

1996

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### Recommended Citation

Michael E. Lewyn, *The Urban Crisis: Made in Washington*, 4 J. L. & Pol'y (1996).  
Available at: <https://brooklynworks.brooklaw.edu/jlp/vol4/iss2/6>

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# THE URBAN CRISIS: MADE IN WASHINGTON

*Michael E. Lewyn\**

## INTRODUCTION

Over the past several decades, most older American cities have lost residents and jobs to their suburbs. Between the 1950s and 1980s, eighteen of the nation's twenty-five largest cities suffered a population loss.<sup>1</sup> By contrast, during the same years, the population of the nation's independent suburbs gained more than sixty million

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<sup>1</sup> The following figures indicate the 18 largest cities in America which suffered population losses between 1950 and 1990 (ranked from highest to lowest according to 1950 figures): New York (from 7,891,957 in 1950 to 7,322,564 in 1990), Chicago (from 3,550,404 in 1950 to 2,783,726 in 1990), Philadelphia (from 2,071,605 in 1950 to 1,585,577 in 1990), Detroit (from 1,849,568 in 1950 to 1,027,974 in 1990), Baltimore (from 949,708 in 1950 to 736,014 in 1990), Cleveland (from 914,808 in 1950 to 565,616 in 1990), St. Louis (from 856,796 in 1950 to 396,685 in 1990), Washington, D.C. (from 802,178 in 1950 to 606,900 in 1990), Boston (from 801,444 in 1950 to 574,283 in 1990), San Francisco (from 775,357 in 1950 to 723,959 in 1990), Pittsburgh (from 676,806 in 1950 to 369,879 in 1990), Milwaukee (from 637,392 in 1950 to 628,088 in 1990), Buffalo (from 580,132 in 1950 to 328,175 in 1990), New Orleans (from 570,445 in 1950 to 496,938 in 1990), Minneapolis (from 521,718 in 1950 to 368,383 in 1990), Cincinnati (from 503,998 in 1950 to 364,114 in 1990), Kansas City (from 456,622 in 1950 to 434,829 in 1990) and Newark (from 438,776 in 1950 to 275,221 in 1990). See THE WORLD ALMANAC AND BOOK OF FACTS 1996, 390 (Robert Famighetti ed., 1995) [hereinafter 1996 ALMANAC]. Of the cities which ranked among the 25 largest in 1950, only seven (Los Angeles, Houston, Seattle, Dallas, Denver, Indianapolis and San Antonio) had a larger population in 1990 than in 1950. *Id.*

persons.<sup>2</sup> In recent years businesses have also followed their employees to the suburbs causing cities to lose jobs as well as people.<sup>3</sup>

The decay of urban neighborhoods creates a vicious circle for many cities: as businesses and taxpayers leave, urban tax bases shrink, causing cities to levy higher taxes.<sup>4</sup> Higher taxes discourage

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<sup>2</sup> See KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 283 (1985). For example, St. Louis' population nose-dived from 856,796 in 1950 to 396,685 in 1990, while during the same period suburban St. Louis County's population soared from 406,349 to 993,508. 1996 ALMANAC, *supra* note 1, at 381, 427; THE WORLD ALMANAC AND BOOK OF FACTS FOR 1954, 294 (Harry Hansen ed., 1954) [hereinafter 1954 ALMANAC]. Similarly, Washington, D.C.'s population declined from 802,178 in 1950 to 606,900 in 1990, while the population of suburban Montgomery County, Maryland increased from 164,401 to 757,027 during that period. 1996 ALMANAC, *supra* note 1, at 380, 425; 1954 ALMANAC, *supra*, at 292.

<sup>3</sup> See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 100-01 (1987) (showing that "between 1947 and 1972, central cities of the 33 most populous metropolitan areas lost 880,000 manufacturing jobs" and 867,000 retail-wholesale jobs, while suburbs gained jobs); Christopher B. Leinberger, *The Loss of Jobs to Suburbs Harms Large Cities*, in *AMERICA'S CITIES: OPPOSING VIEWPOINTS* 33, 37 (Charles B. Cozic ed., 1993) (showing that in nine large Eastern cities in 1980, 55% of jobs were in suburbs, as opposed to 26% of jobs in 1950).

<sup>4</sup> See, e.g., BUREAU OF THE CENSUS, UNITED STATES DEP'T OF COMMERCE, *STATISTICAL ABSTRACT OF THE U.S.* 306 (1993) [hereinafter ABSTRACT] (showing that Washington, D.C.'s income tax rates range from six to 9.5%, while neighboring Virginia's income tax rates range from 2 to 5.75%). It could be argued that Washington, D.C.'s government is more inefficient than that of other cities. However, it appears that big cities typically have a smaller tax base than other communities. For example, "[i]n 1982, cities with populations over 1 million had an average revenue-raising capacity that was 15[%] smaller than the average for the seventy-eight cities studied; while cities with populations less than 100,000 had a capacity that was 11.6[%] above the average." ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 50 (1994).

On the other hand, some commentators question whether population loss leads to fiscal strain. See Terry Nichols Clark, *Fiscal Strain: How Different Are Snow Belt and Sun Belt Cities?*, in *THE NEW URBAN REALITY* 253, 259-60 (Paul E. Peterson ed., 1985) (noting the existence of disagreement between authorities on the issue and questioning the theory that population loss causes fiscal problems). However, Clark's own calculations show a positive correlation between population increases and the city's tax base. *Id.* at 256 (finding 0.34%

business opportunities in cities and encourage more middle-class residents to flee to the suburbs, leading to further tax base shrinkage. Migration to cities by low-income individuals and families has intensified middle-class flight by increasing local government spending due to a greater demand for social services by low-income individuals.<sup>5</sup> By contrast, many suburbs avoid similar increases in government spending by excluding low-income individuals through the enactment of zoning laws which prohibit inexpensive housing such as apartments.<sup>6</sup> As a result of these trends, the population of the disadvantaged in many cities has increased. In 1989, all but six of America's thirty-seven largest cities had poverty rates above the national average.<sup>7</sup>

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correlation between population growth and market value of taxable property). It appears, therefore, that a city which loses population will usually have a smaller tax base, which in turn may force the city to raise taxes or reduce services. *Id.*

<sup>5</sup> See JACKSON, *supra* note 2, at 285.

As businesses and taxpayers left, the demand for middle- to upper-income dwelling units in older neighborhoods declined. At the same time, population increases among low-income minorities, coupled with the demolition of inner-city housing for new expressways, produced an increase in the demand for low-income housing. The new residents required more health care and social-welfare services from the city government than did the old, but they were less able to pay for them. To increase expenditures, municipal authorities levied higher property taxes, thus encouraging middle-class homeowners to leave, causing the cycle to repeat.

JACKSON, *supra* note 2, at 285.

<sup>6</sup> See JACKSON, *supra* note 2, at 242.

Advocates of land-use restrictions in overwhelming proportion were residents of the fringe. They sought through minimum lot and set-back requirements to insure that only members of acceptable social classes could settle in their privileged sanctuaries. Southern cities even used zoning to enforce racial segregation. And in suburbs everywhere, North and South, zoning was used by the people who already lived within the arbitrary boundaries of a community as a method of keeping everyone else out. Apartments, factories, and "blight", euphemisms for [B]lacks and people of limited means, rigidly were excluded.

JACKSON, *supra* note 2, at 242.

<sup>7</sup> The national average poverty level for 1991 was \$13,924.00 for a family of four. ABSTRACT, *supra* note 4, at 469. The six cities that had poverty levels below the national average were: San Jose, California (6.5%); Indianapolis,

What caused the decline of these cities? Many liberals argue that the federal government abandoned cities by not giving them adequate aid.<sup>8</sup> For example, Robert Borosage of the Institute for Policy Studies writes that “[a]lso left out [of President Bill Clinton’s budgets] are the cities . . . . What is needed is money.”<sup>9</sup> However, the lack of federal funds does not adequately explain urban decay for two reasons. First, the liberal argument neglects to explain why the growth of federal aid to cities during the 1960s and 1970s failed to stem urban decline.<sup>10</sup> Second, the liberal argument assumes that cities need federal assistance rather than mere federal neutrality to survive—an assumption which is plausible only if cities would naturally lose people and jobs despite federal neutrality.

By contrast, more conservative commentators contend that suburbanization<sup>11</sup> is the “manifest pattern of millions of individual American desires over seventy-five years.”<sup>12</sup> These desires include

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Indiana (9.7%); San Francisco, California (9.7%); Seattle, Washington (7.4%); Charlotte, North Carolina (8.5%) and Virginia Beach, Virginia (4.3%). ABSTRACT, *supra* note 4, at 471-72. Moreover, poverty statistics understate the severity of urban poverty, because five of these cities are more expensive to live in than the rest of America. See UNITED STATES DEP’T OF COMMERCE, BUREAU OF THE CENSUS, 1990 CENSUS OF THE POPULATION AND HOUSING SUMMARY POPULATION AND HOUSING CHARACTERISTICS: UNITED STATES 276-96 (1992) (indicating that of six “low poverty” cities, only Indianapolis had a lower median rent than the national average).

<sup>8</sup> See, e.g., Ron Walters, *Why Barry Happened: For Many Black Voters, A Declaration of Independence*, WASH. POST, Sept. 18, 1994, at C1 (complaining about “systematic defunding of cities that occurred under the Reagan and Bush [A]dministrations”).

<sup>9</sup> Robert L. Borosage, *Disinvesting in America*, THE NATION, Oct. 4, 1993, at 346.

<sup>10</sup> See Robert D. Reischauer, *Federal Aid Would Not Improve Cities*, in AMERICA’S CITIES: OPPOSING VIEWPOINTS, *supra* note 3, at 201-02 (describing growth of aid to cities).

<sup>11</sup> “Suburbanization” refers to the movement of people and businesses from cities to suburbs. JACKSON, *supra* note 2 (using “suburbanization” in the title); Karen DeWitt, *Suburban Expansion Fed by an Influx of Minorities*, N.Y. TIMES, Aug. 15, 1994, at A1 (quoting Vincent Lane, chairman of the Chicago Housing Authority).

<sup>12</sup> JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 222 (1991). A more intelligent, conservative position argues that urban decay is the result of

a longing for bigger houses, bigger yards and more homogenous neighborhoods.<sup>13</sup>

Both liberal and conservative arguments assume that federal policy has been favorable to, or at least neutral towards, cities. Otherwise, it would be difficult to argue that suburbanization has been caused by market forces or federal inaction, rather than by federal interference.

This article proposes that big government, rather than individual choices, caused urban decline. Through a carrot-and-stick approach, the federal government, and to a lesser extent, state governments, drove Americans into suburbs by favoring suburban schools, highways and new homes over urban schools, apartments and mass transit. Cities need federal handouts less than they need federal neutrality. This article explains why central cities are worth saving and proposes libertarian, market-oriented solutions for past federal mistakes—that is, solutions which would level the playing field between cities and suburbs without increasing government spending and regulation.<sup>14</sup>

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liberal moral permissiveness which causes crime, which in turn causes the middle-class to leave cities. See, e.g., Russell Kirk, *Moral Failure Causes Urban Decay*, in *AMERICA'S CITIES: OPPOSING VIEWPOINTS*, *supra* note 3, at 51; Peter Shaw, *Let a Hundred Cities Bloom*, *NAT'L REV.*, July 11, 1994, at 50. This argument fails to explain, however, why liberal permissiveness is more toxic in cities than in suburbs or rural areas.

