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## [Introduction to] Sprawl, justice, and citizenship : The Civic Costs of the American Way of Life

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THAD  
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Sprawl, Justice, and  
Citizenship

*The Civic Costs of the American  
Way of Life*

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## Introduction

### *Sprawl as a Moral Issue*

**M**UST THE STRIP MALL and the eight-lane highway define twenty-first-century U.S. life?

The possibility that they might is depressing to many concerned Americans. The sight of yet another new subdivision on the fringe of a metropolitan area, the opening of another big-box store, and the prospect of another road-construction project raise little enthusiasm among either academic critics of sprawl or ordinary Americans worn out by growing traffic congestion and long automobile commutes.<sup>1</sup>

Yet the anti-sprawl movement, one of the most striking recent developments in both environmental and urban politics, finds itself at an impasse. Local and state initiatives aimed at combating sprawl have thus far failed to generate either political momentum or broad public consensus on behalf of sustained, comprehensive policy action. Nearly two decades after the formation of the Congress for the New Urbanism and Vice President Al Gore's failed proposal for a carbon tax, federal policy continues to promote suburbanization while Hummers and SUVs overrun the nation's roadways, doing their part (and then some) to contribute to the nation's prodigious greenhouse-gas emissions. The anti-sprawl movement has reshaped the debate and spurred some constructive policy steps at the local and state levels, and criticism of urban sprawl is a regular feature of numerous politicians' speeches on urban policy, including the current president of the United States.<sup>2</sup> Yet while the recent economic crisis in the United States has slowed suburban growth in many areas, decentralized, automobile-driven expansion of the

metropolitan fringe remains the dominant form of urban development in the United States.<sup>3</sup>

Part of the difficulty is that, contrary to the rhetoric of many anti-sprawl activists, sprawl is not a black-and-white issue, but rather one involving both empirical and moral complexity of the highest order. Critiques of sprawl that are too simplistic or too sweeping are neither intellectually credible nor politically efficacious.

Indeed, as observers such as Robert Bruegmann, William Bogart, and David Brooks have argued, there *is* a powerful case to be made on sprawl's behalf.<sup>4</sup> Sprawl, such writers suggest, is, by and large, a good thing because it fulfills Americans' preferences for privacy and mobility and provides a spatial context in which millions of citizens can access the American dream of a comfortable private home in a safe, pleasant neighborhood.

Those are serious arguments, and it is the aim of this book to provide a serious response. The assessment of sprawl reached here is at odds both with optimistic assessments that because sprawl exists, it must be good, and with polemical portrayals of sprawl and continued suburbanization as wholly irrational. Sprawl *does* benefit millions of Americans who prefer lower-density environments and would rather not live close to the concentrated social problems characteristic of U.S. cities.

But it does so at a significant moral cost. Suburban sprawl as currently practiced is fundamentally hostile to the aspiration of achieving a society capable of meeting even modest norms of equal opportunity. Sprawl is also constituent of a way of life that prioritizes privatism and consumerism over engaged political participation and ecological sustainability. The ultimate civic cost of the U.S. way of life, as exemplified by sprawl, is a political culture characterized by weak citizen participation, a declining capacity to provide equal opportunity to citizens, and an inadequate response to the challenges posed by climate change.

Whether this civic cost is worth the benefits associated with sprawl is fundamentally a moral question. In making judgments for or against sprawl, we are necessarily making judgments about what kind of society we wish to live in.

## *Preliminaries I: Sprawl as Collective Choice*

A fundamental contention of this book is that to debate suburban sprawl is to do nothing less than to debate how we are to live together. Counting the costs and benefits of sprawl and evaluating its economic efficiency is an

essential task, but that counting exercise does not fully answer the question of whether sprawl is desirable or not, or in what respects. Evaluating who benefits from sprawl and who does not can provide us with important information concerning whether and how sprawl is linked with inequality and social injustice—but even this evaluation is incomplete. The right questions to ask are not simply whether sprawl is *efficient* or *fair* but also whether it is *good*. It is simply not possible to evaluate sprawl and its consequences without interrogating the goodness and moral worthiness of the way of life sprawl promotes.

Posing this question takes us into terrain where many a liberal political theorist fears to tread. Such theorists might remind us that just as there are multiple plausible views in contemporary societies concerning the best way of life, so, too, are there a multitude of plausible conceptions of how the arrangement of the built environment might best foster (or permit) well-lived lives. Yet unlike ideas about which diet, exercise regime, balance of work and play, choice of leisure activity, or even religious convictions best promote the “good life,” competing conceptions of how space should be organized cannot be accommodated simply by permitting individuals to pursue their own ideals of a well-designed community while the state remains officially neutral.

This is the case for four key reasons: First, individual actions regarding land use and housing may generate externalities that affect one’s neighbors and even the identity of a whole community. Second, and closely related, individuals may have preferences not only about their own living space but also about the character of the neighborhood they wish to inhabit. (Recognition of these first two points underlies many local zoning ordinances in addition to rules set by common-interest developments.) Third, any community involves some shared or public space that is the common concern and responsibility of all residents. Individual persons do not have individual sidewalks, streetlamps, and roads at their disposal.

