisms of standard redevelopment set forth above. This is true for two reasons: (1) the client would be the neighbor of the decision maker and have direct electoral control over the decision maker regarding that single issue and (2) the client and the decision maker would be the parties that would directly and visibly bear the risk of mistakes and wasted money.

1. Libertarian Critique—Resident-controlled redevelopment responds to this criticism least well. However, on two counts this proposal would be more acceptable to such critics than is current practice. First, the resident board would be accountable directly to project area residents through regular elections. Second, given that local residents would be in control, it is unlikely that eminent domain would be used to take property with any frequency. In addition, though redevelopment would continue to divert property taxes, two outcomes hopefully would result. First, only neighborhoods suffering from years of neglect would be entitled to trap property taxes and exercise these powers. Second, recognizing that tax increment financing diverts property tax from necessary services, low-income communities would be more motivated to pay off their projects and return the tax revenue to the jurisdiction.

2. Market Liberal Critique—Resident-controlled redevelopment responds to many of the market-liberal critiques as presented by Malloy. Regular elections of bodies responsible only for redevelopment would provide strong accountability. The governmental intrusion into the economy likely would be more efficient—or more justifiable if just as inefficient—in this context because resident-controlled redevelopment would pursue goals important to low-income residents whose needs and concerns normally are not reflected in the market. Such goals would either be inimical to downtown domination or would

260. See supra Part III.
261. See supra Part III.A.
262. For example, a locally elected official would be extremely unlikely to approve a taking by eminent domain of their neighbor's home.
263. See supra Part III.B.
require significant and tight linkages between any subsidies for such development and benefits to local residents.

Strictly speaking, any subsidy for development will result in inefficient development decisions compared to the mythical free market. Resident-controlled redevelopment would serve to locate and subsidize development and therefore also be inefficient. If redevelopment were limited to distressed central-city neighborhoods, however, these inefficient decisions would be limited to areas ignored or despised by the market. Resident-controlled redevelopment would foster development that both truly requires subsidy and benefits residents—thus, justifying governmental intrusion on the market.

Finally, resident-controlled redevelopment would shift the power balance. In this way it would be a tool for fighting against the circular use of political power to reinforce power gained in the market.

3. Left Critique—Resident-controlled redevelopment responds best to the many critiques levied from the left.\(^2\) Resident-controlled redevelopment would not be likely to pursue a variant of downtown development, and so the odds of it channeling resources away from the poor toward the rich would plummet. Instead of imposing a threat, redevelopment would target resources and benefits to particularly disadvantaged communities. Displacement and relocation would be considered very carefully by any entity that was elected solely for the purpose of conducting redevelopment. Displacement might still occur, but it is likely that resident-controlled redevelopment would take the strategic steps necessary to minimize harm to displacees. Likewise, affordable housing development or rehabilitation would be a high priority of such a process. Although redevelopment would remain geographically focused, one can hope that by striving to improve the quality of life and opportunities available to low-income inner-city residents, redevelopment could fight the concentration of poverty. Of course, the possibility of false blight findings remains. To the extent that chic suburbs or swank neighborhoods within larger cities may abuse these powers, reform will be compromised.

4. Opportunity Costs—Resident-controlled redevelopment would greatly reduce the opportunity costs that standard

\(^2\) See supra Part III.C.
redevelopment imposes on low-income residents.\textsuperscript{265} With resident control, it is likely that redevelopment would pursue projects designed to benefit low-income communities. Resident-controlled redevelopment could not create the flawed industrial policy that standard redevelopment has created. Moreover, resident-controlled redevelopment would ensure that the low-income residents of the project area would be the clients of the activity, and therefore would reverse dramatically the risk and reward ratios.

The needs and opportunities of inner-city neighborhoods across the country are so diverse that no cookie-cutter approach could seriously hope to improve the situation. The ability to respond to this diversity is the beauty of resident-controlled redevelopment. The local residents of the project area would pursue projects based on their specific situation and the needs and opportunities they identify. Thus, this reform would remove the opportunity costs of the present flawed process because low-income residents would be the clients of redevelopment efforts.