<sup>13</sup> DOWNS, *supra* note 4, at 3 (criticizing suburban sprawl but admitting that growth of suburbs fulfilled "personal and social goals—a home in the suburbs, a car . . . that most Americans cherish"); see also JACKSON, *supra* note 2, at 37-61.

<sup>14</sup> Cf. Borosage, *supra* note 9, at 346 (arguing that more social spending is necessary); Shaw, *supra* note 12, at 50 (blaming social spending for urban poverty). This Article does not deny that some relatively statist solutions, such as increasing federal aid, might help cities rather than hurt them; however, the debate over the impact of social welfare spending on cities is beyond the scope of this Article. For articles discussing this issue, see Michael A. Stegman, *National Urban Policy Revisited*, 71 *N.C. L. REV.* 1737 (1993); Walter E. Williams, *Los Angeles, April 29, 1992 and Beyond: The Law, Issues, and Perspectives*, 66 *CAL. L. REV.* 1665 (1993).

## I. WHAT'S SO BAD ABOUT URBAN DECAY?

Before addressing the role of federal policy in suburbanization, it is important to explain why urban decay and suburbanization are matters of public concern. It could be argued that the federal government should encourage suburbanization because most Americans naturally want to move to the suburbs in order to "escape the noise, crowded living conditions, and heavy traffic" of big cities.<sup>15</sup> However, this argument overlooks the fact that many people move to escape problems caused or affected by government, high city crime rates, poor city public school systems and astronomical city tax rates.<sup>16</sup> This section discusses the negative impact of suburbanization upon both the city residents and suburbanites.<sup>17</sup>

### A. *Suburbanization is Bad for City Residents*

Suburbanization adversely affects both middle-class and low-income city residents.<sup>18</sup> The exodus of businesses to suburbs

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<sup>15</sup> RAND McNALLY, *BOOK OF THE UNITED STATES* 19 (1962).

<sup>16</sup> See, e.g., Alex Gibney, *Glendale, Vicious Glendale, California*, NEW REPUBLIC, Sept. 5, 1994, at 22 (describing the author's move to the suburbs to avoid crime). To believe that "people just naturally want to live in suburbs" one would have to believe that if a big city and its suburbs had identical tax rates, crime rates and public schools, no one who lives in the suburbs would now live in the city—a proposition that is hard to believe. *Id.*

<sup>17</sup> See, e.g., JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 445 (1961); WILSON, *supra* note 3, at 100-01, 135-36, 180-88.

<sup>18</sup> As the middle-class flees to the suburbs, it becomes increasingly difficult for those who linger in the city to sell their homes as property values decline and replacement middle-class buyers become scarce. See Sharman Stein, *Study Challenges Notions of "Black Flight,"* CHI. TRIB., Mar. 29, 1990, at C1.

The narrative of William Bell, a retired government worker living in the District of Columbia, personalizes the adversity to the middle-class created by suburbanization: "We thought of going to the suburbs . . . [b]ut my wife said, 'Why should we run?' . . . We could have made this city what we wanted. But most of the people who could help make lives better were on the outside. They left us with a weak core." Marc Fisher & Eric Pianin, *The Riots and D.C.'s Underclass: City's Poor Still Feel Effects of Black, White Exodus After Uprising,* WASH. POST, Apr. 4, 1988, at A1.

increases unemployment among the poor because they often do not have the money to either move to the suburbs or purchase a car to commute to low-skill jobs available in the suburbs.<sup>19</sup> Thus, suburbanization created an “underclass” of low-skilled people who have few local economic opportunities.<sup>20</sup> As suburbanization accelerates, poor urban neighborhoods<sup>21</sup> grow poorer.<sup>22</sup> For

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<sup>19</sup> See Leinberger, *supra* note 3, at 33, 35. “Jobs have followed people to the suburbs, and that makes it even more difficult to create an employment base in poor inner-city neighborhoods.” Nicholas Lemann, *The Myth of Community Development*, N.Y. TIMES, Jan. 9, 1994, § 6 (Magazine), at 27. For example, “the automobile-dependence of the suburbs is barring many would-be workers from jobs. A huge pool of potential workers in New York City remains untapped by [suburban] companies because . . .” of the inability of these city dwellers to commute to the suburban locations. Pamela Mendels & Ronald E. Roel, *Mismatch: When People and Jobs Don’t Fit*, NEWSDAY, Dec. 15, 1988, at 64 (discussing the views of Glenn Yago, director of the Economics Research Bureau at the State University of New York at Stony Brook); see also Barbara Carton, *Suburban Economic Hubs Vying for Workers*, WASH. POST, July 22, 1986, at A1 (discussing the recent wave of “reverse commuters” who reside in the city and are employed in the suburbs); Fern Shen, *Low-Wage Commuters Swim Against Transit Tide*, WASH. POST, Oct. 3, 1990, at D1 (“The situation in Baltimore illustrates how the gap widened between rich and poor in the 1980s was not only an economic and political gulf, but a physical one as well.”).

<sup>20</sup> See WILSON, *supra* note 3, at 135-36, 180-81 (arguing that suburbanization has trapped low-income people in cities). This Article does not argue that suburbanization is the only cause, or even the major cause, of the underclass’ existence. See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, 39-40 (1985) (blaming social welfare programs for the growth of the underclass). Rather, this Article suggests only that urban job loss makes the underclass larger and poorer than it would otherwise be.

<sup>21</sup> This Article rejects the common term “inner city” because it implies that all city neighborhoods which are “inner” (i.e., close to a city’s historic center) are dominated by the poor. In fact, many cities have middle-class neighborhoods in or near their central business district (e.g., Boston’s Back Bay and Washington, D.C.’s Georgetown). See Brian J.L. Berry, *Islands of Renewal in Seas of Decay*, in *THE NEW URBAN REALITY*, *supra* note 4, at 69, 72-74 (discussing renovation of urban neighborhoods near central business districts).

<sup>22</sup> The massive exodus of low-skilled manufacturing jobs from cities to suburban areas left urban neighborhoods with a shrinking job market available to the poor. “As cities were transformed . . . into centers of financial and other professional service,” the poor, who would have taken low-skill jobs, were not qualified to compete for the new jobs demanding more education. Thus, the poor



example, in the 1970s, only one of Chicago's seventy-seven neighborhoods had a poverty rate of over forty percent.<sup>23</sup> By contrast, in 1980, nine of the neighborhoods had a poverty rate of over forty percent.<sup>24</sup>

Suburbanization also creates two problems for middle-class city residents. First, suburbanization erodes cities' tax bases, thereby causing higher taxes for those left behind.<sup>25</sup> Second, the neighborhoods from which suburbanites flee will become dominated by low-income families, thus endangering the safety and comfort of nearby middle-class city neighborhoods.<sup>26</sup>

### *B. Suburbanization is Bad for Suburbanites*

Paradoxically, unchecked suburbanization destroys the very dreams of suburbanites because it "urbanizes" suburbs.<sup>27</sup> Suburbanization increases business development and traffic congestion in suburbs,<sup>28</sup> thus assuring that suburbanites get all the noise and

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were "left farther behind." Robert Greenstein, *Prisoners of the Economy*, N.Y. TIMES, Oct. 25, 1987, § 7 (Book Review), at 1.

<sup>23</sup> WILSON, *supra* note 3, at 49; see generally STANLEY LIEBERSON, *A PIECE OF THE PIE: BLACK & WHITE IMMIGRANTS SINCE 1880* (1980).

<sup>24</sup> WILSON, *supra* note 3, at 52.

<sup>25</sup> This sentiment is echoed by Jeanne Chase, a third-grade teacher in the District of Columbia school system. After leaving the city and purchasing a large ranch house in suburban Prince George's County, she and her husband were "relieved to be . . . less burdened by taxes to support people on welfare." Fisher & Pianin, *supra* note 18, at A1.

<sup>26</sup> The great threat of suburbanization is the total "loss of the middle-class and a city that could become the exclusive domain of the poor." Michael Rezendes, *Boston: The New Migration*, BOSTON GLOBE, Apr. 12, 1992, (Metro/Region), at 1. "It's a major problem for urban America . . . Suburbanization isn't about race now; it's about class. Nobody wants to be around poor people, because of all the problems that go along with poor people: poor schools, unsafe streets, gangs." DeWitt, *supra* note 11, at A1.

<sup>27</sup> JACOBS, *supra* note 17, at 445.

<sup>28</sup> The negative results of the "urbanization" of suburbs can include three hour commutes marked by "clogged highways and aggravating commuting hassles for drivers in every tax bracket." Blair Kamin & David Ibata, *Long Commutes Make Roads Work Overtime*, CHI. TRIB., Feb. 20, 1990, at C1. Thus, many of the inconveniences which induced people to flee the city—congestion,

traffic they allegedly left the city to escape.<sup>29</sup> Suburbanization also causes other urban ills to spread into the suburbs.<sup>30</sup> As city areas lose middle-class residents, the underclass and the working class will occupy the areas the middle-class deserts (including those near the suburbs) thereby causing many suburban neighborhoods to be uncomfortably close to city slums.<sup>31</sup> Indeed, such “suburban

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traffic jams and the resulting time consumption which prevents time with family and involvement in community activities—have followed them to the suburbs. *Id.*

<sup>29</sup> As one commentator noted, “each day, several thousand more acres of our countryside are eaten by the bulldozers, covered by pavement, dotted with suburbanites who have killed the thing they thought they came to find.” JACOBS, *supra* note 17, at 445.

<sup>30</sup> See Diana Jean Schemo, *Facing Big-City Problems, L.I. Suburbs Try to Adapt*, N.Y. TIMES, Mar. 16, 1994, at A1 (quoting Professor Kenneth T. Jackson, stating that, “As the populations move out, the urban problems move out as well”); see also Richard Lacayo, *This Land Is Your Land, This Land Is My Land*, TIME, May 18, 1992, at 28.

<sup>31</sup> For example, suppose a hypothetical city called River City has five neighborhoods along a ten-mile line running north from downtown: *Downtown* (a poor neighborhood dominated by crime), *Adams Circle* (a “marginal neighborhood” inhabited by single people just a few blocks from downtown), *Uptown* (an affluent neighborhood just barely inside the city limits), *Chevy Estates* (an affluent inner suburb close to River City) and *Fairfax Woods* (an outer suburb far from the city). Currently, the general public considers every neighborhood north of Adams Circle to be relatively safe. However, suppose that for some reason (e.g., an unforeseen crime wave or a new highway which makes commuting from Fairfax Woods easier), most of Adams Circle’s middle-class residents move to Uptown or to the suburbs. Suddenly, Uptown will be a few blocks from poor neighborhoods and will become a marginal neighborhood itself. If suburban sprawl continues, the cycle may repeat itself in Uptown, Chevy Estates and perhaps even in Fairfax Woods. Of course, this hypothetical does not always describe reality, but all too frequently it does.

