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Is There Hope for HOPE VI?: Community Economic Development and Localism

NGAI PINDELL*

They come in an unrelenting procession. They march to the front of a building, have a few hushed words with a young man, push through the turnstiles, past the security booths, past the laughing children playing in the hallways and into the dank, forbidding stairways where they buy cocaine and heroin.

....

Indeed, the rules of ordinary neighborhoods hardly apply here. With its three high-rises and 133 low-rise apartments packed into 11 acres, Flag is more like a small city, striking in its lawlessness. Squatters have seized vacant apartments, and the number of official tenants—1,200—is swelled by people illegally doubling up.¹

For a month in 1993, a newspaper reporter visited Flag House Courts, one of Baltimore's most notorious high-rise, public housing projects. He recorded the story of a six-year old girl who had fallen eight stories down the elevator shaft after attempting to exit an elevator stuck between floors.² The reporter followed the struggle of a teenager trying to avoid the fate of

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¹ Michael A. Fletcher, *Series: No Way To Live Flag House Courts*, BALT. SUN, May 9, 1993, at A1, 1993 WL 7362912.

² Michael A. Fletcher, *Disrepair Breeds Danger at Flag House Courts*, BALT. SUN, May 10, 1993, at A1 [hereinafter *Disrepair Breeds Danger*], 1993 WL 7363247.

similar men his age—in a span of 48 hours, “three young men from Flag died in three separate murders.”³ He also wrote about exposed heating pipes that scald young children, sewage that bubbles up into one tenant’s sinks and bathtubs, and maggots that fall out of cracks in the plaster in the summer.⁴

Flag House Courts, which opened in 1955, crumbled in seconds on February 10, 2001 as part of Baltimore’s HOPE VI revitalization plans.⁵ The new development, a community with a combination of public housing, market-rate rental, and homeownership units, will resemble Baltimore’s other HOPE VI projects that are already, or nearly, completed.⁶ “[S]treet[s] of trimmed lawns and tidy townhouses, the kind found in suburban subdivisions and trendy urban developments[,]” will replace this stark, troubled high-rise.

HOPE VI is a competitively funded, public housing redevelopment program with several competing goals.⁸ First, it seeks to revitalize deteriorated inner city communities. Second, the program attempts to transform dense, high-rise public housing that has housed the lowest income tenants

³ Michael A. Fletcher, *Good Kid on Bad Corner Toils to Mend His World*, BALT. SUN, May 11, 1993, at A1, 1993 WL 7363273.

⁴ *Disrepair Breeds Danger*, *supra* note 2.

⁵ Laurie Willis, *Goodbye to a Place that Many Called Home: Residents Remember Good Times and Bad in Flag House Courts*, BALT. SUN, Feb. 11, 2001, at A1, 2001 WL 6150628.

⁶ HOPE VI projects in Baltimore include Lafayette Courts, Flag House, Heritage Crossing (formerly George B. Murphy Homes/Emerson Julian Gardens), Lexington Terrace, Hollander Ridge, Broadway Homes, and Fairfield Homes. Hous. Res. Found., *Hope VI Profiles Sorted by PHA: Hope VI Sites*, at http://www.housingresearch.org/hrf/hrf_SiteProfile.nsf (last visited Nov. 23, 2002) (on file with the Connecticut Law Review). The Housing Research Foundation is a private, nonprofit organization researching and collecting information about public housing generally and the Hope VI Program particularly.

⁷ M. Dion Thompson & Laurie Willis, *‘Hope’ is a Program, Street, State of Mind; Homes: Former Residents of Baltimore’s High-rise Public Housing are Excited about the Communities Built to Replace It*, BALT. SUN, July 11, 2002, at A1, 2002 WL 6963445.

⁸ Harry J. Wexler, *Goals, Strategies, and Midterm Lessons of HUD’s Urban Revitalization Demonstration Program*, 10 J. AFFORDABLE HOUS. & CMTY. DEV. L. 195, 201 (2001). The HOPE VI program has been in operation since 1993 and is administered by the Department of Housing and Urban Development (“HUD”):

HOPE is an acronym for Homeownership and Opportunity for People Everywhere. Initially enacted as part of the Cranston-Gonzales National Affordable Housing Act of 1990, it consisted of three homeownership programs: HOPE I—for tenants of public and Indian housing units; HOPE II—the sale of units in multifamily projects owned by HUD, the Farmers Home Administration, the Resolution Trust Corporation, or state or local governments; and HOPE III—the sale of single-family units in scattered site projects owned by HUD, the Veterans’ Administration, or the Rural Housing Administration, or the Resolution Trust Corporation, among others. The 1990 Act also contained HOPE IV, a demonstration program to test ways to combine section 8 certificates and vouchers with support services to help the frail elderly live independently. HOPE V, the Youthbuild program, was enacted as part of the Housing and Community Development Act of 1992 to expand job opportunities for disadvantaged youth by training them to construct housing for low and moderate income families.

Id. at 228 n.9.

into developments that are more integrated with surrounding communities in terms of architecture, economics, and aesthetics. Third, the program aspires to provide public housing residents opportunities for social and economic mobility through improvements in physical design and program offerings.⁹ The HOPE VI design encompasses demolishing existing “distressed” public housing developments, rebuilding these developments with fewer public housing units, and housing the remaining former tenants of the rebuilt developments elsewhere¹⁰—either in other public housing developments or through Section 8 vouchers.¹¹

HOPE VI will have a significant impact on affordable housing. Through grant awards totaling \$4.85 billion,¹² approximately 115,000 units of public housing have been, or are scheduled to be, demolished across the country.¹³ HOPE VI represents an intermediate step in housing and community development policy in a trajectory towards housing policies that favor economic, spatial, and civic engagement with surrounding communities. The challenge of the HOPE VI program, however, is ultimately how it addresses the root causes of concentrated poverty and racial segregation. In some ways, the program is an effective step toward breaking down the structural barriers to integration. HOPE VI policies include interaction with the adjacent city by employing principles of New Urbanism, aspiring to move public housing residents into areas of the city outside of traditional public housing communities, and expanding opportunities for the private market to participate in the traditionally public sphere of affordable housing production.¹⁴

In other ways, however, HOPE VI falls short of its aggressive goals of

⁹ See *infra* Part I.

¹⁰ *Id.*

¹¹ 42 U.S.C. § 1437f (2000). The Section 8 program was created by the Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633. It provides a rent subsidy based on income, and allows recipient tenants to rent housing in the private market. See BARRY G. JACOBS, HANDBOOK OF HOUSING AND DEVELOPMENT LAW 3-1 to 3-86 (2002) (providing a detailed examination of the Section 8 Program); CHARLES E. DAYE ET AL., HOUSING AND COMMUNITY DEVELOPMENT 143-52 (2d ed. 1989) (providing a brief overview of the major components that comprise Section 8 housing assistance).

For general descriptions of the HOPE VI program, see Wexler, *supra* note 8, at 201-03; Michael S. Fitzpatrick, Note, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD'S Newest Big Budget Development Plan*, 7 GEO. J. ON POVERTY L. & POL'Y 421, 435-39 (2000) (arguing that although well-intentioned, the HOPE VI program fails to reach the goal of housing the poor).