The risk and reward opportunity costs are more difficult to judge. Development does require finance. In the present scenario, those who control the finance are in the driver’s seat. While it is obvious that many inner-city neighborhoods would pursue many different development alternatives if they were in control, it is not clear that this necessarily would result in the cessation of inter-jurisdictional competition for development dollars. However, with increased diversity, competition will diminish and the benefits derived by low-income residents will increase greatly with resident-controlled redevelopment. As fewer areas pursue the identical sorts of development, and as chic suburbs are cut off from redevelopment subsidies, the sway of present developers will decline.

\textbf{C. Difficulties Raised by Resident Control}

Resident-controlled redevelopment, as exemplified by the Dudley Street Initiative and as set forth as an archetype in this Article, directly addresses the criticisms levied against redevelopment as it is usually practiced. Nevertheless, resi-
dent-controlled redevelopment raises other difficulties that are not trivial. Although some of these concerns are common to redevelopment in general, some gain special prominence in the resident-controlled context. These difficulties are: (1) determining project area boundaries—and hence which residents would have a controlling say in the redevelopment process; (2) locating front-end funding for preplanning and organizing efforts; (3) providing technical assistance to the resident groups; and (4) arming resident groups with the skills to negotiate with private development sponsors and the broader capital markets. These concerns are highlighted, not because a pat answer is forthcoming, but because based on experience these concerns will be important limiting factors that must be closely considered while pursuing resident-controlled redevelopment. That we do not yet have complete answers to these questions does not mean these problems are insurmountable; it simply means that additional effort will be required.

1. Determining Boundary Areas and Establishing Project Areas—One must resist the facile notion that local control is inevitably proper and always would serve the goals set forth above. First, “local” can mean many different things. The federal urban renewal programs required citizen participation, but when downtown development was at issue, this frequently resulted in “popular legitimation . . . provided by ‘citizen boards,’ . . . comprised of the business elite.”266 Alternatively, in the modern era of local redevelopment, exclusive and chic suburban communities often cordoned off up to 100% of their surface area into redevelopment project areas in order to trap local property tax increment funds.267 Further, the common “not in my background” (NIMBY)268 reaction to affordable housing and other uses also militates against a simple exaltation of local control.

Redevelopment subsidies have been justified as a means of enabling central urban cores to compete with suburban development.269 Yet, most state statutes do not limit which jurisdictions can use this power. Commonly the statutory language is as follows: “There is in each community a public body,

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266. Fainstein & Fainstein, supra note 12, at 254.
267. See infra text accompanying note 273.
268. This phrase refers to activism many neighborhoods use to exclude “undesirable” projects (from prisons to homes for the developmentally disabled) from their area.
269. See generally Abrams, supra note 83, at 558, 569–71 (describing the increases in federal funding for redevelopment of non-residential areas and the plans of several cities to revitalize their business districts).
Revitalizing the Central City

corporate and politic known as the redevelopment agency of the community." 270 Thus, every political jurisdiction which can find blight can exercise the extraordinary powers of redevelopment. Currently, of California’s 528 incorporated cities and counties, 390, or almost seventy-five percent, have redevelopment agencies. 271

The diffusion of these “rare” powers is nothing new. 272 For example, by 1964,

some 70 percent of the 800 cities carrying out 1600 federally-assisted urban renewal projects had populations of less than 50,000. Politically, renewal must help suburbs as well as central cities. Yet this policy strengthens the hand of suburbs who want “Negro Removal” or who plan to maintain patterns of income segregation. 273

If these special powers are justified to encourage revitalization of inner cities that presumably need this extra power in order to compete effectively with suburban development—already subsidized by massive freeway expenditures and other federal programs—it is foolish indeed to allow suburbs the same power. To the extent redevelopment reform does not tightly limit these powers to distressed central-core areas, the reform presented here will be less effective. 274