Fourth, and most important, collective choices made or shaped by the state help structure the range of choices available to individuals. Residence in the outer suburbs did not become possible until governments built the roads that service such locations. As a practical matter, no process of housing development or community building in the United States can proceed without substantial public assistance and state involvement in the form of building roads, providing infrastructure and other services, hiring police to protect property, and the like. Building a public road to link a new, privately developed community to existing settlements is itself a political act, just as the notion that all built communities in the United States should be physically

connected to one another via publicly accessible ground-level transportation is a political idea.

The spatial organization of communities thus necessarily represents a collective choice, mediated through politics. (Communities may collectively opt to let market forces and individual actions determine spatial development, and residents may accept the consequences; but this, too, is a political choice.) Collective political choices about how to organize communities spatially necessarily involve conceptions (stated and unstated) about what the good life is and what way of life a community wishes to promote. Inattention to this dimension of the sprawl issue leads to an inadequate, even evasive, response to the question, what is wrong with sprawl? It also yields an inadequate understanding of the consequences of the various policy choices that affect the spatial organization of communities.

Indeed, it is implausible and incoherent to suggest that government decisions that help shape land use and the organization of space could ever be “value neutral” in any meaningful sense. When localities set minimum lot-size zoning requirements for new housing developments, they are (quite often explicitly) invoking the ideal of private home ownership—and the ideal of living in a community of other private homeowners. When state planning authorities build new transportation infrastructure to accommodate automobile travel, they are both accommodating and reinforcing a vision of the good life that places high priority on individual mobility and that assumes that well-lived lives do not require that home, work, and the location of other daily activities be geographically proximate. Conversely, when New Urbanist planners seek to build neotraditional towns in which residents can access most places on foot, and ample public spaces that encourage informal social interactions, they, too, are invoking a particular conception of the good life.<sup>5</sup> At the local, regional, and state levels, decisions about the organization of space, the provision of transit, the establishment of building codes, and other components of the built environment are bound to reflect conceptions about what sort of life citizens will engage in on a daily basis. As the journalist Anthony Flint has succinctly put it, the ongoing public debate concerning sprawl is “uniquely revealing about who we are as a country.” He adds, “It’s about our politics and our culture and our ability to think collectively.”<sup>6</sup> Failing to acknowledge this point is, at the theoretical level, a mistake. At the practical level, ignoring this point means that unspoken assumptions about what the best way of life is can often become the basis for policy, without serious public deliberation about the worthiness of that way of life.

To recognize that debates about the built environment are also debates about the good life is to lay the groundwork for a more robust, inclusive, and

substantive dialogue concerning how competing normative values might best be balanced with one another in formulating and implementing spatial and transportation policies. A short list of values and goods that may plausibly be thought to be at stake in how communities are designed includes safety, privacy, convenience, mobility, beauty, order, economic efficiency, neighborliness, sense of community, civic attachment, gender equity, child-friendliness, respect for nature, tranquility, and social and economic inclusiveness.<sup>7</sup> Many contemporary critics (and some friends) of suburbia in general and sprawl in particular argue that contemporary spatial forms give excessive weight to certain of these values—those concerning private well-being—at the expense of those values concerning the civic and social dimensions of our communities.<sup>8</sup>

Explicitly identifying the variety of normative values at stake in urban planning decisions might help tilt the substance of these decisions so as to give greater weight to civic and social considerations. Equally important, the process of critically reflecting as citizens on what sort of communities we aspire to live in (and by extension, what habits and experiences of daily life we want to encourage) might deepen the legitimacy of public decisions about the built environment. Rather than conceptualizing the built environment as simply reflecting citizens' preferences and "choices," democratic theory suggests that public decisions about the built environment should reflect considered *judgments* by citizens about which competing values are to be prioritized in organizing space.<sup>9</sup> Such judgments are possible only after a process of public deliberation in which all competing values are put on the table, and in which citizens are compelled not only to see beyond their initial interests but also to critically reexamine their own preconceptions about what communities are for and what ways of life they wish to promote.<sup>10</sup>

## *Preliminaries II: Normative Arguments and Policy Diversity*

To insist that value questions be debated openly is not, of course, to suggest that there exist universal, determinate answers to such questions. One source of skepticism toward the notion that democratic societies can conduct substantive debates about the good life is the fear that majorities could impose their conceptions of the good upon unwilling minorities.<sup>11</sup> This concern is especially salient in the suburban sprawl debate; some critics of the contemporary anti-sprawl movement, such as Robert Bruegmann, have portrayed

critics of sprawl as high-minded elites anxious to force others to conform to their vision of the good.<sup>12</sup>

How might the danger of a single segment of society simply imposing its spatial preferences on others be avoided? First, it is precisely the *absence* of an explicit, values-driven debate about the shape of our built communities that has enabled the dynamics of automobile-oriented sprawl to emerge in metropolitan area after metropolitan area. Without public debate, unexamined assumptions about what constitutes a desirable community hold sway over zoning ordinances, incentive structures, infrastructure provision, and other policy mechanisms that influence the shape of urban development. Such policy measures influence the type of neighborhoods private developers are prone to build, leading developers to continue to build familiar car-centered developments rather than to attempt to offer a broader array of neighborhoods to prospective residents.<sup>13</sup> The all-too-familiar pattern of outward sprawl has lent a spatial monotony to the metropolitan United States that is at odds with the aim of providing a diverse set of spatial environments capable of satisfying a wide variety of individual and community preferences. Americans (with sufficient means) now can choose whether to live in cities, in near-in suburbs, or in far-flung exurbs, but (with only rare exceptions) they can't choose to live in a metropolitan area in which growth and development are systematically targeted toward maintaining a strong urban core or in which there is a rough balance of political power, economic opportunity, and educational quality between cities and suburbs.