¹² U.S. Dep't of Hous. & Urban Dev., *HOPE VI Program Authority and Fund History* [hereinafter *HUD Fund History*], available at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/history.cfm> (last visited Oct. 18, 2002) (on file with the Connecticut Law Review).

¹³ NAT'L LOW INCOME HOUS. COALITION, 2002 ADVOCATES' GUIDE TO HOUSING AND COMMUNITY DEVELOPMENT POLICY, available at <http://www.nlihc.org/advocates/hopevi.htm> (last visited Oct. 18, 2002) (on file with the Connecticut Law Review).

¹⁴ See *infra* Parts II-III.

moving from isolated public housing communities to fully integrated¹⁵ communities. The program raises concerns about the effects of race consideration (or lack of consideration) in policy formation, the extent of policy engagement with genuine structural barriers to integration, and the connection of policies to market-based foundations. HOPE VI illustrates the potential of housing policy to move beyond traditional place-based community assistance to a model of communities engaged with, and defined by, surrounding communities consistent with a postmodern spatial conception. HOPE VI also demonstrates the shortcomings of a program that does not address the root causes of economic and racial segregation.¹⁶

The HOPE VI program should be at the center of the debate between race-based and race-neutral remedies to eliminate the societal effects of housing discrimination. While the program goals of *income* deconcentration and integration are prescribed in detail in the statute and regulations governing HOPE VI, goals of *racial* deconcentration and integration are amorphous and diffuse. This lack of specificity regarding racial desegregation reflects current judicial suspicion towards race-based remedies.¹⁷ The danger of this approach is that policies that do not engage the structures of community disadvantage in terms of race cannot dismantle those institutions and policies formed using race as an explicit criterion. In this case, the failure of HOPE VI to account adequately for race as a primary cause of current, pervasive residential economic and racial segregation threatens the program's short and long term success.

In fact, recent changes in public housing law through HOPE VI and the Quality Housing and Work Responsibility Act ("QHWRA")¹⁸ reinforce racially segregated housing patterns and communities' efforts to exclude "undesirable" populations. Given this country's long history of legal and policy decisions that thwart the efforts of poor persons and minorities to secure better housing opportunities, HOPE VI is a lost opportunity to accord these disadvantaged populations true improvements.

This Article analyzes the implications of the HOPE VI program for the future course of housing policy by incorporating theories of community

¹⁵ I will expand on the varied meanings of the term "integration" in the course of this Article. Used at this point, I mean to use it in its broadest sense—an inclusion within a larger community on a number of factors, including social, racial, and economic.

¹⁶ See NAT'L HOUS. L. PROJECT ET AL., FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM i-iv (2002) (arguing that the ambiguity in the definition of severely distressed public housing leads to an inability to accurately evaluate the programs effectiveness), available at http://www.nhlp.org/false_hope.htm. (last visited Nov. 1, 2002) (on file with the Connecticut Law Review).

¹⁷ See *infra* note 200 and accompanying text.

¹⁸ Quality Housing and Work Responsibility Act (QHWRA) of 1998, Pub. L. No. 105-276, 112 Stat. 2518 (codified at 42 U.S.C. § 1437 (2000)). For changes to public housing law applicable to HOPE VI, see *infra* Part I.

economic development and theories of localism. It demonstrates that the possibilities raised by a program like HOPE VI encourage a more expansive, postmodern view of housing and economic development policy. However, the actual design and implementation of the program fall short in several significant areas. Part I of this Article provides an overview of the HOPE VI program, its goals, and how it departs from conventional housing policy. Part II provides a community economic development critique of HOPE VI, examining how HOPE VI could address the issues of economic and racial segregation, but fails to do so. Part III analyzes the intersections between HOPE VI and theories of localism and community creation by scrutinizing issues of race, mobility, and boundary creation. Finally, this Article concludes by demonstrating how HOPE VI might be reimagined as a program designed to promote the construction of smaller public housing developments across a metropolitan area instead of concentrated redevelopment at one site.

I. HOPE VI: ORIGINS AND HISTORY

Proponents of HOPE VI developed the program during a period of general anti-public housing sentiment as a means to both save and transform public housing.¹⁹ Public housing has experienced many reconceptions since its creation in the Housing Act of 1937. At first, public housing was created for the working poor in urban areas. Later, mainly as a result of slum clearance programs and federal limits on tenant's rents, public

¹⁹ U.S. DEP'T OF HOUS. & URBAN DEV., HOPE VI: BUILDING COMMUNITIES AND TRANSFORMING LIVES 4-5 (Dec. 1999) [hereinafter HOPE VI BUILDING COMMUNITIES]. Examples of negative popular sentiment are also recounted in Michael H. Schill, *Distressed Public Housing: Where Do We Go From Here?*, 60 U. CHI. L. REV. 497 (1993). For political conservatives, high rises that do have severe social and structural problems have become symbols of the failure of government intervention in affordable housing. For political liberals, decaying public housing developments are the inevitable product of HUD and local governments' conscious efforts to build public housing in areas of high racial and economic segregation.

The history of public housing as well as many causes and symptoms of its distress has been well told. See, e.g., LAWRENCE M. FRIEDMAN, GOVERNMENT AND SLUM HOUSING, A CENTURY OF FRUSTRATION (1968) (tracing the history of housing reform from restrictive laws to urban renewal); KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 219-30 (1985) (discussing the tensions arising from the establishment and enforcement of minimum standards to address slum conditions and the creation of the public housing program); Schill, *supra* (arguing that society's interest in protecting previous investments in public housing prevent the examination of the best solutions); Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285 (1995) (examining the role of federal governmental policies in the concentration of inner-city poverty); Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PA. L. REV. 1351 (1995) [hereinafter *Intentional Racial Discrimination*] (emphasizing the role of racial discrimination and segregation in the administration of federal housing policies).

housing became increasingly associated with the idea of housing of last resort where the poorest of the poor lived.²⁰ This shift meant that large segments of the urban poor lived in public housing developments characterized by high densities and isolation. Although public housing is commonly associated with stark, crime-ridden, high-rise apartment buildings, these high rises comprise only a minority of the total public housing stock.²¹ In fact, the National Housing Law Project et al. found that in the first three years of the HOPE VI program, only twenty-one percent of the grant awards were made to high-rise developments.²² This suggests that HOPE VI proponents may be unfairly capitalizing on the negative image of high-rise public housing sites in order to support excessive demolition of public housing.²³

In the early 1980s, Congress began to consider dramatic revisions to the public housing program.²⁴ Critics wanted to abolish HUD and eliminate the public housing program entirely.²⁵ HOPE VI, also known as the Urban Revitalization Demonstration ("URD") program, was established in 1993 under an annual appropriations act.²⁶ With the enactment of the

²⁰ For a discussion of income eligibility policies, see *infra* note 66 and accompanying text. According to von Hoffman, differences in the character of the tenant population over time changed public housing. Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUS. POL'Y DEBATE 299, 316 (2000) [hereinafter *Contradictions*]. A diminishing role for social work in public housing coinciding with an increase in rural families (unaccustomed to city institutions) moving to urban public housing developments contributed to the difficulties encountered by local housing authorities. *Id.* Income ceilings constrained authorities' abilities to retain higher income tenants. Finally, the Housing Act of 1949 gave admission priority to families displaced by federal urban renewal and highway projects. *Id.* Although important to house displaced families, these priorities undermined the tenant screening process. *Id.*

²¹ NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 6.