Yet, even where suburban jurisdictions would be barred from redevelopment, difficulties arise in promoting resident-controlled redevelopment. Within a jurisdiction many neighbor-

272. As of June 30, 1964, “743 localities (in 43 of the 50 states) [had] either approved for execution or planning [redevelopment projects under the federal program].” MESSNER, supra note 27, at 10. “Estimates for 1966 indicated that 888 localities” would initiate projects. Id. at 11. It is hard to imagine 888 of the densely populated urban quarters one typically considers in terms of revitalizing the “city.”
273. FRIEDMAN, supra note 25, at 170.
274. According to a cost-benefit analysis of urban renewal in the suburban Long Island community of Rockville Centre:

The decision to federally finance the renewal of Rockville Centre . . . does not seem to be entirely compatible with the goal of the Housing Act of 1949, which was to restore cities, in part by making them more competitive with their surrounding suburbs. In fact, the Rockville Centre project contributes, if, in a very small way, to the centrifugal forces of urban development that the Urban Renewal program was designed to offset.

hoods may want to use these powers. If they all pursued redevelopment, would not general revenue decline? How and who would choose between the competing neighborhoods? There are two responses to these questions. First, this concern may be overblown. Very few neighborhoods within a city could meet the requirement of real blight,275 and also have the organizing or development capacity necessary to first gain majority acceptance of the proposal within that zone, and to then implement the complex and time-consuming redevelopment procedures. If, within given cities, many neighborhoods have this capacity, then allocating discretion to local elected officials would invite all the present abuses. The second response is that there are any number of objective decision-making schemes to resolve this problem, including: a lottery within the jurisdiction, or a reverse "beauty contest" based on need within the neighborhood determined by demographic and other indices of crisis; the likely number of jobs for residents per subsidy dollar; or the length of time that tax revenue would need to be diverted to establish the project. Finally, however, this problem may not be resolved in advance and must await the given facts of actual situations.

2. Establishing Front-End Financing—Given the long-term nature of planning and real estate development, other resident groups who seek to replicate DSNI's efforts also must find a consistent source of start-up and predevelopment funding. DSNI was lucky in finding a stable and committed funding source from a local foundation. This strategy should be repeated where possible. Foundations, however, are not the sole possible source of such funding and cannot be the exclusive source. Redevelopment agencies may well have adequate funds to encourage such activity, because, after all, the community will be doing the agency's job. The dilemma is to receive the money without also being purchased by it. Mandating dispersal of funds to various distressed neighborhoods could be a requirement of state enabling legislation so that local political discretion and favoritism does not cloud the picture. Other funding sources include federal grants or judgments resulting from impact litigation. Finally, Community Reinvestment Act276 programs could generate this up-front financing to serve the

275. In this instance blight would be used as a rigorous screening device to target the resources channeled by redevelopment to particularly deserving areas.
broader purpose of community planning and development. In any case, the residents must make a commitment to the process and demonstrate flexibility and diligence in seeking and mixing funding resources.

3. Gaining Technical Assistance—Redevelopment currently requires technical assistance from legal, organizational, and financial sources. These resources also would be critical to resident-controlled redevelopment. With resident boards who may be less sophisticated than local elected officials and staff, it is reasonable to be concerned that resident decision makers would have difficulty controlling technical consultants. The process of residents gaining comfort with exercising control over professionals will take time in each case, but there is reason for optimism. As elected representatives, the resident board would be accountable to the effort of ensuring that benefits accrued to area residents. A growing industry of nonprofit and community-based economic development consulting entities continues to emerge. Hopefully, entities with a philosophical commitment to neighborhood improvement would provide the responsible services and deference that will enable resident boards to control the process.