Second, to embark upon substantive debates about the purpose of the built environment is not to assume that the goal should be to identify a one-size-fits-all balance between competing values. Different communities are likely to weigh competing values differently. It is inevitable that communities and regions with distinct cultural, geographic, demographic, and historical specificities will pursue different responses (or nonresponses) to sprawl, in terms of broad strategy and still more in policy details. It is possible and necessary to recognize this point and, at the same time, to maintain a critical perspective on such value choices, especially when there is good reason to suspect that the decision-making structures are themselves biased, flawed, or inadequate, from a democratic point of view. With more than 360 metropolitan areas in the United States, even if structures for regional decision making that met demanding conditions for democratic inclusiveness and equality of representation existed, it would be folly to suppose that deliberations about the competing values at stake in the debate on sprawl would fail to yield very diverse public decisions and policy outcomes.

Indeed, greater policy diversity at the metropolitan level might beneficially expand the range of choices citizens have concerning what kind of

urban environment they want to live in. Equally important, diverse policy outcomes might help produce better-informed judgments about the effects of various policy strategies. Dozens of plausible tactics to redress urban sprawl have been proposed (and, in an increasing number of cases, implemented), ranging from regional-growth boundaries to congestion pricing to developer-impact fees.<sup>14</sup> In many of these cases, the relevant policies are relatively untested.<sup>15</sup> In this circumstance, the possibilities for “policy learning” would be expanded by having each community implement a different strategy, to one degree or another.<sup>16</sup> The existence of alternative strategies in one state or region may affect policy choices in another region by expanding the range of options policymakers consider plausible. As experience with such strategies grows, evidence regarding the effectiveness, shortcomings, and side effects of sprawl-containment policies will accumulate, which may in turn help citizens and officials make better-informed policy choices.

With respect to the spatial environment, policy variation at the local level is thus inevitable and also, at least arguably, desirable on normative grounds: there is little or no danger that decentralized policy experimentation addressing sprawl will lead to the undemocratic imposition of a particular urban form upon an unwilling public. Acknowledging these points is not inconsistent, however, with recognizing that sprawl is also a national issue—and that local spatial environments are quite substantially shaped by state and national policies. National policies such as mortgage deductions for homeowners, transportation infrastructure and funding, assistance to cities, parking subsidies, and federal housing-development initiatives all impinge upon local spatial environments. State policies regarding transportation, public-good provision, and assignment of municipal powers also help shape urban environments in critical ways. Such larger-order policies affecting sprawl often reflect, at least in part, the influence of material interests. But they also reflect value choices, and both the policy choices themselves and the values underlying them have too often escaped critical scrutiny.

Public debate about “sprawl” thus occurs at multiple levels of government and hence at multiple levels of generality. At the most immediate local level, localities, cities, and regional bodies are directly engaged in zoning, project-approval debates, and other forms of public planning. Very specific tradeoffs between different development possibilities occur at this level. At an intermediate level, states set transportation-planning priorities, make decisions about the disposition of state-owned land, and grant municipalities the power to engage in local-level planning. States may choose to use this influence to steer municipalities toward a particular set of spatial policies (as Maryland has done since 1997).<sup>17</sup> It is at these two levels of government that

debate—and action—about how to deal (or not deal) with suburban sprawl has been most sustained.<sup>18</sup> At the national level, the federal government can steer (either coherently or haphazardly) the behavior of individuals, developers, and local governments in ways that do or do not favor particular habitation patterns.

To this extent, a national debate about whether federal policies should favor one type of built environment over another, perhaps by lending support and aid to states and metropolitan areas pursuing “smart growth”-type policies, or instead simply remain as neutral as possible and allow such decisions to be made at lower levels of government is appropriate. Indeed, much greater debate about these questions at the national level would be desirable.

### *To Debate Sprawl Is to Debate the Good Life*

Public decision making pertaining to the spatial structure of built communities thus reflects underlying ideas about the good life: what the proper balance between private and public space is, which values a community should seek to maximize, what pitfalls communities should seek to avoid. These ideas in turn reflect and express underlying normative political philosophies: ideas about the purposes and proper scope of political association. Does the state have the right to “interfere” in market transactions (such as land deals) for the sake of efficiency, equality, or some other social value? Should communities seek to promote a particular way of life, or attempt to remain “value neutral”? Should policy be guided by a desire to maximize the private well-being of individual citizens, or should the attainment of common goods take priority in some circumstances? Such questions lie just beneath the surface of the public debate about sprawl.<sup>19</sup>

A principal aim of this book is to assist scholars, policymakers, and citizens in thinking through the core values at stake in the debate about suburban sprawl, and thereby enhance prospects for informed, democratic judgment about sprawl and sprawl-related policies. The book proceeds by posing four fundamental questions:

- Is sprawl efficient?
- Is sprawl fair?
- Is sprawl conducive to democratic citizenship?
- Is sprawl ecologically sustainable?