²² *Id.* According to the report, twenty-one percent is in accord with the percentage of public housing high-rises generally. *Id.*

²³ A 1989 study commissioned by Congress found that only six percent of public housing has severe structural problems. NAT'L COMM'N ON SEVERELY DISTRESSED PUB. HOUS., THE FINAL REPORT OF THE NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING: A REPORT TO THE CONGRESS AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT 2 (1992). Thus, the severe physical decay of public housing generally ingrained in the popular image of the inner city may be exaggerated. See Gordon Cavanaugh, *Ending Severely Distressed Public Housing—A Congressional Initiative, a HUD Challenge*, 3 J. AFFORDABLE HOUS. & CMTY. DEV. L. 13, 13 (1993) (discussing the possibilities of the new HOPE VI program and how it seeks to address the "people mocking public housing when it has this record that is far better than that of most other social programs this Congress has enacted"); Paul K. Casey, *Heard from HUD: Real HOPE at HUD*, 7 J. AFFORDABLE HOUS. & CMTY. DEV. L. 18, 18-25 (1997) (enumerating some of the successful policies instituted in public housing).

²⁴ Michael Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 878-79 (1990) (discussing privatization of public housing considered by Congress).

²⁵ See, e.g., Jennifer J. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. PUB. INT. L.J. 239 (1996) (describing HUD's own plan for reorganization in the face of Congressional and public criticism).

²⁶ Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, Pub. L. No. 102-389, 106 Stat. 1571, 1579-81 (codified at 42 U.S.C. § 1437 (2000)). Until 1999, Congress annually authorized and funded the program through

QHWRA in 1998,²⁷ Congress permanently authorized HOPE VI as Section 24 of the Housing Act of 1937.²⁸ HUD has not issued HOPE VI regulations,²⁹ but administers the program through a combination of funding notices,³⁰ grant agreements entered into with fund recipients, and legal opinions.

The statute authorizes local public housing authorities to use HOPE VI funds for the purpose of:

1. [I]mproving the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);
2. [R]evitalizing sites (including remaining public housing dwelling units) on which such public housing projects are located and contributing to the improvement of the surrounding neighborhood;
3. [P]roviding housing that will avoid or decrease the concentration of very low-income families; and
4. [B]uilding sustainable communities.³¹

Housing Authorities compete annually for HOPE VI grants. Since the program's inception in 1993, HUD has awarded some \$4.85 billion in demolition and revitalization money to Housing Authorities across the

appropriations acts and governed it with rules in annual Notices of Funding Availability ("NOFA"), HOPE VI Revitalization and Demolition Applications, and HOPE VI Grant Agreements.

HOPE VI was established in response to the report of the National Commission on Severely Distressed Public Housing in 1992. Pursuant to Congressional directive, this Commission developed a plan of action for addressing the problems of distressed public housing throughout the country. *See* NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 131-33.

²⁷ QHWRA of 1998, 42 U.S.C. § 1437 (2000).

²⁸ *Id.* § 535 (amending section 24 of the United States Housing Act of 1937).

²⁹ HUD apparently feels that regulations would be difficult to modify to reflect annual changes in HOPE VI appropriation acts. *See* GAO REPORT TO CONG. COMM., HOPE VI: PROGRESS AND PROBLEMS IN REVITALIZING DISTRESSED PUBLIC HOUSING 17 (July 1998); NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 18.

³⁰ Annual NOFA detail the terms of application for and participation in the HOPE VI program. The most recent NOFA reflects HUD's concern about grant recipients' delayed use of funds and includes more stringent timeline requirements. Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002, 67 Fed. Reg. 49,766 (July, 31 2002) [hereinafter 2002 NOFA].

³¹ QHWRA of 1998 § 535, 42 U.S.C. § 1437 (2000); *see also* Super Notice of Funding Availability ("SuperNOFA") for HUD's Housing, Community Development Programs and Section 8 Housing Vouchers Assistance for Fiscal Year 2001, 66 Fed. Reg. 11,650 (Feb. 26, 2001).

country.³² In any HOPE VI application, Housing Authorities must demonstrate that the targeted public housing project is severely distressed.³³ In addition to evaluating the overall strength of an applicant's proposal,³⁴ Housing Authorities must also demonstrate that affected residents and members of the surrounding community have meaningful involvement in the planning and implementation of the revitalization effort.³⁵

The Cincinnati Metropolitan Housing Authority's plans for Laurel Homes, a public housing development situated close to downtown Cincin-

³² See *HUD Fund History*, *supra* note 12. HOPE VI awards approximately \$500,000 per year in revitalization grant funds to Housing Authorities. For example, during the last four years, HOPE VI has awarded the following grants: \$507,000,000 (1998), \$571,287,001 (1999), \$513,805,464 (2000), \$491,774, (2001). *Id.*

Housing Authorities compete for grants by satisfying a wide variety of criteria enumerated in the HOPE VI Revitalization Application. HUD evaluates applicants based on nine classes of rating factors: Capacity, Need, Leveraging, Resident and Community Involvement, Community and Supportive Services, Relocation, Fair Housing and Equal Opportunity, Mixed Income Communities, and Overall Quality of Plan. FY 2002 HOPE VI Revitalization NOFA Rating Factors; see also 2002 NOFA, *supra* note 30, at 49,771-85.

³³ According to the 2002 SuperNOFA, "severely distressed public housing" includes public housing requiring "major redesign, reconstruction, or redevelopment"; housing that "[i]s a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood"; housing "occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance"; or [h]as high rates of vandalism and criminal activity"; and housing that "[c]annot be revitalized through assistance under other programs . . . because of cost constraints and inadequacy of available amounts." 2002 NOFA, *supra* note 30, at 49,774. But see NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 3-4. The report states that:

As HUD actually administers the HOPE VI program, the definition of "severe distress" is almost an irrelevancy. A PHA applying for HOPE VI funds need only certify that the development for which it seeks HOPE VI funds meets the open-ended definition of "severe distress" set forth in the statute and submit a certification of severe physical distress prepared by an architect hired by the PHA. *Virtually any family public housing development can meet the definition of "severe distress" for HOPE VI purposes.*

Id. (citations omitted).

³⁴ See 2002 NOFA, *supra* note 30, at 49,771-85.