Similarly, in Detroit, nineteenth-century tycoons built fancy brick mansions in the gridded blocks off Woodward Avenue, Detroit’s grandest boulevard. They were built to endure, yet most of them did not last a hundred years . . . .

. . . .  
 . . . What remains of this enormous neighborhood is something worse than a slum. A scattering of once-beautiful, now hopelessly damaged mansions stand in these blocks like inscrutable megaliths in a wilderness of rubble.

decay" has already occurred in poor city neighborhoods which were once middle-class outlying areas similar to today's suburbs.<sup>32</sup> For example, several municipalities in Prince George's County, a suburb of Washington, D.C., have crime rates higher than those of nearby big cities.<sup>33</sup> Continued suburban sprawl increases the likelihood that many of today's suburbs will become tomorrow's slums.

## II. THE CASE AGAINST THE CAR SOCIETY

Suburbanization increases society's dependence on automobiles.<sup>34</sup> Auto-dependence occurs because suburbs generally are too scarcely populated to support reliable public transportation.<sup>35</sup>

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JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* 190 (1993).

<sup>32</sup> See JACKSON, *supra* note 2, at 307-11.

[P]eripheral areas were growing more rapidly than core cities. Philadelphia offers a good example of the trend. The highest population jumps between 1810 and 1830 were registered along the city's northern edges by the independent suburbs of Northern Liberties and Spring Garden. In the next twenty-year period the areas of most spectacular growth moved beyond the inner suburbs to Moyamensing, Penn District, Richmond, and Kensington.

JACKSON, *supra* note 2, at 307.

<sup>33</sup> See GENERAL RECORDS DIV., STATE OF MD., 1990 UNIFORM CRIME REPORTS: CRIME IN MARYLAND 1, 147-49 (1991) (indicating that of 27 county municipalities, five have higher crime rates than Baltimore city); see also FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T. OF JUSTICE, UNIFORM CRIME REPORTS 109-57 (1993) (showing that numerous suburbs have higher violent crime rates than nearby cities).

<sup>34</sup> GARREAU, *supra* note 12, at 105-07 (describing links between automobiles and suburbs).

<sup>35</sup> GARREAU, *supra* note 12, at 103-35.

[F]rom 1970 to 1987 the number of cars in America more than doubled. Population growth in America at exactly the same time was not great—a trifle over 1[%] per year. That's a growth rate for cars more than five times the growth rate for population. Most of the automotive surge came from women who were entering the work force.

It could be argued that suburban auto dependency is not a problem because the automobile meets “people’s needs as freely and individually as electricity and telephones moved power and messages.”<sup>36</sup> Undeniably, cars have their advantages.<sup>37</sup> However,

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GARREAU, *supra* note 12, at 112-13. “[I]n affluent America, the dominant mode of transportation for generations is likely to be something with four tires and a steering wheel. In the Depression, the last thing to go was the car. It’s simply a question of what we value.” GARREAU *supra* note 12, at 126-27; *see also* JAMES J. MACKENZIE ET AL., *THE GOING RATE: WHAT IT REALLY COSTS TO DRIVE* 26 (1992) (“Densities above 7 housing units per acre are needed for cost-effective bus service while densities of over 9 housing units per acre are needed for cost-effective light rail service.”).

<sup>36</sup> GARREAU, *supra* note 12, at 109. One commentator describes the automobile as:

[T]he mechanization of man’s most primitive activity, walking on his hind legs. It is that marvelously effective compressor of time and distance, that self-driven, self-owned, self-maintained bubble of familiar, personal space. . . . The places that first understood the automobile underscore the key element that . . . personal transportation [is] designed to conserve. That is the most precious element any human has, the very measure of his individuality—*time*. [T]he automobile [is a] time machine[.]

GARREAU, *supra* note 12, at 109, 111; *see also* Kenneth A. Small, *Transportation and Urban Change*, in *THE NEW URBAN REALITY*, *supra* note 4, at 197, 205 (suggesting that increased auto use is the natural result of higher incomes); Jonathan Yardley, *A City Dweller’s Urban Reviewal*, *WASH. POST*, Sept. 13, 1995, at B2 (suggesting that urban decline is “irreversible” because “with our feet and our dollars and our cars, we have voted for the city . . . ringed by suburbs and malls and parking lots”).

<sup>37</sup> This Article does not deny that cars are quite useful for hauling heavy objects such as furniture and groceries, however, the common suggestion that cars have increased “freedom and mobility” is without merit for three reasons. *See, e.g., Letter from Pete Wilson, Governor of California, to James J. Florio, National Chair*, *TRANSIT NOW NEWS* (America’s Coalition for Transit NOW, Wash. D.C.), Sept. 21, 1994 [hereinafter *WILSON LETTER*]. First, automobile dependence has actually decreased mobility for people who are too young, old, poor or disabled to drive. Second, a less vehicle-dominated society would be just as “mobile” as ours because people could fulfill all their desires within a narrower geographical area. In a car-dominated city the typical worker might go to work (and satisfy other needs such as grocery shopping, dry cleaning, etc.) a few miles from home, while in a pedestrian-dominated city the worker might go just a few blocks away from home to perform the same functions. Thus, the

this section argues that car dependency creates at least some types of social costs.

First, car dependency creates pollution by increasing the levels of carbon monoxide in the air.<sup>38</sup> Air pollution "damages human health, materials, crops, trees, and other vegetation . . ." <sup>39</sup> A University of California study calculates that the costs of motor-vehicle generated pollution, including health effects, lost labor hours and reduced agricultural output, amounts to "\$10-200 billion per year, the large range reflecting the uncertainty surrounding the number of deaths and illnesses attributable to pollution and the monetary value assigned to human health . . ." <sup>40</sup>

Second, car dependency increases reliance on foreign oil by the United States.<sup>41</sup> Increased dependency on foreign oil occurs partially because cars use energy less efficiently than other forms of transportation.<sup>42</sup> Dependency on Middle Eastern oil costs American taxpayers roughly fifty billion dollars a year in military spending to protect Persian Gulf oil and about 500 million dollars a year for the Strategic Petroleum Reserve.<sup>43</sup>

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latter worker is just as "mobile" because his or her amenities are just as convenient to his or her residence as they would be in a car-dominated city. Third, cars do not increase mobility because in either a car-dominated or a pedestrian-dominated society, travelers can conveniently go only where the government wants them to go; in a car-dominated society, people go where the government has built roads, and in a pedestrian-dominated society, people go where the government has built sidewalks and public transportation.

<sup>38</sup> See WOLFGANG ZUCKERMANN, *END OF THE ROAD, THE WORLD CAR CRISIS AND HOW WE CAN SOLVE IT* 27 (1991). Carbon monoxide, 65 to 80% of which is produced by automobiles, creates air pollution when combined with nitrogen oxide and other pollutants. *Id.*

<sup>39</sup> MACKENZIE ET AL., *supra* note 35, at 13.

<sup>40</sup> MACKENZIE ET AL., *supra* note 35, at 13.

<sup>41</sup> Thomas W. Lippman, *Memories of Gas Lines Dimmed by Time and Tide of Oil*, WASH. POST, Nov. 26, 1993, at A12.

<sup>42</sup> See ABSTRACT, *supra* note 4, at 615, 625 (noting that buses use less than one percent of all gasoline, although 5.4% of all home-to-work trips include public transit).

<sup>43</sup> MACKENZIE ET AL., *supra* note 35, at 17. The Strategic Petroleum Reserve stockpiles oil to protect consumers from oil supply disruptions. MACKENZIE ET AL., *supra* note 35, at 17.

Third, auto dependency increases traffic related deaths and nonfatal injuries. Each year, nearly fifty thousand people lose their lives in traffic related accidents, while nearly two million people suffer traffic related injuries as a result of car accidents.<sup>44</sup>

Fourth, auto dependency creates a "car tax," which is the costs to an individual car owner to maintain his or her car. The average American car owner spends over four thousand dollars a year on car payments, insurance, depreciation, license fees, maintenance and repairs.<sup>45</sup> If cars were a luxury, rather than a necessity, for most Americans, their auto-related spending could be considered a measure of affluence. Many Americans, however, require cars to get to work, to live in neighborhoods with satisfactory public education and to otherwise function socially.<sup>46</sup> For these Americans, car expenses are virtually compulsory and are therefore a form of tax.<sup>47</sup> In other words, if the government restructured American urban areas so that cars were as much of a luxury as ice-cream makers or compact disc players, Americans who own cars would essentially receive a four thousand dollar per vehicle tax cut.<sup>48</sup>

Fifth, car dependency further isolates those unable to drive. In cities or suburbs where a car is a necessity, people unable to drive

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<sup>44</sup> JACKSON, *supra* note 2, at 247 (describing the significant annual increases in motor vehicle accidents).

<sup>45</sup> ABSTRACT, *supra* note 4, at 624 (assuming 10,000 miles driven).

<sup>46</sup> ZUCKERMANN, *supra* note 38, at 228.

<sup>47</sup> Albeit a tax paid to car-related industries rather than to the government.

<sup>48</sup> Admittedly, this figure does not include the costs of improving mass transit to enable more Americans to live without cars. On the other hand, such costs could be paid out of reductions in auto-related government spending, such as highway maintenance and the costs of protecting the Persian Gulf oil supply.

are virtually frozen out of public life.<sup>49</sup> In a sense, auto dependency actually decreases mobility for a large minority of Americans.

Finally, car dependency adversely affects drivers because increases in traffic congestion render driving less pleasurable. For example, in Los Angeles, California congestion has reduced average freeway speeds to less than thirty-one miles per hour.<sup>50</sup> Congestion also raises vehicle operating costs by causing extra wear to brakes, tires and car engines.<sup>51</sup>

### III. WHAT WENT WRONG AND WHERE DO WE GO FROM HERE?

Suburbanization is a problem that continues to grow because of, rather than in spite of, federal policy. Massive spending on social welfare programs,<sup>52</sup> however, is not the only possible answer to urban decay. Instead, America's policies in the areas of education,

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<sup>49</sup> For example, because blind people cannot drive, Elga Joffee of the American Federation of the Blind has asserted that mass transit spending cuts "would disproportionately impact 4.2 million visually impaired people who depend upon public transportation as a lifeline." *News Conference Focuses on Budget Proposal and Transit Needs*, TRANSIT NOW NEWS (America's Coalition for Transit NOW, Wash., D.C.), Apr.-May 1994, at 2 (paraphrasing Joffee's remarks); see also Gary Orfield, *Ghettoization and Its Alternatives*, in THE NEW URBAN REALITY, *supra* note 4, at 161, 179 (noting that "the jobs in [Chicago's] outer suburban areas are not accessible by public transportation from the high unemployment areas" and that 41% of African Americans in Chicago do not own cars); Diane Ketcham, *How Do You Get Around on L.I. If You're Afraid to Drive?*, N.Y. TIMES, Nov. 21, 1993, at § 13 (L.I. Weekly), at 1 (reporting on stigma and consequences of disabling driving phobias); *White House Conference on Aging to Consider Transportation Needs of the Elderly*, TRANSIT NOW NEWS (America's Coalition for Transit NOW, Wash., D.C.), Nov.-Dec. 1994, at 2 ("Transit is a vital lifeline to the elderly . . . senior citizens make up nearly one fifth of all transit passengers in small cities and rural areas, and about seven percent overall.").