Answering these questions requires a two-fold approach. First, we must explain what we mean by terms such as “efficiency” and “fairness,” and why we

think such values are important. It is my contention that the practical argument about sprawl is inextricably tied to larger-order debates about politics and its purposes. What we think about sprawl will depend in large measure on what we think is important in political life, and on what we think the broad aims of public policy should be. Consequently, this book investigates and critically compares how three central strands of contemporary normative political thought—utilitarianism, liberal egalitarianism, and civic republicanism—assess sprawl as a public concern. Each of these normative views provides a critical framework for evaluating U.S. society, and taken together, these traditions have supplied much of the vocabulary of modern politics, including our conceptions of “efficiency,” “fairness,” and “citizenship.” But each tradition offers a distinct understanding of politics, its purposes, and its possibilities—distinctions that turn out to be quite important in evaluating the phenomenon of sprawl. Consideration of these theoretical perspectives both deepens our understanding of what is at stake in the sprawl debate, and helps clarify the profound moral tradeoffs the U.S. public faces in charting a course to manage sprawl.

Second, we must consider relevant empirical evidence that will allow us to assess how well or how poorly sprawl fares when judged by these norms. My principal tool in testing key claims about sprawl’s effects on social and civic well-being is detailed analysis of the Social Capital Community Benchmark Survey (SCCBS). The SCCBS is a unique survey of more than 29,700 Americans that was conducted by the Saguaro Center on Civic Engagement at the Kennedy School of Government (Harvard University) in 2000. Roughly 90 percent of the survey respondents are clustered into one of forty-one geographic communities representing all regions of the country, metropolitan areas of various sizes, and rural areas; the remaining cases consist of a representative national sample. The SCCBS contains geo-codes allowing us to match individual cases with 2000 census data on local spatial and demographic characteristics, measured at the census tract level. This rich data set enables us to systematically explore the relationship among four spatial features commonly associated with sprawl—population density, neighborhood age, automobile dependence, and suburban residence—and a variety of important goods, including local quality-of-life, social trust, political ideology, and political participation.<sup>20</sup>

This book thus departs from a mode of political theorizing that is performed in the abstract, independent of any particular historical situation or the facts of any given case. What we wish to explore here is how three prominent public philosophies might help us think both critically and constructively about a concrete issue facing contemporary Americans; namely, whether we ought to continue with the pattern of urban development that has dominated for more than half a century or instead fashion alternatives to

the continued outward expansion of our metropolitan areas, given what we know about the relationship between this pattern of development and the goods we care about. The book also departs from many conventional empirical studies, in that the empirical analyses undertaken here are explicitly driven by normative concerns, and the results of such analyses are explicitly analyzed through the lenses of those same concerns.

### *The Argument, in Brief*

The overall empirical picture drawn in this book can be summarized this way: Sprawl appears to be ecologically unsustainable, inconsistent with democratic theories of justice, and inimical to the active practice of citizenship—yet Americans (by and large) like it anyway. Key elements of sprawl are linked to reduced levels of specifically political participation, especially more confrontational forms of political participation. But sprawl is not apolitical in the usual sense; rather, it is part and parcel of a political regime characterized by systemic social inequalities mediated in part by geography. I show how sprawl is both symptom and cause of fundamental inequalities tied to spatial location, and how suburban residence is linked to politically conservative attitudes that resist efforts to rectify those inequalities. Finally, I demonstrate how sprawl—and in particular, automobile-centered urban development—is deeply complicit in America’s prodigious generation of climate-threatening greenhouse gases.

Taken together, these arguments present a powerful brief against sprawl and its consequences. But to stop here would be to present an intellectually incomplete and politically unhelpful one-sided argument. I also show that key elements of sprawl are *positively* related to two widely valued goods; namely, social trust and local quality-of-life. Sprawl—in its fundamentals, if not in every excess—does seem, on average, to satisfy the widespread desire for secure, pleasant neighborhoods.

Considering the advantages and disadvantages of sprawl reveals a profound, deep-seated tension between several core democratic ideas (equality, robust political engagement, ecological sustainability) and two fundamental features of the American way of life: the aspiration to live in a comfortable, convenient spatial environment, safely removed from social problems, and the habitual prioritization of private satisfactions over public concerns. Navigating this tension is a particularly acute challenge for versions of liberal political theory that stress the primacy of individual choice and the importance of respecting individuals’ decisions about where and how to live. In this view, the state should remain as neutral as possible with respect to various ways of

life. But it is difficult to see how public policy can make substantial alterations to sprawl—or secure other goals that liberals value, including equal opportunity, democratic engagement, and sustainability—without challenging the norms and lifestyle practices characteristic of life in the United States today.