³⁵ *Id.* at 49,766-71. There are opportunities for residents to affect the HOPE VI process. Residents can be involved in a Housing Authority's planning process, in which the Housing Authority has to create one and five year plans. Demolition and development activities must be consistent with those plans. Although residents do not have veto power, they are required to be consulted in the application process for the HOPE VI grant. This is perhaps the best opportunity to influence the direction and character of the HOPE VI effort. *Id.*

The precarious position of public housing residents in this program has led to the creation of innovative partnerships and legal strategies. For example, students at the University of Baltimore School of Law Community Development Clinic have represented public housing tenant organizations in transactional work in Baltimore as part of the HOPE VI process.

The obstacles to resident participation raise the concern that the isolated areas of availability for resident input give a false sense of empowerment. See Susan Bennett, "The Possibility of a Beloved Place": Residents and Placemaking in Public Housing Communities, 19 ST. LOUIS U. PUB. L. REV. 259, 263-64 (2000) (examining historical patterns of support for resident management and participation in public housing programs); Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 689-93 (1994) (arguing that locally affected residents should have greater control of local redevelopment.).

nati, illustrate the HOPE VI concept.³⁶ The Housing Authority received a \$35 million HOPE VI grant to redevelop Laurel Homes in 1999,³⁷ and added to this amount close to \$12 million in public funds and \$55 million in private investment.³⁸ The Housing Authority demolished all of the 939 pre-existing public housing units (94 were vacant), and in their place envision a community of 184 public housing units, 84 low-income housing tax credit units, 75 subsidized home ownership units, 188 market rate rentals, and 75 market rate home ownership units.³⁹ The new community will have smaller blocks consistent with the surrounding West End area of Cincinnati, as well as new retail space and a community center for programs like child care and family self-sufficiency. Finally, the nearby HOPE VI revitalization of Lincoln Courts (at a cost of \$65 million) will complement the redevelopment of Laurel Homes.⁴⁰

The overarching goals of HOPE VI have been described as addressing the physical and social distress of public housing developments by renovating developments, integrating these developments into the larger communities, and improving the lives of residents through individual and family self-sufficiency programs.⁴¹ The development of the HOPE VI program has influenced many of the new provisions of QHWRA,⁴² which has corre-

³⁶ Cincinnati Metro. Hous. Auth., *HOPE VI Redevelopment, Laurel Homes Hope VI*, at http://cintimha.com/hop_laurel.asp (last visited Nov. 2, 2002) (on file with the Connecticut Law Review).

³⁷ Cincinnati Metro. Hous. Auth., *Cincinnati Metropolitan Housing Authority and The Community Builders Host HOPE VI Homeownership Informational Session for CMHA Residents*, available at http://www.cintimha.com/abo_home%20info%20session.asp (last visited Nov. 2, 2002) (on file with the Connecticut Law Review).

³⁸ Cincinnati Metro. Hous. Auth., *FY 1999 Fact Sheet, Laurel Homes HOPE VI, Public Housing Development* (on file with the Connecticut Law Review).

³⁹ *Id.* As a result of HOPE VI redevelopment, 235 families have relocated to other public housing communities within Cincinnati and 125 have relocated through Section 8 vouchers as of December 31, 2002. Telephone Interview with Tanya Gilette, Cincinnati Metropolitan Housing Authority and Supportive Services Program Coordinator (Jan. 8, 2003). A greater number of families relocating to other public housing developments is consistent with the findings of a recent Urban Institute Report. See THOMAS KINGSLEY ET AL., *HOPE VI AND SECTION 8: SPATIAL PATTERNS IN RELOCATION 7* (2001).

⁴⁰ Cincinnati Metro. Hous. Auth., *Hope VI Redevelopment, Lincoln Court Hope VI*, available at http://www.cintimha.com/hop_lincoln.asp (last visited Nov. 2, 2002) (on file with the Connecticut Law Review).

⁴¹ Gayle Epp, *Emerging Strategies for Revitalizing Public Housing Communities*, 7 HOUS. POL'Y DEBATE 563, 570-71 (1996). But see Alexander von Hoffman, *High Ambitions: The Past and Future of American Low-Income Policy*, 7 HOUS. POL'Y DEBATE 423, 423-24 (1996). Bundling the concepts of environment, housing, and personal development are goals that have fallen short of success in housing programs of the past, and indeed the broad scope of the goals themselves contribute to programs' lack of success. *Id.*

⁴² See Eileen M. Greenbaum, *Quality Housing and Work Responsibility Act of 1998: Its Major Impact on Development of Public Housing*, 8 J. AFFORDABLE HOUS. & CMTY. DEV. L. 310, 316-19 (1999) (examining the QHWRA and the future development and operation of public housing); Peter W. Salsich, Jr. & Nathan A. Orr, *Legislative Note: Congress Approves Major Housing Legislation*, 8 J. AFFORDABLE HOUSING & CMTY. DEV. L. 175, 184 (1999) (discussing the approval and enactment of the QHRWA); Terry A.C. Gray, *De-Concentrating Poverty and Promoting Mixed-Income Communi-*

spondingly accorded permanent status to aspects of the HOPE VI program that previously needed to be reauthorized each year. A few major provisions of QHWRA substantially affect HOPE VI.

The first major change in public housing law authorizes replacement housing on the same site or in the same neighborhood as the demolished project, provided that the number of replacement public housing units is significantly fewer than the number of units demolished.⁴³ This departure in policy furthers two goals of HOPE VI development: The reinvestment of resources into neighborhoods traditionally underserved by private and public investment and the deconcentration of public housing units.⁴⁴

The requirement that a Housing Authority replace, on a one-for-one basis, each unit that a Housing Authority demolishes, has also been repealed.⁴⁵ The repeal of this requirement not only helps Housing Authorities to finance the massive demolition goals of HOPE VI, but it also allows Housing Authorities to decrease the aggregate amount of affordable housing available to very low-income families.⁴⁶

These changes have several consequences. First, they create a focus on on-site redevelopment. Housing Authorities take the opportunity to invest substantial funds to redevelop a historically impoverished urban site through mixed income development.⁴⁷ The Housing Authority and the city hope that higher income homeowners and renters will change the demographics of the once distressed public housing development.⁴⁸ Although

ties in Public Housing: The Quality Housing and Work Responsibility Act of 1998, 11 STAN. L. & POL'Y REV. 173, 173-74, 183-84 (1999) (considering the potential advantages and pitfalls of the QHWRA).

⁴³ QHWRA of 1998 § 531(d), 42 U.S.C. § 1437 (2000). QHWRA also provided authorization legislation for continued funding of the HOPE VI program. *Id.* § 535(m). Previously, HOPE VI was funded through appropriations legislation. Greenbaum, *supra* note 42, at 310.

⁴⁴ QHWRA of 1998 § 535(a), 42 U.S.C. § 1437.

⁴⁵ *Id.* § 531(d).