<sup>50</sup> MACKENZIE ET AL., *supra* note 35, at 17.

<sup>51</sup> MACKENZIE ET AL., *supra* note 35, at 17-18.

<sup>52</sup> See Borosage, *supra* note 9, at 346 (criticizing Congress' rejection of the Milton Eisenhower Foundation's proposal of \$30 billion a year for the next 10 years to fund programs like Head Start, drug treatment and community development in the nation's cities); see also Walters, *supra* note 8, at C1 (criticizing alleged "systematic defunding of cities that occurred under the Ronald Reagan and George Bush [A]dministrations").

transportation and housing need to be reshaped in order to stunt the growth of urban decay. This section will review these three problem areas and offer viable solutions.

*A. Education: The Desegregation Disaster*

*1. The Problem*

Most readers of this article probably know people who lived in a city neighborhood in their twenties, but moved to suburbia after marriage or childbirth so that their children could avoid urban public schools. School-based flight from cities is especially common among middle-class Whites: in 1990, seventeen large cities with majority White populations had school systems in which over fifty percent of the pupils were ethnic minorities.<sup>53</sup>

School-based flight has been caused by federal incompetence. For the past forty years, the federal courts have sought to integrate city schools in a variety of ways but have made little effort to integrate suburban schools. As a result, parents who want to send their children to schools dominated by other middle-class children frequently cannot do so without moving to the suburbs.

The federal government's involvement with school integration began with *Brown v. Board of Education*,<sup>54</sup> which prohibited

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<sup>53</sup> DOWNS, *supra* note 4, at 84-85 (using data from National Center for Education Statistics). These cities include Philadelphia, San Diego, Milwaukee, Boston, Denver, Indianapolis, Austin, Sacramento, Columbus (Ohio), Albuquerque, Cincinnati, Seattle, Oklahoma City, Buffalo, Anaheim, Pittsburgh and Baton Rouge. DOWNS, *supra* note 4, at 84-85. Even in "majority minority" cities, the gap between White population and White public school enrollment is astounding. For example, the total population of Washington, D.C. is 26.8% White, but its public school population is only 3.9% White. DOWNS, *supra* note 4, at 84; see also Michael E. Lewyn, *The Courts v. The Cities*, 25 URB. LAW. 453, 453 n.4 (1993) (stating that only 12% of all 10-year-olds in Washington are non-Hispanic Whites).

<sup>54</sup> 347 U.S. 483, 495 (1954) (holding that segregation of children in public schools solely on the basis of race deprives minority children of equal education opportunities and violates the Fourteenth Amendment's Equal Protection Clause).



state-sponsored segregation of public schools.<sup>55</sup> After many local governments sought to evade *Brown*,<sup>56</sup> the Supreme Court held that school systems had to go beyond mere nondiscrimination by converting “to a unitary [school] system.”<sup>57</sup> In *Swann v. Charlotte-Mecklenburg Board of Education*,<sup>58</sup> the Supreme Court allowed lower courts to create integrated city schools through forced busing, racial quotas and a variety of other techniques.<sup>59</sup> Since *Swann*, federal courts have routinely ordered cities to bus students from one city neighborhood to another in order to create racial balance in public schools.<sup>60</sup> As a result, middle-class parents

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<sup>55</sup> In *Brown*, the Court found that racially separate schools are “inherently unequal” and that they “generate a feeling of inferiority as to [children’s] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Id.* at 494-95.

<sup>56</sup> See RAYMOND WOLTERS, *THE BURDEN OF BROWN: FORTY YEARS OF SCHOOL DESEGREGATION* 65-128 (1984). Wolters describes resistance to desegregation in Prince Edward County, Virginia, by White citizens:

For a decade they challenged the federal judiciary and refused to countenance even token desegregation. When their policy of massive resistance could no longer be maintained, they refused to finance public schools in 1959 and established a private academy for [W]hite students. For four years there was no formal education for [B]lack in the county, and when public schools were finally reopened in 1964, their enrollment was almost all [B]lack.

*Id.* at 65; see also ROSEMARY C. SALOMONE, *EQUAL EDUCATION UNDER LAW* 46 (1986) (describing violence against Blacks who tried to attend majority White schools).

<sup>57</sup> *Green v. County Sch. Bd. of New Kent City*, 391 U.S. 430, 440 (1968) (holding that the school board’s “freedom of choice” plan which permitted each pupil to choose a school to attend was not adequate to establish that the board had taken steps to abolish its dual, segregated system when during three years of operation of the plan, not a single White child had chosen to attend a former Black public school and 85% of Black children in the system still attended the same school).

A “unitary school system” is an integrated school system in which there is no distinction between Black schools and White schools. *Id.* at 442.

<sup>58</sup> 402 U.S. 1 (1971).

<sup>59</sup> *Id.* at 22-23.

<sup>60</sup> In *Swann*, the Court sanctioned the use of busing and racial quotas as a starting point in shaping a remedy for segregation. *Id.* at 22-23; SALOMONE, *supra* note 56, at 49-56; see also John D. Casais, *Ignoring the Harm: The*

fled city schools in order to avoid sending their children to schools dominated by children from minority households.<sup>61</sup>

By the mid-1970s, most big-city school systems had become overwhelmingly African American or Hispanic.<sup>62</sup> Under such circumstances, racial balance is often impossible to achieve because schools cannot evenly balance racial groups when very few White students are left in city school systems.<sup>63</sup> In order to solve this problem, some integrationists urged the courts to adopt "metropolitan busing plans" which discourage "White flight" by busing suburban Whites into minority-dominated city schools.<sup>64</sup> In *Milliken v. Bradley*,<sup>65</sup> the Supreme Court held that metropolitan busing plans were inappropriate unless suburbs themselves had discriminated against minorities.<sup>66</sup> Thus, White parents could send their children to homogeneously White schools if they lived in the suburbs, but not if they lived in the city.<sup>67</sup>

Not surprisingly, middle-class flight from cities has been primarily a family phenomenon.<sup>68</sup> For example, in Washington, D.C., a 1967 court decision sought to integrate city schools by busing African American students into majority White schools and

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*Supreme Court, Stigmatic Injury, and the End of Social Desegregation*, 14 B.C. THIRD WORLD L.J. 259, 267-69 (1994); Neal Dennis, *School Desegregation Law in the 1980's: The Courts' Abandonment of Brown v. Board of Education*, 26 WM. & MARY L. REV. 7, 17-19 (1984); Maria L. Marcus, *Learning Together: Justice Marshall's Desegregation Opinions*, 61 FORDHAM L. REV. 69, 72 (1992).

<sup>61</sup> Instead, urban Whites and middle-class minorities have either sent their children to urban private schools, or moved to the suburbs. Lewyn, *supra* note 53, at 453, 455-58.

<sup>62</sup> Lewyn, *supra* note 53, at 457.

<sup>63</sup> See, e.g., *Milliken v. Bradley*, 418 U.S. 717, 765 (1974) (Douglas, J., dissenting) (noting that even if busing were ordered in Detroit, many city schools would be 75 to 90% Black) (citation omitted).

<sup>64</sup> See, e.g., GARY ORFIELD, *MUST WE BUS?* 196 (1974) ("If lasting large-scale desegregation is to be possible . . . the suburban boundary line must be crossed.").

<sup>65</sup> 418 U.S. 717 (1974).

<sup>66</sup> *Id.* at 745 (holding metropolitan busing inappropriate because the record contained evidence of "*de jure* segregated conditions only in the [city] schools" and "no showing of significant violation by the . . . [suburban] school districts").

<sup>67</sup> Lewyn, *supra* note 53, at 457.

<sup>68</sup> Lewyn, *supra* note 53, at 455.

eliminating a "tracking plan" which placed allegedly brighter students (who were usually White) into separate classes.<sup>69</sup> During the late 1960s and 1970s, White enrollment in Washington public schools decreased by over seventy percent, while the city's population of single Whites barely decreased at all.<sup>70</sup>

## 2. Solutions

As suggested above, middle-class urban parents frequently leave cities to avoid urban public schools.<sup>71</sup> As overwhelming as school-related middle-class flight may appear at first glance, this problem is by no means insoluble. For example, a voucher system, whereby children can obtain free, or partially free, education in private or suburban schools regardless of where they live, is a step in the

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<sup>69</sup> *Hobson v. Hansen*, 269 F. Supp. 401, 494 (D.C. Cir. 1967), *appeal dismissed*, 393 U.S. 801 (1968) (holding that ability tracking and neighborhood assignments, as practiced in the public schools of Washington, usually deprived Black children of equal protection of the laws); Lewyn, *supra* note 53, at 455 (citing WOLTERS, *supra* note 56, at 36-37) (describing a remedy for segregation which prohibited an optional zone program, required the busing of Black students from overcrowded schools and assigned White teachers to schools throughout the districts on a "color-conscious basis").

<sup>70</sup> Lewyn, *supra* note 53, at 455 (noting that White enrollment decreased from 11,519 to 3,321 between 1967 and 1981, while the single White population only decreased from 79,761 to 74,488 between 1970 and 1980) (citation omitted).

Washington's experience is not unique. In Boston, where courts sought to integrate public schools through forced busing, the city's juvenile White population declined by over 50% in the 1970s, while the city's single adult White population decreased by only three percent. Lewyn, *supra* note 53, at 456 (citations omitted); see also J. ANTHONY LUKAS, *COMMON GROUND* 200-21 (1985) (presenting a portrait of Boston from the years 1968 to 1978. The focus is on the school integration crisis in the mid-1970s, as told through the eyes and experiences of three families and several key players in the crisis. The key event is Boston's reaction to a federal court's order that schools be desegregated through court-enforced busing programs).

Thus, it appears that "White flight" has been led by families, who have fled cities in order to avoid sending their children to schools dominated by children from low-income families. Lewyn, *supra* note 53, at 456.

<sup>71</sup> Lewyn, *supra* note 53, at 456.

right direction. Overruling *Swann*<sup>72</sup> and allowing cities to return to neighborhood school systems might also entice middle-class families into big cities.<sup>73</sup>

a. *Voucher Systems*

Adopting a voucher system is the first step in battling urban decay. In contrast to the present system whereby the government dictates which public school a child must attend,<sup>74</sup> under a voucher system, the government pays for a child's education at a school chosen by the child's parents.<sup>75</sup> Under one version of a voucher system, the government

provides parents with a voucher or chit to pay for the child's education at the school of their choice. The parents then give the voucher to the school officials when the child is enrolled. The school returns the voucher to the government, which in turn sends the school a predetermined amount of publicly raised tax dollars.<sup>76</sup>

Voucher proposals vary widely. The purest form of voucher system would require the government to pay for a student's education in any public or private school that accepts the student.<sup>77</sup> Less radical voucher plans require the government to

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<sup>72</sup> 402 U.S. 1 (1971) (allowing district courts to make limited use of mathematical racial ratios and forced busing to shape remedies for segregated dual school systems).