### *Public versus Private Ideo-Logics: The Libertarian Challenge*

As we shall see, there are significant differences among the utilitarian, liberal egalitarian, and civic republican approaches to politics and public policy. All three, however, might reasonably be counted among what Alan Altshuler describes as “public ideo-logics”—worldviews that stress the significance and priority of the general good over purely privatistic concerns.<sup>21</sup> Indeed, the differences among these positions might be regarded by some observers as intramural debates overshadowed by the more fundamental dispute between public “ideo-logics” of all types and what Altshuler terms “private ideo-logics.” All three public ideo-logics considered here, for instance, provide grounds for challenging or overriding individual choices to secure other goals, in some circumstances. Private ideo-logics, in contrast, insist on the primacy of private choice and market processes in assessing public policy.

Libertarianism is the example par excellence of a private ideo-logic, and libertarian perspectives are highly influential in practical debates about land use policy. Consequently, some elaboration upon why I reject the libertarian approach to evaluating sprawl is warranted. That task will consume the remainder of this introductory chapter.

The thrust of the libertarian position is this: individuals as a general rule have strong rights to use (or not use) their private property in any way they see fit, and any limitation of these rights by the state, in the form of regulation, taxation targeted to favor some land uses rather than others, or prohibitions against certain uses of land represents an infringement upon and effective reduction of individuals’ liberty. Land use policies that might affect liberty thus must meet a very high standard of public necessity. Since a defining aim of government is to protect private property, policies that unnecessarily restrict liberty for the sake of some alleged public good are an abuse of government’s purposes.

As Joshua Cohen points out, libertarian thinking falls into two main camps: possessive libertarianism, which emphasizes the moral claims of property rights, and choice-based libertarianism, which stresses the desirability of maximizing the scope of individual choice.<sup>22</sup> It is incumbent upon partisans

of any of the three public ide-ologies at the center of this inquiry to address both sorts of arguments.

### POSSESSIVE LIBERTARIANISM, STRONG AND WEAK

Possessive libertarianism is based on the thesis that government is fundamentally a mechanism to defend preexisting property rights. This thesis, in turn, relies on a notion of a natural right to property. In a hypothetical state of nature prior to the formation of government, it is posited, individuals may legitimately acquire a right to a given piece of land by investing the effort to cultivate and develop the land. A prime aim of government is to protect this natural right by protecting the landowner–user from unwanted incursions, whether from persons internal or external to the community.

Acceptance of this line of reasoning, derived initially from John Locke and rearticulated in contemporary political thought by thinkers such as Robert Nozick, has profound consequences for public policymaking. It is important, however, to distinguish between strong forms of the possessive argument associated with Nozick, and the somewhat weaker version associated with Locke. The strong argument made by Nozick holds that so long as no one is actually made worse off by my taking possession of a piece of property, then I am entitled to claim full possession of that property.<sup>23</sup> Individuals thus can claim an individual right to property as a trump against almost all taxes and regulations, even those that would unambiguously promote the public good.<sup>24</sup>

The weak argument also allows for individuals to establish a moral claim to property prior to the formation of government but acknowledges that such moral claims can be outweighed by other considerations. Locke, for instance, conceives of the world as a common inheritance granted to humanity by God (not as originally unowned) and presumes that “men, once being born, have a right to their preservation,” a right that limits claims to property; consequently, Locke held that those with a surplus of property have a moral obligation to assist the needy.<sup>25</sup> As Jeremy Waldron puts it, the “special right” to property that Locke espouses is outweighed by a “general right” of all people to subsistence.<sup>26</sup> Likewise, Locke places limits on the scope of just acquisition of property: for instance, no one has the right to claim a piece of property and then waste or discard its fruits, or hold the property for the sole purpose of denying others its use; individuals have no moral claim to land they do not make productive use of. Famously, Locke also argued that initial acquisitions of property in the state of nature should leave “enough and as good” resources for others to access.<sup>27</sup>

Thus, while Locke did envisage respect for preexisting property rights as setting boundaries on what governments can do, those rights were not

absolute and were intended to be compatible with and conducive to the broader common good. One of Locke's most powerful arguments on behalf of a right to property contends that private property rights promote the general prosperity by encouraging the cultivation and rational development of land and resources.<sup>28</sup> More generally, Locke accepts the legitimacy within civil society of both taxation and state regulation of property aimed at advancing the public interest.<sup>29</sup> Whereas Locke was concerned with preventing *arbitrary* expropriation or taxation of land by unjust rulers unconcerned with the common good, Nozick was concerned with minimizing taxation and regulation as such, even when imposed by democratic publics acting for common purposes.

These are significant differences, and it is not obvious that the sorts of regulations of property accepted as morally legitimate by contemporary adherents of "public ideologies" of land use violate Lockean principles. But Locke's view is frequently invoked to justify a sweeping view of property rights that gives owners near-absolute rights regarding how they dispose of their property, and that obliges government to compensate property owners not just for the existing value of property but for the value of potential future uses that might be affected by public regulations.<sup>30</sup> Thus, there are good reasons to push further and both (1) reject even the weak possessive account of the origins of property rights and (2) question the relevance of the natural-rights account (whether in its strong or weak form) as a binding constraint on the regulation of contemporary urban property.

## THE CONVENTIONALITY OF PROPERTY RIGHTS: THEORY

Consider first the case against a natural rights conception of property. As Jean-Jacques Rousseau insisted, there is a critical distinction between *possession*—the fact that one happens to occupy a particular piece of land—and *property*, which is a legally recognized and enforceable claim of an individual to a particular plot.<sup>31</sup> In this contrary view, property rights are not prior to, but rather the creature of, the state.