⁴⁶ Another section of QHWRA allows Housing Authorities to convert public housing to tenant-based assistance vouchers under certain circumstances. *Id.* § 533. The Housing Authority must determine that conversion will not be more expensive than continuing to operate the development, that residents of the development will be benefited, and that the availability of affordable housing in the community will not be adversely affected. *Id.* On the shortage of affordable housing, see THE JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION'S HOUSING* 3 (2002). "Even a decade of record economic growth has done little to lift the incomes of the nation's most disadvantaged households. With an average annual income of \$10,500 in 2000, households in the lowest 20 percent of the distribution have seen almost no gains since 1975." *Id.*; see also WINTON PITCOFF ET AL., NAT'L LOW INCOME HOUS. COALITION, *RENTAL HOUSING FOR AMERICA'S POOR FAMILIES: FARTHER OUT OF REACH THAN EVER* 6 (2002) (finding that in no state or metropolitan area did the federal minimum wage equal the respective housing wage-defined as the income required for a worker to afford a two bedroom apartment and limit their housing costs to thirty percent of their incomes).

⁴⁷ HUD has encouraged housing authorities to leverage other funding with their HOPE VI grants to make affordable housing an integral part of their redevelopment plans—without losing sight of their core mission of serving public housing residents. HOPE VI BUILDING COMMUNITIES, *supra* note 19, at 8.

⁴⁸ See *infra* Part II.

not inherently wrong, this focus on the redeveloped public housing “place” may impose costs on the surrounding community and residents who are not able to return to the site.⁴⁹ Second, these changes cause a net reduction of public housing units, which has an adverse effect on former public housing residents and persons on the public housing waitlist.⁵⁰ Former public housing residents are displaced from their homes, and are not likely to be able to acquire housing in the redeveloped site.

Other changes to public housing law directly impact the development of mixed-income communities. QHWRA authorizes mixed finance developments through the leveraging of HOPE VI and other public housing funds.⁵¹ This allows Housing Authorities to use public housing funds to attract a variety of additional public and private sources for development. Additionally, QHWRA repeals federal occupancy preferences for public housing and Section 8 giving Housing Authorities greater income flexibility with admissions to public housing.⁵² Finally, Housing Authorities are notably allowed to target higher income residents for occupancy.⁵³ Taken together, these provisions invite the investment of substantial resources in place-based redevelopment, for the benefit of comparatively fewer returning public housing residents. Through this approach, HOPE VI over-prioritizes narrow “place-based” development in limited geographic areas and undervalues the effect of this development on public housing residents’ lives.

II. A COMMUNITY ECONOMIC DEVELOPMENT EXAMINATION

The community economic development examination analyzes how well HOPE VI policies address concentrated poverty and racial segregation. A growing consensus in this body of scholarship is that market-centered reforms are inadequate to address the root causes of poverty and

⁴⁹ See *infra* notes 228-49 and accompanying text.

⁵⁰ See *infra* notes 117-24 and accompanying text.

⁵¹ See QHWRA of 1998, Pub. L. No. 105-276, § 539, 112 Stat. 2461 (codified at 42 U.S.C. § 1437 (2000)).

⁵² See *id.* §§ 514, 545. Federal preferences included applicants involuntarily displaced, living in substandard housing, or paying more than fifty percent of family income for rent. The Section 8 program provides rental housing subsidies to private housing owners on behalf of low-income renters that cover the difference between thirty percent of a renter’s income and the rent charged by the landlord, subject to some limitations. See *id.* § 545. For a further discussion of federal preferences, see also Bennett, *supra* note 35, at 274-75.

⁵³ QHWRA of 1998 § 513, 42 U.S.C. § 1437. QHWRA also creates a one-year and five-year Housing Authority planning requirement. See *id.* § 511. The HOPE VI program has evolved through changes in grant agreements between HUD and recipient Housing Authorities. HUD has also periodically released new public housing regulations and guidance like the Rule to Deconcentrate Poverty and Promote Integration in Public Housing issued in 2000. See *infra* text accompanying note 203; 24 C.F.R. § 903 (2002).

racial segregation.⁵⁴ In the context of HOPE VI, market-centered reforms take the form of mixed-income communities and the goal of attracting increased private investment to traditionally underserved neighborhoods.⁵⁵ In this Part, I first briefly describe the hyper-economic and racial segregation in public housing communities. I then analyze whether the HOPE VI strategy of mixed-income communities is effective in successfully addressing this persistent segregation.

For ease of analysis I shall examine concentrated poverty and concentrated racial patterns separately. This approach comports with the HOPE VI policy of acknowledging the links between the two phenomena, but addressing them separately. One consequence of separating the two phenomena is to avoid strict scrutiny analysis of racial classifications by reviewing courts.⁵⁶ Instead of creating racial classifications, HOPE VI focuses on economic classifications (i.e. income levels of public housing residents in a particular community), using income as a tacit proxy for race.⁵⁷ An examination of the connection between race and poverty in family public housing reveals the causes and effects of racial segregation on community formation and housing choice. I will address these cause and effect factors in turn.

Public housing has both caused and been a victim of increased concentrations of poverty⁵⁸ in recent decades. This concentrated poverty has his-

⁵⁴ Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 408-09 (2001).

⁵⁵ See QHWRA of 1998 § 535, 42 U.S.C. § 1437.

⁵⁶ See, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (holding that "all racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests").

⁵⁷ See QHWRA of 1998 § 535, 42 U.S.C. § 1437.

⁵⁸ Concentrated poverty means simply that large numbers of poor households live within close geographic proximity of each other. This closeness, coupled with barriers to interaction with people of different socioeconomic levels, has significant social and economic consequences. William Julius Wilson is largely responsible for the current liberal articulation of policies responding to the concentration of poverty issue. See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987) [hereinafter *THE TRULY DISADVANTAGED*] (examining the deterioration of the social conditions of the ghetto underclass in Chicago). Wilson countered a trend toward focusing on the personal traits of "underclass" members by describing the effects of structural changes in the economy (the movement of jobs away from urban centers) and the out-migration of middle-class blacks from these urban centers. See *id.* at vii-xi. The effects of concentrated poverty are generally characterized by high rates of "joblessness, crime, teenage pregnancy, female-headed families, and welfare dependency." *Id.* at 35. The presence of "concentration effects" discourages social and economic development in these neighborhoods. *Id.* For social conservatives, the concentration of poverty issue is largely framed in terms of personal responsibility, welfare disincentives to work, a culture of poverty, and similar individual and collective pathologies of afflicted groups. See *id.* at ix-x. See generally CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (1984) (arguing that social policy in the 1960s has made it profitable for the poor to behave in the short term in ways that were destructive in the long term); LAWRENCE MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* (1986) (arguing that the main problem with the welfare state is its permissiveness, not its size).

torical roots in the first plans for public housing policy and has been reinforced by continuing housing and economic policies that maintain the economic marginalization of these public housing communities.⁵⁹ Examples of these policies include linking public housing with slum clearance policies, changing the income eligibility policies of public housing, and fostering the growth of suburban areas.⁶⁰

One of the early compromises reached in the first passage of a national housing statute was the "equivalent elimination requirement," which required the elimination of one substandard unit of housing for each unit of public housing built.⁶¹ Thus public housing, to its political and popular detriment, was linked early on with the idea of slum clearance.⁶² The slum clearance requirement facilitated the construction of public housing developments in inner city neighborhoods.⁶³ Areas with little or no substandard housing were presumably prevented from constructing public housing. Building public housing on expensive urban land led to the construction of large tower dwellings as a way to accommodate the cost.⁶⁴ The demolition of the Pruitt-Igoe development in St. Louis in 1972, however, epitomized and foreshadowed popular discontent with the high-rise public housing model.⁶⁵

Policies governing the income eligibility of public housing residents demonstrate the tension between reserving scarce units for the poorest of the poor and maintaining the same scarce units for higher income tenants (or the working poor). Beginning with the 1937 Act and up until the latest changes under the 1998 QHWRA, Congress expressed different conceptions of the preferred public housing tenant by placing and eliminating income ceilings and imposing various caps on tenants' rent as a percentage of the income.⁶⁶ The prevailing impression of public housing at the end of

⁵⁹ See generally GAIL RADFORD, *MODERN HOUSING FOR AMERICA: POLICY STRUGGLES IN THE NEW DEAL ERA* (1996) (discussing the origins and evolution of government housing programs).