<sup>73</sup> A "neighborhood school system" is one which exhibits a preference for schools in relative proximity to a student's home. *Keyes v. School Dist. Number 1, Denver, Colo.*, 413 U.S. 189, 245 n.25 (1973) (Powell, J., concurring in part and dissenting in part); see also Lewyn, *supra* note 53, at 459-61 (describing these options and discussing the debate surrounding the overruling of *Milliken v. Bradley* and the extension of busing into suburbs).

<sup>74</sup> Colin Greer, *Why Private School Choice Is Not the Answer*, in *WHY WE STILL NEED PUBLIC SCHOOLS*, 278, 282 (Art Must, Jr. ed., 1992) (describing the role of public education since World War II).

<sup>75</sup> Arnold Fege, *Private School Vouchers: Separate and Unequal*, in *WHY WE STILL NEED PUBLIC SCHOOLS*, *supra* note 74, at 221, 221-22.

<sup>76</sup> Fege, *supra* note 75, at 222.

<sup>77</sup> Fege, *supra* note 75, at 222.

pay only part of a student's private school education,<sup>78</sup> while others are limited to public schools.<sup>79</sup>

Any form of voucher plan might discourage middle-class flight from cities if it ensured that parents could live in the city and send their children to suburban or private schools. Such a plan would also encourage residential desegregation because those parents unwilling to send their children to city schools might otherwise be willing to live in diverse neighborhoods or at least live in the same jurisdiction as diverse neighborhoods.

For a voucher plan to effectively discourage suburban migration, a voucher plan should also include private schools. If parents' only options are urban public schools and suburban public schools, parents may move to the suburbs to be near their children's public schools and to avoid transportation expenses. By contrast, if a voucher plan pays private school expenses, parents could live in the city and send their children to nearby private schools.

Some criticize the voucher system as a "loud repudiation of the ideal of the common school."<sup>80</sup> This argument portrays the public school system as "virtually the last place where children of different backgrounds and classes cross paths and learn about one

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<sup>78</sup> Fege, *supra* note 75, at 222-23.

<sup>79</sup> Fege, *supra* note 75, at 222-23; see also Philip T.K. Daniel, *A Comprehensive Analysis of Educational Choice: Can the Polemic of Legal Problems Be Overcome?*, 43 DEPAUL L. REV. 1, 17-22 (1993) (providing examples of other voucher systems); see generally Carol L. Ziegler & Nancy M. Lederman, *School Vouchers: Are Urban Students Surrendering Rights for Choice?*, 19 FORDHAM URB. L.J. 813 (1992) (presenting school choice alternatives to traditional voucher programs).

<sup>80</sup> Peter Schrag, *Bailing Out of Public Education: School Vouchers in California*, NATION, Oct. 4, 1993, at 351-52. Schrag contends that while the debate in California over implementing school vouchers has focused on market-inspired improvement of the school system, its underlying purpose in most cases is to create one billion dollars in tuition subsidies for the 550,000 Californian students already enrolled in parochial and private schools. *Id.* As the private schools would be free to expel and to reject those students whom they wish, the public schools would serve as a backup system for the students who are the most expensive to educate, namely the disabled, the limited-English speakers, the unmotivated and those who simply do not have access to another school. *Id.*

another."<sup>81</sup> In a small town with just one high school, this ideal might have some relevance to reality. However, in major metropolitan areas, the "common school" idea has become a victim of suburbanization because middle-class families tend to live in middle-class suburbs with relatively homogeneous student bodies.<sup>82</sup> As one commentator notes, urban and suburban parents "alike send their children to segregated schools where the cultural diversity that is no more is assiduously celebrated."<sup>83</sup>

Voucher systems, by contrast, will increase children's exposure to economic and cultural diversity by enabling parents to live in or near diverse neighborhoods without sending their children to urban public schools. For example, suppose Mr. and Mrs. X want to expose their children to a minimal level of diversity, but fear city public schools. Under today's educational system, when their children reach school age they will probably reluctantly leave the city and move to a relatively homogenous suburb. By contrast, a voucher system would allow Mr. and Mrs. X to live in a diverse city neighborhood and send their children to the same schools that their children would attend if they lived in suburbia. By allowing people to live in culturally diverse neighborhoods without having to send their children to urban public schools, the voucher system would make society more integrated.

Voucher plans which include private schools create more controversy than those which are limited to public schools. Critics predict the following problems: (1) an increased demand for private school education might cause private schools to raise tuition and make vouchers fiscally impractical;<sup>84</sup> (2) a benefit will accrue only

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<sup>81</sup> *Id.* at 354.

<sup>82</sup> DOWNS, *supra* note 4, at 84-85 (explaining that Chicago suburban schools are overwhelmingly White); *see, e.g.*, U.S. DEP'T OF EDUC., NAT'L CENTER FOR EDUC. STAT., THE CONDITION OF EDUC. 298 (1994) (reporting that nationwide, 52.6% of central city public school students are Black or Hispanic, as opposed to only 20.4% of suburban public school students).

<sup>83</sup> Shaw, *supra* note 12, at 52.

<sup>84</sup> Donald Frey, *What if Government Subsidies Are Legislated?*, in WHY WE STILL NEED PUBLIC SCHOOLS, *supra* note 84, at 191, 196-97 ("According to conventional economics, this increase in demand for places in private schools . . . [may cause private schools to] increase their tuition and so capture part of the subsidy for themselves.")

to religious parents because most private schools are sectarian;<sup>85</sup> (3) a natural result of vouchers will be government regulation of private schools;<sup>86</sup> (4) some students, such as handicapped students, will be excluded from private schools<sup>87</sup> and (5) the government might finance private school vouchers by taking money from already needy public school systems.<sup>88</sup>

In order to give state governments a chance to ascertain the validity of these concerns, any voucher plan which includes private schools should be limited to the group that needs vouchers the most—residents of our nation's largest cities. Thus, a federal voucher plan might give vouchers only to residents of the thirty or forty largest cities, or a state plan might give vouchers only to residents of cities large enough to have experienced extensive middle-class flight to the suburbs.

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<sup>85</sup> Frey, *supra* note 84, at 191, 197-201. One could argue that subsidizing religious education might constitute an establishment of religion in violation of the First Amendment. See U.S. CONST. amend. I. However, if a voucher plan subsidizes both religious and nonreligious private schools, it is unlikely that constitutional problems would arise. Cf. *Mueller v. Allen*, 463 U.S. 388 (1983) (upholding tax credit for parochial school expenses).

<sup>86</sup> Fege, *supra* note 75, at 233 (noting that if vouchers were implemented, private schools "would come under mounting pressure for public regulation"); see also Ralph Z. Hallow, *Buchanan Hits School Vouchers*, WASH. TIMES, Sept. 14, 1995, at A4 (noting that presidential candidate Patrick Buchanan argues that vouchers "are 'wolves in sheep's clothing' that could open the way to federal control of private and religious education").

<sup>87</sup> Fege, *supra* note 75, at 225-26. Fege argues that the competition "between the public and private schools envisioned with the introduction of a [voucher program] is really an unfair match in which one competitor—the private school—does not have to play by the same rules as the public schools." Fege, *supra* note 75, at 225. This situation arises because many public schools and schools that receive federal grants must comply with discrimination statutes, while private schools do not have to meet the same standards. Fege, *supra* note 75, at 225-26.

<sup>88</sup> Fege, *supra* note 75, at 226-28.

[T]he cost of each voucher would be skimmed off the top of the respective public education budget, local and/or state, and funneled to the private schools. This financial drain would be at the expense of the public schools, many of which are already experiencing funding shortages and a "no new taxes" environment.

Fege, *supra* note 75, at 226.

Such a limited voucher plan has several advantages over a nationwide voucher scheme. First, a "big city only" voucher plan would encourage parents to move into cities in order to take advantage of the chance to send their children to private schools or to any suburban school they prefer. Second, a limited voucher system would give state governments an opportunity to solve the financial and administrative concerns discussed above. If these problems prove to be insurmountable, governments might have to limit their voucher plans to public schools, or otherwise modify the system. If, on the other hand, vouchers did not create daunting financial or administrative problems, a voucher program could expand to include students in small cities, rural areas, or suburbs.

*b. Return to Neighborhood Schools*

Another solution to school-related middle-class flight from cities may be to overrule *Swann*, thereby allowing some cities to discard desegregation plans and assign children to the school nearest their residence.<sup>89</sup> Under such a "neighborhood school" system, homogeneously middle-class urban neighborhoods, like middle-class suburbs, might have homogeneously middle-class schools and thereby become more attractive to middle-class parents.<sup>90</sup>

Although neighborhood schools are better than the status quo, a voucher system is preferable for two reasons. First, a neighborhood school system helps parents in the most affluent, homogenous city neighborhoods, but fails to help middle-class parents trying to revitalize marginal neighborhoods. Poor and working-class parents desiring a better education for their children than that offered by schools in low-income areas, are also not helped by neighborhood school systems.<sup>91</sup> Second, neighborhood schools might also be

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<sup>89</sup> Lewyn, *supra* note 53, at 459.

<sup>90</sup> Lewyn, *supra* note 53, at 459.

<sup>91</sup> Lewis D. Solomon, *The Role of For-Profit Corporations in Revitalizing Public Education: A Legal and Policy Analysis*, 24 U. TOL. L. REV. 883, 892 (1993); see also DOWNS, *supra* note 4, at 115 (noting that vouchers would allow low-income parents to send their children to schools outside poor neighborhoods). For example, suppose a city has four high schools: *Northwest* (located



inadequate if a school system's problems are due to reasons other than the student body's makeup. For example, if the school district's administrative bureaucracy was the primary cause of an urban school system's poor reputation, even the most homogeneously middle-class school would not attract most parents.<sup>92</sup> A voucher system, therefore, would be both more equitable and effective than a neighborhood school system.

### *B. Transportation: Putting Suburbs First*

Federal transportation policy encouraged suburbanization by directing infrastructure subsidies to auto-based suburbs.<sup>93</sup> This

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in a homogeneously middle-class area), *Southwest* (located near some gentrified areas and some extremely dangerous areas), *Southeast* (located in a ghetto) and *Northeast* (also located in a ghetto). Under a neighborhood school policy, parents in Northwest could send their children to middle-class schools, but the parents in the other areas would still be tempted to move in order to avoid their neighborhood school. By contrast, voucher systems dissolve the link between residence and schooling, thereby ensuring that even students living in the poorest neighborhoods have access to the schools in middle-class neighborhoods. Justin J. Sayfie, *Education Emancipation for Inner City Students: A New Legal Paradigm for Achieving Equality of Educational Opportunity*, 48 U. MIAMI L. REV. 913, 939 (1994) ("While the schools and legislatures implement the reforms needed to bring the quality of inner-city schools up to constitutional adequacy, students in those schools will get an adequate education in a qualified school.").