4. Negotiating with Private Capital—Resident ability to negotiate with private capital is a fundamental concern. It is possible that residents of distressed neighborhoods would be in such extreme economic circumstances that private developers would control the process and exploit this advantage against the residents of a project area. Competent technical assistance to the resident boards would reduce this risk. Alternatively, it is equally likely that a neighborhood with nothing will have nothing to lose by patiently driving the hardest bargain possible. Again, because the residents would be the client of any subsidized development, one can hope that the result would be dramatic improvement.

V. FOSTERING COMMUNITY-CONTROLLED REDEVELOPMENT

No magic bullets exist that will remove the local political and bureaucratic realities that push jurisdictions towards redevelopment that hurts the resident poor while also harming economic development within the jurisdiction. The criticisms of standard redevelopment set forth above are responses to
entrenched outlooks and positions that make the Maginot Line look like a screen door. Imposing any significant reform on the redevelopment process requires some maneuvering. Reform likely could be implemented through three approaches: amending federal taxation codes, amending state enabling legislation, and vigorous political action at the local level.

A. Federal Tax Code Revisions

As noted above, foregone federal tax revenues on tax-exempt bonds subsidize redevelopment to a degree that probably exceeds direct federal outlays under the earlier federal programs.\textsuperscript{277} To the extent that a jurisdiction hopes to utilize tax-exempt bond financing, the jurisdiction is obliged to comply with federal requirements. Although Congress revised the tax code significantly in 1986, they did not include a provision requiring resident control of redevelopment project areas as a condition to the right to issue tax-exempt bonds.

The world of tax-exempt bonds is particularly complex and this Article will not delve too deeply into it. Relatively simple modifications of the Internal Revenue Code, however, could generate strong inducements for the creation of resident-controlled redevelopment. The effect would be doubly salutary in that the traditional lack of state resources to oversee redevelopment could be compensated, to a certain extent, by the efforts of counsel for bond underwriters as a part of their due diligence work.

Generally speaking, the interest income from state or local bonds is not taxable unless the bond is a “private activity bond which is not a qualified bond.”\textsuperscript{278} Therefore, the Internal Revenue Code allows for two sorts of tax-exempt bonds to be issued by local jurisdictions: first, a bond that is not a private activity bond\textsuperscript{279} and second, a bond that is a private activity

\begin{itemize}
  \item \textsuperscript{277} See \textit{supra} text accompanying notes 67–69 for an explanation of federal subsidies through tax-exempt bonds.
  \item \textsuperscript{278} 26 U.S.C. § 103(a)-(b) (1988).
  \item \textsuperscript{279} A private activity bond is one from which more than 10% of the proceeds are to be used for private business purposes and where more than 10% of the principal or interest is secured by property used for private business purposes or by related payments. A bond is also a private activity bond if the proceeds used to finance loans to persons other than government units exceeds the lesser of five percent of the total proceeds or $5 million. 26 U.S.C. § 141(a) (1988).
\end{itemize}
bond but which is also a qualified bond. \(^{280}\) It would be a relatively simple step to require a showing that the residents in the zone have controlled the redevelopment project before allowing the jurisdiction the privilege of issuing any non-private activity bonds or any private activity bonds which are also qualified bonds and therefore tax-exempt. This control could be demonstrated by the creation of an elected decision-making body, at least two-thirds of which is comprised of residents of the project area and by petitions signed by, for example, sixty percent of the residents of the project area stating that they desire a redevelopment project in the proposed location. The members of this body would be selected by regularly staggered elections.