Why should we accept this alternative view? Consider the nature of property. Property rights fundamentally involve the capacity to *exclude* others from using a piece of land or a particular manmade artifact (such as a house); consequently (and ironically), they involve quite literal deprivations of liberty for those excluded. But in a hypothetical state of nature prior to the existence of government, the lucky soul who happens upon an unusually favorable piece of land and develops it can have no reasonable expectation that others will stay off that land just because he is already there. On the contrary, he can

expect physically stronger people—or people with a larger private army—to periodically attempt to displace him from his favored spot.

And why not? There is no prior relationship between persons in the state of nature. That being the case, there is no reason that one individual should accept as valid another person's property claim while receiving nothing in return, particularly if an individual or group is significantly disadvantaged by that claim. It is only the existence of government that provides the landholder–user a reasonable expectation that his exclusionary claims on some particular piece of property will be respected by strangers. Put another way, it is only the *acknowledgment of the legitimacy of a rights claim by a wider community*—not the mere act of claiming a right—that establishes a binding right.<sup>32</sup> An explorer may claim half of a continent in the name of his king, or I may claim a particular bench in Central Park as my “special place” that no one else can use, but neither of us can reasonably expect that claim to carry any effective force or legitimacy unless or until it is accepted and acknowledged by the wider community of persons affected by the claim.<sup>33</sup>

The advocate of natural property rights might acknowledge that the institution of government is necessary to enforce individuals' claims to property but nonetheless insist that persons who make productive use of land have a moral claim to a property stake and that states *should* respect that claim. In short, having dismissed the notion that people can have an enforceable right in the absence of government, natural-rights claims might be reframed as a normative argument about property claims that government *should* respect. Because I work the land and mix my labor with it, the state should honor my claim to a property stake. Yet even this formulation of the natural-rights claim to property is open to serious question.

First, even granting a natural right to benefit from one's own labor, it is unclear why the combination of labor with land should give one the right not simply to the resulting product (i.e., what is grown) but to the land itself. Consider one of Locke's key arguments for allowing an individual to control this land, which is that the land has scarcely any value apart from what human labor adds to it. This assertion is, at best, an argument for allowing proprietorship of actively cultivated agricultural land, not for permitting unimpeded private control of urban land (which does have inherent economic value). Moreover, it is not clear that the argument persuasively establishes an exclusive right to property: instead of allowing the laborer total control over the relevant property, we might believe (as Waldron puts it) that “the appropriator should acquire a substantial interest in the object he has worked on, roughly proportionate in some sense to the labour he has expended on it, but that this should not be deemed to exclude altogether the common rights of other men.”<sup>34</sup>

Second, the strong natural-rights formulation assumes that the individual's labor-based claim is the *only* morally relevant consideration in judging who should benefit from the property in question. As we have already observed, Locke specifically rejects this idea. Even Nozick (pushed sufficiently) relents on this point, acknowledging that in the case of a desert island or a catastrophe that leaves an individual in exclusive control of an essential resource, individual property claims must be superseded by the claims of a broader common good. Having conceded on the principle, it is not clear why we should regard individual property claims as automatically trumping community considerations in less dramatic cases where substantial community interests are being damaged by the existing pattern of appropriation.<sup>35</sup> (Communities have a legitimate moral interest, for instance, in ensuring that the land and resources of a given community do not fall into the possession of a narrow group of persons; in short, communities have a legitimate interest in not reverting to de facto feudalism, a possibility not precluded by strong Nozickean property rights.)<sup>36</sup> The acknowledgment that a "natural" claim to property is not absolute in all cases necessarily forces us back to the view that property claims in general gain their moral force not merely by assertion but by the recognition of such claims by the wider community of persons affected by the claim.

To put it another way, the would-be property holder is not the best judge of his own claim to a property right; judgment is reserved to the community that will enforce any claims that arise from individuals' holdings prior to the formation of political society. As Waldron points out, it seems morally odd, indeed bizarre, to hold that it is possible for a single person, via his or her own self-regarding act (that of initially acquiring property), to impose a morally binding obligation on all other persons for all time (namely, the obligation to respect both the initial owner's claim to property and the claim of all succeeding owners to whom the property may be transferred). Any such argument runs counter to the commonsense view that while we may have general moral obligations (i.e., not to cause harm to other people), and while we may freely assume further specific moral obligations (such as by the act of promising, or the act of getting married and having children), we do not have the ability to impose specific moral obligations on other people without their consent.<sup>37</sup>