<sup>92</sup> See JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* 166-84 (1990) (blaming urban schools' poor performance on bureaucracy). Chubb and Moe assert that

schools in different locations [will] experience different amounts of control. In particular, [they] expected that urban schools [will] be subject to unusually high levels of bureaucratic influence. Cities have disproportionate numbers of difficult student and uninterested parents. They also have large heterogeneous populations, which generate conflict over educational values and problems in imposing values on schools. Bureaucracy is the response to such problems.

*Id.* at 168.

<sup>93</sup> Daniel Lazare, *Government Is to Blame for Urban Decline, in AMERICA'S CITIES: OPPOSING VIEWPOINTS*, *supra* note 3, at 17-18 ("Through a carrot-and-stick approach, society has rendered cities unlivable by redirecting the flow of tax breaks and infrastructure subsidies to auto-based suburbs. As a consequence, millions of city dwellers have been lured to the countryside . . .").

section will explain first why government spending on highways and driving-related expenses augment the development of suburbs at the expense of cities,<sup>94</sup> and will then discuss how the federal government has encouraged car dependency.<sup>95</sup> This article will then offer recommendations on how the government can reverse its course.

### 1. *Roads vs. Cities: The Root of the Problem*

Henry Ford, one of America's first auto magnates, summed up the relationship between the highway and the city when he stated: "We shall solve the city problem by leaving the city."<sup>96</sup> Highways enable people to live far from public transportation because they can travel to work along the highways.<sup>97</sup> Where government

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<sup>94</sup> JACKSON, *supra* note 2, at 293 (arguing that Washington programs often result in encouraging decentralization, thereby favoring the suburbs; "thus, suburbanization was not an historical inevitability created by geography, technology, and culture, but rather the product of government policies").

<sup>95</sup> See Lazare, *supra* note 93, at 18. Cf. JACKSON, *supra* note 2, at 163-64 (explaining that even before the federal government became involved in highway construction, "[t]he removal of horses from cities was widely considered a proper object for the expenditure of public funds. . . . On the basis of the common good, many local governments applied general revenues to easing the way for the motorcar").

<sup>96</sup> JACKSON, *supra* note 2, at 175. When Henry Ford began building his empire, real estate that could be developed had to be located within walking distance of streetcar lines. JACKSON, *supra* note 2, at 189. The new streetcar lines created population growth in outlying neighborhoods. JACKSON, *supra* note 2, at 307 (describing population growth in the suburbs, largely due to expanding transportation services, during the 19th-century). For example, the construction of the cable lines along Clark and Wells Streets in 1885 Chicago was coincident with the 1885-94 building boom in Lincoln Park. JAMES LESLIE DAVIS, *THE ELEVATED SYSTEM AND THE GROWTH OF NORTHERN CHICAGO* 25 (1965).

<sup>97</sup> ZUCKERMANN, *supra* note 38, at 68-69. New public transit systems can have a similar effect. For instance, in metropolitan Washington, D.C. an apartment within a couple of blocks from a subway stop is usually more desirable than one further away because many people prefer to live as close as possible to the subway. See also KPMG PEAT MARWICK, *EXECUTIVE SUMMARY 2* (1994) (finding that the extension of Washington, D.C.'s subway system to Virginia will, by year 2010, generate 31,000 residential units and 91,000 jobs in the Commonwealth).

spending is directed towards highways, as opposed to mass transit, commercial and residential centers will develop near those highways.<sup>98</sup> The large influx of people to the suburbs or outlying city neighborhoods created congestion on the highways.<sup>99</sup> When the government attempted to reduce traffic by creating new highways, it exacerbated the problem of suburbanization by making it more convenient for city residents to flee to the suburbs.<sup>100</sup>

Besides encouraging residents to leave, highway construction also drives retailers and businesses away from cities. As one commentator noted, in the 1950s and 1960s:

New roads and parking lots were provided to serve downtowns and relieve road congestion. These new roads quickly filled with newly generated traffic, which eventually made these centers less attractive to shoppers and thus to retailers. At the same time, the new road system had drawn many of the former city-center shoppers to new homes in the suburbs. Many retail firms consequently abandoned downtowns to develop new stores on the periphery of urban areas where motorists could easily reach them using the freeway system. In many cases, offices followed suit, and some suburban downtowns developed around freeway intersections. Road congestion then followed retail decentralization, making the situation ripe for yet another wave of retail decentralization to escape congestion, until the new decentralization became congested in its turn, and so on ad infinitum.<sup>101</sup>

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<sup>98</sup> For example, many of Detroit's suburbs have arisen along major roads. JACKSON, *supra* note 2, at 165 (illustrating that the 25-mile stretch of highway between Detroit and Pontiac contributed to the development of several commuter suburbs).

<sup>99</sup> JACKSON, *supra* note 2, at 175-76 (explaining that between 1920 and 1930, "new suburbs sprouted on the edges of every major city" and that automobile registrations rose by more than 150%).

<sup>100</sup> JACKSON, *supra* note 2, at 175 (stating that suburbanites were dependent upon automobiles to commute and explaining how new roads were financed using general taxes); cf. ZUCKERMANN, *supra* note 38, at 240.

<sup>101</sup> ZUCKERMANN, *supra* note 38, at 240.

Finally, highway construction directly destroys some city neighborhoods by cutting through them.<sup>102</sup> For example, an overly large highway interchange may turn nearby areas into “gigantic wastelands of on-ramps and off-ramps . . . [causing them to become] horrible places to live.”<sup>103</sup> Moreover, if the highway construction displaces low-income residents, an increased demand for low-income housing occurs in other neighborhoods.<sup>104</sup>

## 2. Roads vs. Transit: A Choice Made By Big Government

Through laws which encouraged highway development by providing funding,<sup>105</sup> governments at all levels have subsidized highways since cars were invented.<sup>106</sup> While highways

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<sup>102</sup> See KUNSTLER, *supra* note 31, at 193; see also ZUCKERMANN, *supra* note 38, at 44-45.

<sup>103</sup> KUNSTLER, *supra* note 31, at 193.

<sup>104</sup> See JACKSON, *supra* note 2, at 285. Indeed, some supporters of expanded highways have endorsed urban decay. In 1951, the *Bulletin of the Atomic Scientists* argued that to reduce the destruction caused by a nuclear attack, “the United States should disperse existing large cities into . . . a depopulated urban core surrounded by satellite cities and low density suburbs.” JACKSON, *supra* note 2, at 249. Of course, such concerns seem tragically naive today, as the major nuclear powers have enough nuclear weapons to destroy both cities and suburbs. See, e.g., ABSTRACT, *supra* note 4, at 355 (indicating that in 1991 the Soviet Union had 1399 Intercontinental Ballistic Missiles (“ICBMs”) and the United States had 956 ICBMs).

<sup>105</sup> In 1916, the “Federal Road Act . . . offered funds to states that organized highway departments . . .” JACKSON, *supra* note 2, at 167. In 1921, another Road Act “designated 200,000 miles of road as . . . eligible for federal [matching] funds,” and created a Bureau of Public Roads to plan an interstate highway network. JACKSON, *supra* note 2, at 167. Federal funds were also funneled into roads during the Depression because road projects “employed many workers and could be planned quickly.” JACKSON, *supra* note 2, at 167.

<sup>106</sup> It could be argued that car dependency and suburbanization are inevitable results of freedom and affluence, while mass transit cannot survive without massive government subsidy. See GARREAU, *supra* note 12, at 130 (contending that commuter trains are not economically efficient). For example, Garreau suggests that “the internal logic of individualized transportation led to high-capacity transmission devices—eventually, the freeway.” GARREAU, *supra* note 12, at 109. This commentator also argues that “there is something about buses we hate [and] the economics of commuter trains are maddening. There is not

“flourish[ed] with general taxpayer subsidies and the road was defined as a public good, mass transportation was flounder[ing] because of government decisions that the streetcar represented private investment and should ‘pay for itself.’”<sup>107</sup> As a result, “aging equipment and reduced services were accompanied by falling ridership.”<sup>108</sup> Eventually, many cities dismantled parts of their mass transit systems.<sup>109</sup> In contrast, federal highway construction accelerated after World War II.<sup>110</sup> The federal government did not significantly subsidize public transportation until 1962,<sup>111</sup> and even after the government began to do so, highway spending still exceeded mass transit spending.<sup>112</sup>

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thought to be a single commuter rail system in the United States that manages even to meet its expenses out of the farebox.” GARREAU, *supra* note 12, at 130. This commentator begins with the common assumption that cars are supported by the market, while public transportation is supported by taxpayers. This assumption, however, is incorrect. Highways and their related expenses are paid for by government spending, not by the ‘internal logic’ of anything. See ZUCKERMANN, *supra* note 38, at 214-19.

When state and local governments began to build new roads at the turn of the century, they could either “levy heavy user fees to reimburse local treasuries in full for the cost of streets, traffic maintenance and police services . . . or rely on general taxation . . . . [T]he latter course was adopted.” JACKSON, *supra* note 2, at 163. Businesses tied to the auto industry, such as tire manufacturers and dealers, oil companies, road builders and land developers, pressured the state and local governments to rely on general taxation. JACKSON, *supra* note 2, at 164.

<sup>107</sup> JACKSON, *supra* note 2, at 168. For example, local governments often refused either to subsidize streetcar companies or allow them to raise fares. JACKSON, *supra* note 2, at 168-70.

<sup>108</sup> JACKSON, *supra* note 2, at 169.

<sup>109</sup> See, e.g., KUNSTLER, *supra* note 31, at 192-93, 211-12 (describing destruction of streetcar systems in Detroit and Los Angeles).

<sup>110</sup> In 1954, President Dwight D. Eisenhower appointed a committee on highways chaired by Lucius Clay, a member of the General Motors board of directors. KUNSTLER, *supra* note 31, at 106. The committee “endorsed a massive investment in the superhighway scheme.” KUNSTLER, *supra* note 31, at 106. Two years later, Congress enacted the Interstate Highway Act, which created a 41,000-mile interstate highway system. KUNSTLER, *supra* note 31, at 106-07.

<sup>111</sup> OFFICE OF MANAGEMENT & BUDGET, BUDGET OF THE U.S. GOV’T: HISTORICAL TABLES, FISCAL YEAR 1996, 129, 189 (1995) [hereinafter HISTORICAL TABLES] (first federal mass transit spending listed was in 1962).

<sup>112</sup> For example, President Bill Clinton’s proposed 1995 budget provides

Although most highway construction is financed by gas tax revenues, highways are not self-financing. About forty percent of government highway spending is paid for by the public as a whole.<sup>113</sup> At all levels, government spends \$65.6 billion on highways,<sup>114</sup> but collects only \$38.2 billion in gas taxes.<sup>115</sup> Auto dependency also contains hidden costs which are not reflected in either gas taxes or highway spending, such as (1) expenses to enforce traffic laws and parking laws, and to investigate vehicle accidents and auto theft; (2) expenses for emergency responses to

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\$21.7 billion for highways and a paltry \$3.8 billion for mass transit. OFFICE OF MANAGEMENT & BUDGET, BUDGET OF THE U.S. GOV'T, FISCAL YEAR 1995, 130 (1994) [hereinafter BUDGET] (including \$1.4 billion for highways damaged by the San Fernando Valley earthquake). Ironically, the same budget states that "[s]elective infrastructure investments also protect the environment." *Id.* at 125. If, as this Article suggests, highways encourage car dependency and car dependency damages the environment, President Clinton's infrastructure priorities are anything but pro-environmental.