**B. State Enabling Legislation**

As noted above, redevelopment has been below the radar screen for the past two decades in part because a single federal legislative program no longer exists to provide a clear target for criticism. \(^{281}\) Rather, local jurisdictions pursue their redevelopment pursuant to individual state enabling legislation. A model state enabling statute that (1) limits redevelopment powers to significantly distressed cities and (2) requires resident control of the redevelopment process could be one method for implementing resident-controlled redevelopment on a state-by-state basis. In addition, comparison of diverse state legislation with a single model statute will enable more focused criticism on the state level. Finally, drawing attention to current examples and conducting pilot projects would reduce resistance to enacting this type of reform. California, for example, has a statute that includes measures similar in many ways to those recommended here. \(^{282}\) Obviously, the political terrain that must be covered to create such amendments would be fraught with peril. It is equally obvious, however, that

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\(^{280}\) Section 141 defines qualified bonds as certain kinds of private activity bonds, further subjected to the volume cap provisions of § 146 and the various limitations of § 147. 26 U.S.C. § 141(c) (1988).

\(^{281}\) See supra Part II.A.

\(^{282}\) Cal. Health & Safety Code §§ 33700–33738 (1968). Unfortunately, this statute is discretionary rather than mandatory and does not appear to ever have been used. The author is pursuing the possibility of generating pilot projects within California to demonstrate the feasibility of operating under this statutory provision.
current practice simply is not getting the job done. Experimentation is needed.

C. Local Political Action

Ultimately, the approach most likely to be successful is local political action. For states that allow a redevelopment corporation to pursue redevelopment, local CDCs should replace local redevelopment agencies and take the lead in redevelopment themselves. Where redevelopment authority lies only in legislative bodies or other municipal entities, groups must demand that these bodies delegate their authority to a locally elected board with decision-making authority in order to obtain control. The DSNI story discussed above indicates that this approach only may be possible if the city in question has given up a business-as-usual approach to revitalization. Unfortunately, once powerful development groups have identified a particular area as ripe for development, a local government is not likely to grant control to residents unless the neighborhood already has proven itself capable of blocking development it does not want. This power only can come from forceful local political action.

VI. IMAGINING RESIDENT-CONTROLLED REDEVELOPMENT

Redevelopment conceived, planned, implemented, and controlled by the residents of the affected project area is almost impossible to imagine in the present climate of redevelopment practice and local political realities. Yet, a handful of positive examples do exist. Because these waters are largely untested, advocates who espouse resident-controlled redevelopment often are reduced to claiming that theory and limited practice indicate the new approach will achieve different and better results. Fortunately, every reason exists to believe that conclusion to be true.

283. See supra Part IV.A.
284. Obviously, it is likely that abuses and distortions would occur even in resident-controlled redevelopment. See Amitai Etzioni, Incorrigible, ATLANTIC MONTHLY, July 1994, at 14, 16. Such problems should be viewed as a given in any social program. The more appropriate questions are: will these abuses be rare and random, and will the broader positive results overshadow any bad specific projects? Standard redevelopment fails both prongs of this test.
The Dudley Street example is informative and inspiring. Nevertheless, it is plain that the variety of approaches, investigations, and goals necessary to revitalize the quality of life in diverse central cities requires much more experimentation. What would resident-controlled redevelopment look like if created on a wide scale? First, it would be significantly more diverse than standard redevelopment’s pursuit of downtown development. Distressed neighborhoods in cities simply do not experience uniform problems that can be treated in a cookie cutter fashion. Present standard-issue redevelopment-induced “revitalization” of downtown areas is a distressingly similar exercise across the nation. Yet, dealing with massive overcrowding in one city will require entirely different strategies than dealing with divestment and abandonment in other cities. The following are some suggested avenues that resident-controlled redevelopment may pursue, which would do more to improve the economies and quality of life of central cities than forty-five years of standard redevelopment has been able to accomplish.

A. Bring the Suburbs Home

For communities such as Camden, New Jersey, which have suffered from massive disinvestment and abandonment, resident-controlled redevelopment could pursue strategies that would create zones that are more like suburban cities. Open space is in abundance, as are foreclosed buildings that the city now owns. Assuming that bourgeois tastes and aspirations apply to low-income people, why could not every current household enjoy a spacious unit with a large lot?