Third, the moral intuitions about property upon which Lockean natural-rights theory trades can be satisfied much more persuasively by accounts that view property as a social convention. Locke is sometimes read as providing a *desert*-based argument for natural property rights; but if desert is to be the core moral principle undergirding a system of property rights, then there is no reason that only the labor and effort of the *first* person to work on a property, and not that of all subsequent others, should be morally privileged. Similarly,

partisans of natural property rights sometimes stress the importance of respect for the legitimate expectations of owners and the importance of having security that one's rights will be honored; but there is no reason that property rights understood as a social convention whose precise content is defined by the state cannot fulfill those expectations. Indeed, doing so is the very purpose of modern property law. Fourth, as we have noted, Locke (like Nozick) stresses the connection between the establishment of property rights and the promotion of general prosperity. But if general prosperity is the most important consideration, it is not obvious that providing absolute rights to first acquirers of property, rights that the state must respect, is the best way to promote such prosperity, particularly if there is good reason to think that vast inequalities that deny many people the resources to meet their own needs is a likely result of such a system.<sup>38</sup> Finally, property rights are often regarded as important because of their role in promoting individual freedom and autonomy. But there is no reason that a conventionalist account of property cannot support those goals, and there is indeed good reason to think that promoting a broader, more general dispersion of property than a strict natural-rights account permits is a more plausible strategy for realizing freedom and autonomy for each and all.<sup>39</sup>

#### THE CONVENTIONALITY OF PROPERTY RIGHTS: HISTORY AND PRACTICE

In any case, the notion that absolute property-rights claims in the contemporary United States can be justified by appeal to supposed primordial natural-rights claims is wildly implausible. First, consider the obvious fact that possession of the North American continent by the United States of America was acquired through political action involving no small amount of physical force and violence.

Second, as Elizabeth Anderson and others have pointed out, numerous crucial features of capitalist economies—such as the limited-liability corporation and patent law—depend upon manifestly artificial creations of government policy.<sup>40</sup> With respect to urban land in particular, modern real estate markets depend fundamentally on the establishment of a public network of transportation, in addition to the establishment of government conventions regarding such matters as lending and financing rules, building and inspection standards, tenant rights, property subdivision, easements, and zoning.<sup>41</sup> Such rules are not hindrances upon the market; rather, they help constitute it.

Third, the value of much private property in the United States is bound up in or shaped by public goods and public activities of various kinds. This is especially true in urban land markets; holders of property located near a

public park, for instance, might be expected to enjoy a boost in the value of their holdings relative to comparable property located far away from such publicly generated amenities. As Liam Murphy and Thomas Nagel have pointed out in the general case of taxation of income and wealth, it is simply illogical for such property holders to claim a right to be exempt from taxation or regulation, given that their very enjoyment of property is dependent upon the existence of such a system of taxation and regulation.<sup>42</sup> This point is generalizable, to the degree that all landowners benefit from the existence of government and of a stable system of property.

Modern property rights, in short, are the creation of government. Therefore, government action to limit or redefine the scope of such property rights in order to advance the public good carries a fundamental legitimacy. Why? Because property rights are not ends in themselves but rather instruments for advancing a common good. Property rights are a social creation whose fundamental purpose is to advance important public goods, such as social peace and economic productivity. To be sure, action that redefines or limits such rights must be enacted via legitimate democratic mechanisms and should not be undertaken for capricious or arbitrary reasons divorced from public benefit. But property holders have no inherent “natural” right to use their property in any way they see fit or to extract maximum economic value from such property unless or until the community at large grants such permission.

This way of understanding property assumes that the desirability of any particular proposal to expand, alter, or reduce regulations on property must be based on the effects such action will have on the larger public good. This understanding is particularly appropriate in the case of urban land markets. Quite obviously, there is not “enough and as good” land remaining for all to enjoy in U.S. metropolitan areas; hence, even those who accept a Lockean account of just property acquisition have strong reason to accept the legitimacy of nesting property rights within a broader set of policies aimed at better securing the common good.

There can be little question that the Lockean view of property played an important part in the thinking of the framers of the United States Constitution; an explicit aim of James Madison was to defend both property, as such, and *inequality* of property. Nonetheless, as it has evolved, the constitutional law tradition in the United States has increasingly recognized that private-property rights are not absolute but are subject to limitations established by government for the sake of preserving and promoting the common good.<sup>43</sup> Constitutional law in the United States upholds the right of the government to tax land and regulate its use, and also to appropriate private land for public purposes, with due compensation to owners.<sup>44</sup>

Beyond this, as the property rights scholar Joseph Singer has illustrated in chapter-and-verse detail, law frequently must adjudicate between competing property-rights claims, as when one landowner drains a large amount of water from beneath his or her own land, with the effect of draining the local water table and affecting the value of neighbors' properties. Property law is therefore fundamentally a social and political convention, not simply the neutral application of preexisting, self-evident moral claims to property. Libertarian views of property, Singer charges, fail to take seriously the fact that property owners do not live in a vacuum but must live *with other people* and, hence, under a set of rules to adjudicate conflicting claims. Likewise, libertarianism fails to recognize that property rights are fundamentally relations between *persons*, not relationships between persons and things.<sup>45</sup>

Singer's assessment reflects the views of many contemporary property-rights theorists who regard property as fundamentally a social convention adopted to promote particular public goods. But the stability of this understanding of property cannot be taken for granted: libertarian activists have aggressively promoted initiatives to require governments to compensate property owners for economic losses (or future gains denied) due to regulatory requirements (even when no appropriation is involved). If successful, the "regulatory takings" (or "property rights") movement has the potential to seriously weaken the practical capacity of government to regulate property, including regulations aimed at slowing or reversing sprawl.<sup>46</sup>