⁶⁰ See *id.*; see also QHWRA of 1998 § 535, 42 U.S.C. § 1437.

⁶¹ See Schill & Wachter, *supra* note 19, at 1292 n.30 (explaining the enactment of the "equivalent elimination requirement").

⁶² See *Contradictions*, *supra* note 20, at 302.

⁶³ See Schill & Wachter, *supra* note 19, at 1292-93 n.30 (explaining the effect of the "equivalent elimination requirement" on public housing); see also JACKSON, *supra* note 19, at 225-26 (discussing the practice of slum clearing, which was a feature of the legislation that concentrated public housing in the center of a city rather than in the suburbs).

⁶⁴ Schill & Wachter, *supra* note 19, at 1293.

⁶⁵ See Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699, 770 (1993) (discussing the failure of the Pruitt-Igoe housing project).

⁶⁶ For a summary of changes to resident income policies, see Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 *GEO. J. ON POVERTY L. & POL'Y* 35, 39-42 (2002). The most dramatic changes to resident income policy occurred as a result of several Acts: The 1937 Housing Act (units reserved to lowest income residents who could pay at least some rent and income capped at five times rent), the 1949 Housing Act (preference for residency given to displaced from slum clearance and income ceiling forces higher income residents out), and the 1974 Act (prefer-

the millennium (and a catalyst of the HOPE VI program) is that it is housing of the last resort.⁶⁷ Similarly, the concentration of the lowest income residents in public housing is generally seen as a mistake in policy.⁶⁸

Resident incomes mattered.⁶⁹ Resident incomes were necessary to cover the costs of operations in public housing developments.⁷⁰ The federal government covered capital costs, but operating costs of the public housing developments depended on rent receipts.⁷¹ As resident incomes fell, local Housing Authorities were forced to reduce expenditures on measures like maintenance and security to combat the physical deterioration and social problems affecting public housing communities.⁷²

The growth of the suburbs in the twentieth century is probably the most visible manifestation of structural economic forces that shaped the relative affluence of suburban areas to the detriment of urban areas. Suburbs were allowed to self-incorporate, and once established, were able to pursue land-use policies that excluded low-income families.⁷³ This application of exclusionary zoning was accompanied by technological changes, like the development of the trolley car, and later, the automobile. This made it possible for those with money to live far from where they worked.⁷⁴ Federal highway construction policies supplemented this mobility network.⁷⁵ These three examples of policies that shaped the composi-

ence for diversity of incomes and income ceilings eliminated). *Id.* at 39-40. In the 1980s Congress reserved almost all of the units for the lowest income residents of an area. *Id.* at 40-41. Finally in 1998 under QHWRRA, Congress expressed support for a mix of incomes. *Id.* at 41. See also BIPARTISAN MILLENNIAL HOUS. COMM'N, MEETING OUR NATION'S HOUSING CHALLENGES: REPORT OF THE BIPARTISAN MILLENNIAL HOUSING COMMISSION 22-23 (2002). Congress established the Millennial Housing Commission in December of 2000 under Pub. L. 106-74, § 206(b) to examine, analyze, and explore three areas: (1) the importance of housing, particularly affordable housing, to the infrastructure of the United States, (2) ways to increase the role of the private sector in providing affordable housing, and (3) the performance of existing HUD programs and how they can be improved. *Id.* at ii.

⁶⁷ Hendrickson, *supra* note 66, at 42-43.

⁶⁸ *Id.*

⁶⁹ Resident incomes still matter. Higher income public housing residents are able to pay more rent. Developers are concerned with debt service and the continued economic viability of HOPE VI projects, particularly considering the possibility that the Federal Government could reduce or even discontinue the rental subsidy for eligible tenants over time. In addition to the incentive to select the highest paying tenants in the public housing system (the richest of the working poor), developers also enter into agreements with local housing authorities to arrange how the authority would allocate its share of the federal subsidy in the event of a decrease. For example, a local housing authority might agree to allocate all of its share of subsidy to HOPE VI developments in its area before allocating subsidy dollars to the other developments in its portfolio.

⁷⁰ R. ALLEN HAYS, THE FEDERAL GOVERNMENT AND URBAN HOUSING 97 (1995).

⁷¹ *Id.*

⁷² Schill, *supra* note 19, at 505.

⁷³ See Henry A. Span, *How the Courts Should Fight Exclusionary Zoning*, 32 SETON HALL L. REV. 1 (2001).

⁷⁴ See JACKSON, *supra* note 19, at 118, 157 (providing an overview of American suburbanization).

⁷⁵ *Id.* at 3. For a discussion of restrictive policies focusing on race, see *infra* notes 87-93 and accompanying text.

tion of public housing illustrate the longevity and pervasiveness of concentrated poverty in housing.

In addition to income concentration, racial segregation dominates the public housing discussion. Segregation in America is neither natural nor inevitable. It is neither the result of individual preferences, nor a temporary holdover from a more overtly racist past. Instead, segregation is systemic and structural. "[S]egregation by race and income has been an integral element of the federal housing policy from its inception, and . . . subjective factors such as white prejudice and associated individual discrimination merely obscure the role of the federal government in creating and maintaining segregation."⁷⁶

Researchers Douglas Massey and Nancy Denton, who reemphasize segregation as an underlying cause of urban deterioration, generally agree with conclusions like those of William Julius Wilson⁷⁷ describing structural and demographic transformations of the urban economy, but they believe that segregation is at the root of any discussion of poverty and the underclass.⁷⁸ Studying the same trends of concentrated poverty and economic