B. Blue-Collar-Based Redevelopment

Communities are low-income because, inter alia, residents lack access to decent jobs. Standard redevelopment has pursued development that locates—but does not create—jobs for wealthy, educated suburbanites. Resident-controlled redevelopment may pursue development that attracts manufacturing jobs. More importantly, resident-controlled redevelopment
boards would quickly realize that simply relocating jobs is not enough, and that their powers need to be marshalled to help create new, and protect existing, enterprises. Once given decision-making authority, these neighborhoods also would realize that their futures are tied to an international economy. They might well strive to create an industrial-based redevelopment approach which will serve them for the next thirty years.

C. Green Redevelopment

Many enterprises in low-income communities create toxic and other hazardous byproducts. Yet, many also provide employment for nearby residents. Neither closing the facility nor living with the waste are acceptable alternatives. Redevelopment could be used to subsidize equipment and facilities that would dramatically reduce environmental emissions. It is too early to tell what this sort of development might look like. It is plain, however, that redevelopment controlled by the residents would focus on merging employment and competitiveness concerns with environmental concerns. Naturally, such an employment focus should seek out and utilize local preference and first-source hiring policies to the maximum extent possible.

D. Mini-Redevelopment

In addition to looking outward to the national and international economies and preparing for regional competitiveness, resident-controlled redevelopment also could look inward to the neighborhoods degraded by crime and environmental hazards. For example, mini-redevelopment could use eminent domain to take abandoned drug houses and give them to low-income, stable families. Likewise, many neighborhoods are tarnished by toxic pollution and other environmental problems. These result in unsafe living conditions and also bar productive

286. See supra note 229 and accompanying text.
investment. Mini-redevelopment could focus on environmental remediation of such sites.

Typical redevelopment project areas are large and rarely contain less than fifty acres of real estate. Mini-redevelopment would focus on much smaller territories. Addressing eight or ten properties in a four or five block area could quickly and inexpensively transform the physical environment of a neighborhood. Obviously, key difficulties in mini-development would be overcoming the transaction costs of establishing small project areas and the complications of issuing bonds on such a small amount of territory. The virtues, however, are equally obvious.

These general suggestions for new directions are by no means exclusive. Many of the problems central-city, low-income neighborhoods face, such as crime, drugs, inadequate housing, and unemployment, transcend boundaries. Yet, the diverse nature of low-income neighborhoods in central cities, their different populations, local assets, indigenous leadership, and ethnic compositions all indicate that resident-controlled redevelopment could pursue a diverse array of development opportunities and approaches. Recognition of this diversity reveals the greatest opportunity cost of standard redevelopment to date: we have wasted forty-five years pursuing projects with no likelihood of benefiting the urban poor, and have lost forty-five years’ worth of experimentation which could have produced a cornucopia of successful development approaches created by a resident-controlled redevelopment process.

CONCLUSION

Redevelopment reform must, of course, fix the problems associated with past failings: waste of tax dollars, lack of accountability, displacement, misallocated subsidies, inefficient development and finance decisions, and poor development strategies of no benefit to the urban poor. It must also move beyond merely arresting gross failures. It is the author’s hope that reformed redevelopment will pursue development that is designed to benefit the low-income urban core residents and

287. These include some that are coopted, fail, or do more harm than good overall; these outcomes would be a small price to pay for the benefits. See supra note 284.
improve their life choices. Because resident-controlled redévelop-
ment will put residents in control of the process, they will
be the clients it serves. This process will shift the risk alloca-
tion and reduce the negative externalities associated with
current practice. In short, the negative by-products of current
redevelopment efforts are not merely problems to be solved by
tinkering at the edges of the process. Rather, the byproducts
are symptomatic of the fact that the current process is con-
trolled by the wrong parties, pursues the wrong goals, and
serves the wrong people. Resident control will reverse this
scenario, and through real experimentation across diverse
cities, generate urban development approaches that can help
revitalize our urban cores.