## CHOICE-BASED LIBERTARIANISM

Quite apart from the possessive argument on behalf of an inviolable right to property, libertarians also appeal to a second sort of argument, focused on the desirability of maximizing choice and freedom of action.<sup>47</sup> Maximizing the scope of choice available to any individual shows respect for individuals' ability to guide and direct their own life. Constraints on choice should therefore be viewed skeptically and must meet a very high threshold of necessity to be considered wise policy. Milton Friedman is an exemplar of this variety of libertarian argument; notably, the plausibility of his view does not depend upon acceptance of a natural-rights account of property but simply upon a general presumption that individual autonomy and liberty are best enhanced by unconstrained market transactions.<sup>48</sup> In the case of land use, choice-based libertarianism presumes that individual "privacy, mobility, and choice" is best ensured by an unfettered market.<sup>49</sup>

Partisans of public ideologics have four possible responses to this view. One response is to express general agreement with this perspective but to go

on to argue that libertarian policies do not necessarily follow from a general commitment to expanding choice for each and all. Expanding choice for all might require restricting the unlimited privileges of a few, redistributing elite-controlled resources, and providing basic social goods to each and all. In short, expanding the domain of choice might require expanding what traditionally have been called “positive” freedoms.

That argument is surely an important one, but it is of limited direct relevance to questions about land use and sprawl. A second, more specific response calls into question the assumption that current socio-spatial patterns are simply a product of market forces responding to individual preferences. Instead, as Jonathan Levine has stressed, sprawl has been endemically shaped by a variety of government interventions, including subsidies at the federal level and restrictive, exclusionary zoning at the local level. In short, the practical policy choice we face is not between a supposed free market and a planned regime but between one form of planned regime and another. Consequently, a choice-based argument cannot be used to defend the policy status quo.<sup>50</sup>

A third possible response follows closely on the heels of the second. As already noted, there is a fundamental distinction between “choices” about land use and choices about diet or lifestyle or sexual partners. Land use and development, by their very nature, occur in time and space, and each decision about how land will or will not be developed affects not only the person making the choice but also everyone else presently in the vicinity, as well as those who will use the space in the future. Dropping a new shopping mall with a vast parking lot into a previously undeveloped rural community will fundamentally change the nature of that community. Consequently, the lifestyle—and “choices”—available to an entire community can be drastically affected by the action of a single individual, firm, or developer. It is as if one took an eight-mile jog, and each of one’s neighbors got sore knees. Because individual land use decisions can impose costs on others against their will, the state is justified in regulating such decisions.

The most far-ranging critical response to the choice-oriented libertarian, however, challenges the very assumption that land should be treated primarily as a privately held commodity. As Karl Polanyi notably argued, land (like labor and money) does not fit the classical definition of a commodity—that is, an object produced *for* sale. This is true in two senses: first, land is obviously not a product of human labor; second, its fundamental purpose is not to be sold for private gain but rather to be lived upon. If extraterrestrial life forms were found, no one would regard it as legitimate for an enormously wealthy human to buy all the Earth’s land and then resell it to a buyer from another planet at a profit.<sup>51</sup>

Consequently, persons who happen to hold title to a plot of land should be treated (and should regard themselves) as stewards of the land, rather than owners with an unrestricted right to exploit the land for private advantage. As Timothy Beatley has forcefully argued, the market-based normative paradigm dominant in U.S. land use practices is “largely economic, wrongly narrow in scope, and morally indefensible for many, if not most, land use conflicts.”<sup>52</sup> A stewardship conception of land suggests that landowners have additional ethical responsibilities beyond refraining from harming others or the public at large. These responsibilities include protecting both the land itself and the ecosystems of the land, being mindful of the needs and interests of future generations, and not exercising control over land to deny others the means to fulfill their basic human needs. In short, neither private landowners nor the public should treat land as simply an instrument for generating economic value.<sup>53</sup> Rather, land use policy and practice must take into account a much broader range of ethical considerations that derive from the fact that land is not merely a commodity produced for private sale but a shared resource whose use or abuse affects the conditions of life for the entire community.<sup>54</sup> Hence, advocates of a public land use logic can coherently reply to choice-based libertarians as follows: choice and economic efficiency are indeed praiseworthy goods, but they are not the only goods at stake in decisions about land use and development, or in decisions about the spatial design of the built environment.

This book assumes that both possessive and choice-based libertarian arguments fail as an account of private property and the moral issues arising from its use and regulation. But to stress that choice and individual liberty are not the only goods at stake in a given policy arena is hardly to conclude that such goods are unimportant or can be safely neglected. With respect to suburban sprawl, the central moral question is this: given the interdependence implied in metropolitan forms of life, and given that the Jeffersonian dream of wholly independent landowners unbothered by one another is not a realistic aspiration in our urbanized society, how ought we live *together*?

Answering that question requires taking into account not only our commitments to liberty and freedom but a range of other aspirations, including efficiency, social justice, democratic engagement, and ecological sustainability. The primary aim of this book is to illuminate how U.S.-style suburbanization—and by extension, the American way of life itself—affects this broader set of goods, and thus to clarify the moral choices facing the U.S. public as it charts a metropolitan development path for the twenty-first century.

We begin, however, with a more mundane but absolutely essential question: what exactly is sprawl, and how can it be measured?