⁷⁶ MODIBO COULIBALY ET AL., SEGREGATION IN FEDERALLY SUBSIDIZED LOW-INCOME HOUSING IN THE UNITED STATES 1-2 (1998). Two examples of federal housing policies that have had a large role in maintaining or legitimizing racial discrimination at the local level are the creation of the Home Owners Loan Corporation ("HOLC") in 1933 and the Federal Housing Administration ("FHA") in 1934. See, e.g., Schill & Wachter, *supra* note 19, at 1308-11. Many scholars have documented the role that federal housing policies have had in maintaining or legitimizing racial discrimination at the local level. See *Intentional Racial Discrimination*, *supra* note 19, at 1352-53 (noting that "[p]ublic housing must be considered in the context of the full array of federal housing laws and policies" such as those embodied by the HOLC and the FHA). HOLC standardized and promoted the long-term mortgage by, in part, systemizing racially and ethnically discriminatory appraisal procedures on a large scale that segmented neighborhoods. The FHA extended the segmentation of neighborhoods through redlining. In providing insurance to private lenders for long-term mortgage loans, the FHA disfavored areas occupied by racial minorities. For a further discussion of federal housing policies and their impact in terms of racial discrimination, see generally JACKSON, *supra* note 19 (examining the effect of federal housing policies on American suburbanization); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994) [hereinafter *Boundaries of Race*]. Ford noted that "[t]he Federal Housing Administration . . . advocated the use of zoning and deed restrictions to bar undesirable people and classified black neighbors as nuisances to be avoided along with 'stables' and 'pig pens.'" *Id.* at 1848 (citing CHARLES ABRAMS, *FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING* 231 (1955)); see also Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 619 (1999) (exploring "the historical and legal ramifications of racial redlining and suggest[ing] a new analytical framework to eradicate the practice").

⁷⁷ THE TRULY DISADVANTAGED, *supra* note 58.

⁷⁸ See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993) [hereinafter *AMERICAN APARTHEID*] (presenting a systematic study of racial and ethnic segregation based on the 1980 census). The Index of Dissimilarity is a popular method of measuring segregation by sociologists. The index measures the amount that the racial composition of the neighborhood deviates from the racial composition of the city as a whole. See *id.* at 20. Neighborhood deviations are then aggregated to create one index figure for a city. *Id.* A dissimilarity index of twenty means that twenty percent of the city's black population must relocate within the city in order to achieve an "even" racial pattern—that is, a racial pattern reflective of the total percentages of whites and blacks in a city. See *id.* Index values are considered by sociologists to be low if they are under thirty, moderate between thirty and sixty, and high above sixty. See *id.* Among eighteen northern areas, Massey and Denton found an average index value of 84.5 from 1970

downturns as Wilson, Massey and Denton conclude that economic downturns without segregation would not have produced the same level of changes in concentrated poverty.⁷⁹ The deleterious effects of economic downturns are concentrated and amplified within segregated areas.⁸⁰ These ill effects are not solely economic, but rather other social ills, such as family instability, welfare dependency, crime, housing abandonment, and low educational achievement are amplified in an area of concentrated poverty.⁸¹

Public housing has remained segregated since its beginnings.⁸² A 1994 HUD report found that tracts which have a less than one percent black population contain public housing developments in which seventy-one percent of the residents are white.⁸³ Conversely, in areas that are seventy percent or more black, ninety-two percent of the public housing residents are black.⁸⁴ HOPE VI must contend with the persistent segregation that pervades public housing today. HOPE VI must also be designed to avoid replicating segregated communities in the future. The program is ill-equipped for the task because it does not explicitly engage racial categories.⁸⁵

Controversy over local siting decisions forced many local governments to cluster public housing developments away from objecting neighborhoods who feared an influx of black neighbors to their communities.⁸⁶ The extent of opposition at the local level and congressional in fighting at the federal level, is reflected in the delayed construction of public housing units. By 1960, only forty percent of the Housing Act of 1949's six year

census data and 80.5 from 1980 census data. *See id.* at 64-65. In general, as metropolitan areas grew larger and more economically developed, the Index of Dissimilarity for those areas increased. *See id.* *See generally* DAVID RUSK, BALTIMORE UNBOUND: CREATING A GREATER BALTIMORE REGION FOR THE TWENTY-FIRST CENTURY (1996) (discussing the growth and prosperity of the Baltimore region as reflected in the 1990 census and the simultaneous deterioration of the city's neighborhoods).

⁷⁹ AMERICAN APARTHEID, *supra* note 78, at 126; *see also* Florence Wagman Roisman, *The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration*, 81 IOWA L. REV. 479, 500 (1995) (comparing the conclusions expressed in *American Apartheid* with those of William Julius Wilson).

⁸⁰ AMERICAN APARTHEID, *supra* note 78, at 126.

⁸¹ *Id.* at 130.

⁸² *See* U.S. DEP'T OF HOUS. & URBAN DEV., THE LOCATION AND RACIAL COMPOSITION OF PUBLIC HOUSING IN THE UNITED STATES 1, 78 (1994) [hereinafter RACIAL COMPOSITION OF PUBLIC HOUSING] (examining the poverty and racial composition of the neighborhoods in which public housing tenants live); COULIBALY ET AL., *supra* note 76, at 1-2 (arguing "that segregation by race and income has been an integral element of the federal housing policy from its inception").

⁸³ RACIAL COMPOSITION OF PUBLIC HOUSING, *supra* note 82, at 22.

⁸⁴ *Id.* at 225.

⁸⁵ *See infra* notes 198-227 and accompanying text.

⁸⁶ JACKSON, *supra* note 19, at 225. Reflecting the local nature of the program, many suburban areas simply elected not to establish Housing Authorities. *Id.* For a discussion of the influence of local discretion, *see* Philip D. Tegeler, *Housing Segregation and Local Discretion*, 3 J.L. & POL'Y 209, 212-13 (1994) (explaining how local government control over assisted housing decisions has facilitated housing segregation); Mittie Olion Chandler, *Public Housing Desegregation: What are the Options?*, 3 HOUSING POL'Y DEBATE 509 (1992).

goal of 810,000 housing units had been built.⁸⁷

Arnold Hirsch provides rich details of public housing's explosive origins in Chicago.⁸⁸ The Chicago experience with public housing was punctuated with riots, racial confrontation, and resistance to integration.⁸⁹ The Chicago Housing Authority's (the "CHA") decisions for public housing site selection were made subject to the City Council's approval.⁹⁰ Moreover, local aldermen were given veto power over sites proposed in their communities.⁹¹ As a result, the vast majority of public housing communities were located in existing ghetto areas.⁹²

The tension between integration and segregation is an undercurrent to any discussion of the future of public housing.⁹³ Minority communities are

⁸⁷ *Contradictions*, *supra* note 20, at 312.

⁸⁸ See ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940-1960* (1983) (analyzing historical and contemporary forces that create and reshape ghetto areas in Chicago).

⁸⁹ See *id.* at xi-xv.

⁹⁰ See *id.* at 223. Local opposition forced the Illinois legislature to give the Chicago City Council veto power over proposed site selection decisions in 1949. See *id.* The City Council then limited or prevented public housing from being built in majority white areas on the outskirts of the city. See *id.* at 223-24. The City Council also restricted blacks' ability to rent those few apartments that were in the outskirts of the city. See *id.* at 230-31. As originally created, the CHA had independent authority to propose and develop public housing. See *id.* at 219; see also LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* 19, 20 (2000) (discussing the creation of the Chicago Housing Authority by the Illinois legislature).

⁹¹ HIRSCH, *supra* note 88, at 240-41.