In addition, some federal transit funding is offset by federal mandates requiring transit agencies to spend additional money on various services. *See, e.g.*, 42 U.S.C. § 12141 (1994) (requiring transit agencies to make vehicles readily accessible and usable by individuals with disabilities); 49 U.S.C. § 5333 (1994 & Supp. I 1995) (requiring federally funded transit agencies to pay "prevailing wages" for construction and to adopt various labor protections); *see also Transit Budget Update: Working to Ensure Adequate Funding for Public Transportation*, TRANSIT NOW NEWS (America's Coalition for Transit NOW, Wash., D.C.), Apr.-May 1991, at 1 ("[T]he costs of all transit systems to be compliant with the ADA [Americans With Disabilities Act] will be approximately \$1 billion per year").

<sup>113</sup> *See* ABSTRACT, *supra* note 4, at 293 (revealing that government collects \$38.2 billion in fuel taxes, about 58.2% of \$65.6 billion highway spending); MACKENZIE ET AL., *supra* note 35, at 9.

<sup>114</sup> ABSTRACT, *supra* note 4, at 293.

<sup>115</sup> ABSTRACT, *supra* note 4, at 293. The gap between tax revenue and highway spending, however, is smaller for the federal government. *See* BUDGET, *supra* note 112, at 130 (showing that the federal government collected \$18.2 billion in 1994 fuel taxes and proposed to spend slightly over \$20 billion on highways). However, state and federal highway spending are interrelated because highway spending at one level creates suburban sprawl, which in turn creates political demand for highway spending at another level. Furthermore, the federal government often "matches" state spending by promising to spend federal funds if states spend state funds. *See* JACKSON, *supra* note 2, at 167 (noting federal use of matching funds in highway programs).

traffic accidents; (3) costs of routine street maintenance;<sup>116</sup> (4) costs of air pollution;<sup>117</sup> (5) costs of military spending to protect Persian Gulf oil<sup>118</sup> and (6) costs related to the Strategic Petroleum Reserve.<sup>119</sup> Although many of these expenses do not appear in highway budgets, they are all indirectly related to highway spending: government highway expenditures encourages suburbanization, suburbanization increases driving, which in turn increases all other driving-related social costs.<sup>120</sup>

Federal, state and local governments have all actively promoted roads and driving at the expense of mass transit. Because government heavily subsidizes highways and driving,<sup>121</sup> it creates incentives for people to move to car-dependent suburbs while it discourages people from living in mass transit-accessible cities and inner suburbs.<sup>122</sup>

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<sup>116</sup> MACKENZIE ET AL., *supra* note 35, at 9.

<sup>117</sup> MACKENZIE ET AL., *supra* note 35, at 13.

<sup>118</sup> MACKENZIE ET AL., *supra* note 35, at 15-17.

<sup>119</sup> MACKENZIE ET AL., *supra* note 35, at 17.

<sup>120</sup> According to one study, "the costs of driving that motorists and truckers [do not] shoulder come to some \$300 billion a year." See MACKENZIE ET AL., *supra* note 35, at vii. This figure includes the above mentioned highway costs; however, it rests on some highly uncertain calculations. See MACKENZIE ET AL., *supra* note 35, at 13 (noting that estimates of pollution costs are so uncertain that studies show costs ranging from \$5 billion to \$200 billion yearly, and adopting a "conservative estimate" of \$10 billion). Even if the \$300 billion figure is a gross exaggeration, it is undeniable that *some* car-related expenses are paid for by taxpayers as a whole rather than by drivers.

<sup>121</sup> See, e.g., ABSTRACT, *supra* note 4, at 294 (indicating that in 1991, government at all levels spent \$65.6 billion on highways and \$20.3 billion on mass transit systems); BUDGET, *supra* note 112, at 130 (indicating that in 1995, the federal government proposed \$21.7 billion in highway spending, which includes an additional \$1.4 billion in funding related to the San Fernando Valley earthquakes and \$3.8 billion in mass transit spending).

<sup>122</sup> See Lazare, *supra* note 93, at 17, 20-21; see also Penny Mintz, *Transportation Alternatives Within the Clean Air Act: A History of Congressional Failure to Effectuate and Recommendations for the Future*, 3 N.Y.U. ENVTL. L.J. 156, 157-58 (1994).

### 3. Solutions

#### a. No More Road Subsidies

If federal policy caused our urban crisis, the logical solution is to stop the policies that led to the crisis. As highway spending and other subsidies to driving have caused suburbanization, government can slow down suburbanization by eliminating such subsidies.

The federal government should eliminate all highway spending on roads in or near suburban areas. Specifically, spending should cease on roads not within the limits of a major city or in a purely rural area.<sup>123</sup> The logic of a paving moratorium is quite simple: if highways destroy cities and older suburbs, the government should stop wasting taxpayer money on highways and should spend the money on a less harmful program. A paving moratorium would also significantly reduce government spending at all levels by reducing highway spending. Admittedly, a paving moratorium would not prevent settlement in existing suburbs; however, a moratorium would prevent government from creating new suburbs by building more highways.

A common argument in favor of building new roads is that more roads, not fewer, are needed to deal with highway congestion.<sup>124</sup> New roads, however, cause homeowners and businesses to move near highway interchanges, thereby increasing traffic near the interchanges.<sup>125</sup> Thus, new roads may have actually increased traffic congestion in some areas.<sup>126</sup> Moreover,

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<sup>123</sup> One could argue that the federal government should eliminate urban or rural highway spending because all highway spending encourages driving and thereby creates environmental and social costs. As this Article is about urban policy rather than environmental policy, the wisdom of nonsuburban highway spending is beyond the scope of this Article.

<sup>124</sup> See DOWNS, *supra* note 4, at 8 ("Congestion could have been mitigated if a lot more streets and roads had been built, or existing ones expanded, in the 1980s.").

<sup>125</sup> GARREAU, *supra* note 12, at 128.

<sup>126</sup> See, e.g., GARREAU, *supra* note 12, at 128 ("The more capacity you add, the more likely you are to make the place more popular . . . creating more



new roads, by increasing suburbanization, make people more car-dependant and thereby force them to drive more; which in turn may increase congestion.<sup>127</sup>

A convincing argument cannot be made for a “balanced” transit policy which funds both new roads and mass transit for two reasons.<sup>128</sup> First, roads and public transportation are competitors—what helps the former often hurts the latter.<sup>129</sup> Second, because U.S. transportation policy overwhelmingly favors highways over mass transit, only a massive policy shift would create a truly evenhanded policy. For forty-six years the federal government spent money on highways without significantly subsidizing mass transit.<sup>130</sup> For thirty-four more years the federal

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traffic.”); MACKENZIE ET AL., *supra* note 35, at 25 (“[A]mple evidence shows that every time a roadway is built or widened, more drivers appear and the new or expanded roads soon become as congested as the old ones.”); *see also* Henry R. Richmond, *From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma*, 13 PACE L. REV. 327, 337 n.57 (1993) (“Building more highways to reduce traffic congestion is an exercise in futility. Whenever it is done, more people take to their cars, and before long the roads are as clogged as ever.”) (quoting Andres Duany & Elizabeth Plater-Zyberk, *The Second Coming of the Small Town*, UTNE READER, May-June 1992, at 97).

<sup>127</sup> *See* Richmond, *supra* note 126, at 337 n.57.

<sup>128</sup> *See* Small, *supra* note 36, at 217-22 (endorsing both highway and transit upgrades); *see also* Gerald L. Bartels, *More Highways Alone Won't Ease Traffic*, N.Y. TIMES, Aug. 20, 1995, § 3 (Money & Business), at 11; *cf.* WILSON LETTER, *supra* note 37, at 1 (endorsing mass transit spending because “freeways . . . alone cannot support the sustained growth in our economy”) (emphasis added). Bartels states that the best transportation budget balances investments among roads and mass transit. During the Bush Administration, Congress developed the Intermodal Surface Transportation Efficiency Act to reduce traffic congestion and air pollution by investing in both public transportation and highway construction. Bartels, *supra*, at 11.

<sup>129</sup> *See* Small, *supra* note 36, at 5 (noting that auto use has expanded as transit use has fallen, and accordingly reasoning that “transit use will continue to fall, at least relatively, barring events or policies that make automobiles less desirable”). *Cf.* JACKSON, *supra* note 2, at 168-71 (describing demise of trolleys after government began to fund highways). On the other hand, one mode of transportation can make the other more bearable by reducing overcrowding. For example, public transportation makes roads less congested than they would otherwise be.

<sup>130</sup> Federal highway spending began in 1916, while comparable mass transit

government has subsidized both, but spent far more on highways.<sup>131</sup> In order to achieve a truly balanced policy, we would have to eliminate federal highway spending well into the next century, rather than eliminating such spending permanently.

*b. Stop Subsidizing the Driver*

Government could also eliminate other driving subsidies (e.g., costs of protecting Middle Eastern oil) by imposing taxes and user fees on drivers.<sup>132</sup> The revenues could be used to fund driving-related costs which are paid directly by government to reduce taxes for the general public, so that drivers rather than non-drivers will pay car-related costs.

An increase in fuel tax would raise substantial revenues. If the government raised fuel taxes sufficiently to collect an extra 300 billion dollars in revenue yearly, income taxes could be dramatically reduced for all taxpayers or completely eliminated for all taxpayers earning less than 100 thousand dollars per year.<sup>133</sup> If the government implemented such an increase in fuel taxes, drivers would be tempted to leave their cars at home and use mass transit (which would become more economical due to increased farebox revenues). Workers who continued to drive would also find it convenient to live in cities, or in relatively close-in suburbs, in order to shorten their commutes and thereby shorten their commuting costs. Tolls and gas taxes are not regressive because upper and

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spending did not begin until 1962. See JACKSON, *supra* note 2, at 167; HISTORICAL TABLES, *supra* note 111, at 129, 189.

<sup>131</sup> See HISTORICAL TABLES, *supra* note 111, at 129-33, 189, 194, 199, 206, 213.

<sup>132</sup> Possible tax and user fee options include levying fuel taxes and making most roads toll roads. See MACKENZIE ET AL., *supra* note 35, at 23-26.

<sup>133</sup> See ABSTRACT, *supra* note 4, at 340. This figure was computed by adding all 1990 taxes paid by taxpayers earning less than \$100,000.00 (totaling \$287.8 million). As noted above, such a heavy tax may be undesirable if general taxpayers' subsidy of drivers is smaller than \$300 billion per year. See MACKENZIE ET AL., *supra* note 35, at 23 (noting the uncertainty of size of subsidy).

middle-class families drive more often than lower-class families.<sup>134</sup> Households with a family income of under ten thousand dollars are responsible for eight percent of the total American auto-related consumption of fuel, even though they comprise about twelve percent of all households with vehicles.<sup>135</sup> By contrast, households with a family income over seventy-five thousand dollars comprise only five percent of households with vehicles, but are responsible for almost eight percent of total American auto-related consumption of fuel.<sup>136</sup> Thus, tolls and gas taxes will fall predominantly on those who can afford to pay.

### C. Housing Policy

During the Depression and postwar eras, the federal government laid the groundwork for future suburbanization by subsidizing suburban homes. The Federal Housing Administration ("FHA") has

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<sup>134</sup> Many argue that tolls and gas taxes are regressive because they are not based on one's ability to pay. See, e.g., Stephan D. Casler & Aisha Rafiqi, *Evaluating Fuel Tax Equity: Direct and Indirect Distributional Effects*, 6 NAT'L TAX J. 97 (1993); Michael Kramer, *The Political Interest; A Poverty of Compassion*, TIME, Jan. 16, 1995, at 32; John H. Maikin, *An Oil Tax Is Not the Answer*, BUS. WEEK, Feb. 24, 1986, at 19; John D. Schulz, *Truckers Align with Sin Industries To Fight Increase in Excise Tax*, TRAFFIC WORLD, March 22, 1993, at 22; see also ABSTRACT, *supra* note 4, at 625.

<sup>135</sup> See ABSTRACT, *supra* note 4, at 625. Specifically, in 1988, households with family income under \$10,000.00 consumed eight percent of the total amount of gas consumed. Out of the 81.3 million American households, 10.2 million, or approximately 12.5% of this group, have a family income below ten thousand dollars and a vehicle. See ABSTRACT, *supra* note 4, at 625. Moreover, such households with vehicles have fewer vehicles than other households—1.3 vehicles per household, as opposed to 1.8 for all households. See ABSTRACT, *supra* note 4, at 625. Finally, low-income households are less likely to have vehicles than other households. Specifically, in 1988, 14.7% of all households, as opposed to 12.5% of vehicle-owning households, had incomes below ten thousand dollars. See ABSTRACT, *supra* note 4, at 457 (listing income distribution among all households), 625 (listing income distribution among vehicle-owning households).

<sup>136</sup> See ABSTRACT, *supra* note 4, at 625. Specifically, such households comprise 4.5 million households out of the 81.3 households with vehicles, yet they consume 7.7% of all gallons of fuel and own 2.4 vehicles per household. See ABSTRACT, *supra* note 4, at 625.

guaranteed selected home loans since 1934, thereby dramatically increasing home ownership.<sup>137</sup> In deciding which projects to guarantee, the FHA discriminated against cities in two significant ways.

First, until the 1970s, FHA loans for the repair of existing single-family structures were “small and for short duration, which meant that a family could more easily purchase a new home than modernize an old one.”<sup>138</sup> Because cities generally developed earlier than their suburbs, cities tended to have fewer new homes (as opposed to new apartments and old homes) than suburbs. Thus, FHA policies which favored new homes also favored suburbs over cities.<sup>139</sup>

Second, FHA guaranteed home loans only in “low-risk” areas.<sup>140</sup> FHA guidelines defined low-risk areas not only as areas where residents paid their debts, but also as low-density areas with new homes and no Black enclaves nearby.<sup>141</sup> Suburbs met FHA criteria more frequently than cities,<sup>142</sup> however, even

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<sup>137</sup> KUNSTLER, *supra* note 31, at 102 (explaining “that the federal treasury, through the Federal Housing Administration [FHA], would guarantee mortgage loans”). Cf. JACKSON, *supra* note 2, at 204 (describing FHA loan guarantees in detail).

<sup>138</sup> JACKSON, *supra* note 2, at 206.

<sup>139</sup> JACKSON, *supra* note 2, at 206.

<sup>140</sup> JACKSON, *supra* note 2, at 207.

<sup>141</sup> JACKSON, *supra* note 2, at 207-08.

<sup>142</sup> Out of eight categories that the FHA used to measure the quality of residential areas, “economic stability” and “protection from adverse influences” were weighted more than the other six criteria combined. JACKSON, *supra* note 2, at 207-08.

The 1939 *Underwriting Manual* taught that “crowded neighborhoods lessen desirability,” and “older properties in a neighborhood have a tendency to accelerate the transition to lower class occupancy.” . . . Obviously, prospective buyers could avoid many of these so-called undesirable features by locating in suburban sections. In 1939 FHA asked each of its [50] regional offices to send in plans for six “typical Americans.” . . . Virtually all of the entries were bungalows or colonists on ample lots with driveways and garages. In an attempt to standardize such ideal homes, the size, setback from the street, separation from adjacent structures, and even for the width of the house itself. While such requirements did provide light and air for new

neighborhoods within cities were affected by FHA guidelines.<sup>143</sup>  
Not surprisingly, most FHA loans went to suburban home buyers.<sup>144</sup>

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structures, they effectively eliminated whole categories of dwellings, such as the traditional 16-foot-wide row houses of Baltimore, from eligibility for loan guarantees. Even apartment-house owners were encouraged to look to suburbia: "Under the best of conditions a rental development under the FHA program is a project set in what amounts to a privately owned and privately controlled park area."

JACKSON, *supra* note 2, at 207-08.

<sup>143</sup> JACKSON, *supra* note 2, at 209. For example, residents of one Detroit neighborhood could not get FHA loans because of the presence of an "inharmonious racial group" nearby. JACKSON, *supra* note 2, at 209. "[I]n 1941, an enterprising [W]hite developer built a concrete wall between the [W]hite and African American areas. The FHA appraisers then took another look and approved mortgages on the [W]hite properties." JACKSON, *supra* note 2, at 209 (citing DAVID ALLAN LEVINE, *INTERNAL COMBUSTION: THE RACES IN DETROIT 1915-1926, passim* (Westport, Conn. 1976)).

<sup>144</sup> JACKSON, *supra* note 2, at 209. In St. Louis County, buyers received five times as much FHA mortgage insurance as buyers in the city of St. Louis. JACKSON, *supra* note 2, at 210. The cumulative number of home mortgages from 1934-1960 in St. Louis County was \$62,772.00 whereas in St. Louis City it was \$12,166.00. The cumulative amount of home mortgages for the same time period was \$558,913,633.00 in St. Louis County and \$94,173,422.00 in St. Louis City. The per capita amount of home mortgages as of January, 1961 in St. Louis County was \$794.00. In St. Louis City it was \$126.00. JACKSON, *supra* note 2, at 211. "Even in terms of home-improvement loans, a category in which the aging city was obviously more needy, only \$44 million went to [city homeowners], while about three times [as] much, or \$112 million, went to [homeowners in St. Louis] county through 1960." JACKSON, *supra* note 2, at 210, 213 (outlining similar favoritism in the Washington, D.C. area). Senator Paul Douglas complained that "[e]ven middle-class residential districts in the central cities were suspect [to FHA discrimination]." JACKSON, *supra* note 2, at 214. Although the FHA later altered its policies, it has already wreaked considerable damage on central cities. JACKSON, *supra* note 2, at 214-15. Even less discriminatory FHA policies also indirectly favored suburbanization. Recent FHA policies have actually made

it easier for [W]hite families to finance their escape from areas experiencing racial change. . . . [T]he relaxed credit standards for [B]lack applicants meant that home improvement companies could buy properties at low cost, make cosmetic improvements, and sell the renovated home at inflated prices approved by FHA. Many of the minority purchasers could not afford the cost of maintenance, and the FHA had to repossess thousands of homes. The final result was to

The federal government also indirectly encouraged suburbanization by segregating low-income families in inner cities.<sup>145</sup> In 1937, the federal government decided to develop housing projects by funding local housing authorities.<sup>146</sup> The housing laws provided that “any city desiring public housing had to provide tax exemptions for the project and had to create a municipal housing agency.”<sup>147</sup> Because some suburbs wanted to keep low-income families out of their communities, they avoided building public housing by not creating housing authorities.<sup>148</sup>

Finally, the federal government indirectly encourages suburbanization by making interest on home mortgages tax deductible.<sup>149</sup> The mortgage deduction favors suburbs because single family houses, as opposed to rental apartments, are disproportionately located in suburbs due to suburban zoning laws which frequently limit or forbid rental apartment construction.<sup>150</sup>

The federal government cannot solve the problems caused by federal housing policy merely by undoing past mistakes. For instance, bringing public housing into suburbs might encourage migration from inner suburbs to outer suburbs, and bring urban decay into suburbs. However, the federal government could remedy

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increase the speed with which areas went through racial transformation and to victimize those it was designed to help. The only people to benefit were contractors and [W]hite, middle-class homeowners who were assisted in escaping from a distress position.

JACKSON, *supra* note 2, at 215.

<sup>145</sup> JACKSON, *supra* note 2, at 225.

<sup>146</sup> JACKSON, *supra* note 2, at 224.

<sup>147</sup> JACKSON, *supra* note 2, at 225.

<sup>148</sup> JACKSON, *supra* note 2, at 225.

<sup>149</sup> See 26 U.S.C. § 163(h)(3) (West Supp. 1995). Residence interest is tax deductible under 26 U.S.C. § 163. The law defines qualified residence interest as any interest which is “paid or accrued during the taxable year on (i) acquisition indebtedness with respect to any qualified residence of the taxpayer.” *Id.* § 163(h)(3)(A). Acquisition indebtedness is defined as “any indebtedness which (I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and (II) is secured by such residence.” See *id.* § 163(h)(3)(B)(i).

<sup>150</sup> JACKSON, *supra* note 2, at 242 (“The introduction of zoning beg[an] with a New York City ordinance in 1916. [Zoning] served the general purpose of preserving residential class segregation and property values.”).

its past sins by some form of "enterprise zone" legislation which uses the tax code to encourage migration into cities. For example, the federal government could make rent on urban apartments tax deductible, alter the mortgage interest deduction to include principal for homeowners in large cities, or turn the deduction for state and local income taxes into a partial credit for cities with inordinately high taxes.

## CONCLUSION

This Article was written to rebut the view that suburbs "blossomed because of the preference of consumers who made free choices in an open environment."<sup>151</sup> In fact, numerous federal policies affected consumers' choices, most notably FHA mortgage insurance, various highway subsidy programs and federally mandated desegregation policies. It therefore appears that "the social costs of low-density living have been paid by the general taxpayer rather than only by suburban residents."<sup>152</sup> Thus, suburbanization has been a by-product of "big government" social engineering, rather than a natural result of the free market.

Traditional big government solutions to these problems, such as federal aid to cities, are not the only possible solutions to urban decay. Instead, the government can encourage repopulation of cities by cutting subsidies to suburbanization, such as highway spending, and by eliminating roadblocks to urban renewal, such as desegregation rulings that force parents to choose between good schools and city living. While such policies would not end the competition for people and jobs between cities and suburbs, they would, at a minimum, create a level playing field.

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<sup>151</sup> JACKSON, *supra* note 2, at 293.

<sup>152</sup> JACKSON, *supra* note 2, at 293.