⁹² *Id.* at 242-43. Hirsch notes:

Of the thirty-three projects approved between 1950 and the mid-1960s, twenty-five and a substantial portion of another were located in census tracts containing a black population in excess of 75% [Because the remainder of the projects were in areas undergoing racial transition,] all but seven of the developments, when actually completed, were located in census tracts that were at least 95% black.

Id.; see also STEPHEN GRANT MEYER, *AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* 30-37, 50-55, 72-75 (2000) (examining the effect of massive black migration to cities outside of the south and the ensuing racial conflict in communities across the nation). Meyer also chronicles the development of local and federal legislative and political responses. *Id.*

⁹³ The discussion of the tension between integration and segregation is often erroneously described as one strategy versus the other. Those scholars who call for place-based intervention more particularly advocate for the right of racial minorities to have access to resources wherever they choose to live, whether in communities with high concentrations of minorities or low concentrations. The integration strategies of HOPE VI, namely providing vouchers to former public housing residents, are discussed in Part III.B.2.c of this Article. The problem with HOPE VI place-based development is that it reinforces a long standing pattern of development opposed to new construction of subsidized and other forms of affordable housing outside of racially and economically concentrated areas. As this pattern of development continues, the reification of racialized space intensifies and racial segregation becomes more intractable. It becomes easier to identify and maintain tangible borders separating space in terms of resources, and concomitantly, affluence, race and social conditions. See Michelle Adams, *Separate and [Un]Equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 418-20 (1996); John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1494-95, 1503 (1993); Ankur J. Goel, *Maintaining Integration Against Minority Interests: An Anti-Subjugation Theory for Equality in Housing*, 22 URB. LAW. 369, 391-95 (1990); Chester Hartman, *A Universal Solution to the Minority Housing Problem*, 71 N.C. L. REV. 1557, 1562-63 (1993); Florence Wagman Roisman &

not inherently troubled,⁹⁴ and the concepts of “minority” and “poor” are not synonymous. But failure to recognize the racial issues in housing policy undervalues the connection. Public housing is an institution that policymakers have compromised in the face of popular demands for economic and racial segregation. Over time, this acquiescence to segregative pressures has obfuscated the importance of individual choices that policymakers instituted to limit the range of housing choices for public housing residents. In addition to being a poverty issue and a racial issue, the story of public housing is shaped by the aggregate choices of federal, state, and local actors in the legislature and the judiciary. The danger for HOPE VI is that twenty years from now it will be one more policy intervention that contributed to higher degrees of racial separation. At that point, commentators may rationalize the effects by discussing the individual choices of public housing and community residents, unforeseen economic upturns and downturns, and similar, seemingly random trends. At present, however, the signs and foundations of this future are already visible.⁹⁵

The HOPE VI response to the racial and economic segregation concentration associated with traditional public housing is twofold—the creation of mixed income communities and the dispersal of former public housing residents throughout a metropolitan area through Section 8 vouchers.⁹⁶ I will examine the mixed income community ideal in this Part, and examine the voucher issue in the context of mobility programs and boundary creation in Part III of the Article. The danger with mixed income communities is that the gains hoped for may not be fully realized and therefore will not be worth the harm caused by the displacement of public housing residents.

Policies encouraging mixed-income communities exemplify market-based policies to combat concentrated poverty.⁹⁷ In HOPE VI, these communities create economic incentives for the construction of market rate housing in areas previously reserved for public housing, provide incentives for market rate renters and home owners to rent or buy in these areas, and replace a number of public housing units with low income housing tax credit units.⁹⁸ Although these units are subsidized for affordability to poor

Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 CLEARINGHOUSE REV. 312, 313-14 (1990).

⁹⁴ See Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729, 733, 755-61 (2001).

⁹⁵ See *infra* text accompanying notes 117-23 (discussing the issue of displacement of residents from redevelopment public housing).

⁹⁶ See 42 U.S.C. § 1437v (2000).

⁹⁷ Cummings, *supra* note 54. Cummings notes that “[f]orged at the intersection of neoliberal economics and postmodern micropolitics, market-based CED rose to prominence in a political and intellectual environment hostile to the social welfare programs and large-scale reform strategies that formed the foundations for earlier mass-based movements for economic justice.” *Id.* at 437.

⁹⁸ Jean L. Cummings & Denise DiPasquale, *The Low-Income Housing Tax Credit: An Analysis of the First Ten Years*, 10 HOUSING POL’Y DEBATE 251, 252 (1999). The authors note that “[b]y bringing these various actors together, [for-profit and non-profit developers, investors, state housing policy

persons, the tax credit units do not service the very low income families that public housing units can serve.⁹⁹ The net result is the displacement of the very poorest families and the elimination of the lowest rent units.¹⁰⁰

The general expectation of market-centered reform is that by applying corrective measures to an area, policy makers hope to replicate asset strengths of more stable and growing neighborhoods, and correct for the market failures that prevent development in less successful neighborhoods.¹⁰¹ HOPE VI resources are intended to drastically improve the infrastructure and appearance of inner urban areas as incentives to attract higher income residents.¹⁰² According to HUD, HOPE VI funds act as a catalyst for economic development by attracting more infrastructure investments, providing work and revenue to neighborhood suppliers, workers and stores, encouraging nearby property owners to maintain and invest in their property, and increasing community property values.¹⁰³ HOPE VI funds can also subsidize the construction of market rate units by leveraging funds for infrastructure and demolition.¹⁰⁴

The HOPE VI formula appears well-suited to combat income segregation at the former public housing site.¹⁰⁵ Old structures are demolished, new facilities are constructed, and occupancy rules are changed to permit a broader range of public housing eligible incomes as well as an integrated

makers, and the Internal Revenue Service] the LIHTC program is designed to bring the efficiency and discipline of the private market to the building of affordable rental housing." *Id.*

The Low Income Housing Tax Credit ("LIHTC") gives investors a tax credit over ten years in return for providing equity for the construction of affordable housing. LIHTC units have income restrictions: "Either at least 20 percent of the units must be occupied by households with incomes no higher than 50 percent of area median income, or at least 40 percent of the units . . . must be occupied by households with incomes no higher than 60 percent of area median." JACOBS, *supra* note 11, at 10.01[2][a].

⁹⁹ Cummings & DiPasquale, *supra* note 98, at 278-79; see also *Intentional Racial Discrimination*, *supra* note 19, at 1355; Kirk McClure, *The Low-Income Housing Tax-Credit as an Aid to Housing Finance: How Well Has It Worked?*, 11 HOUSING POL'Y DEBATE 91, 91 (2000) (citing critics' arguments that the LIHTC program is "overly complex" and "poorly designed to serve the need of low-income households"). Tax Credit units do not reach the poorest families:

While the legislation creating the LIHTC is not explicit about which households the program is meant to target, it clearly was not designed to produce housing that is affordable to the very poor, at least not without considerable additional subsidies. The income limitations under the LIHTC program of 50 to 60 percent of area median income result in rents that are beyond the means of many poor households.

McClure, *supra*, at 91.

¹⁰⁰ *Intentional Racial Discrimination*, *supra* note 19, at 1355-56, 1363-64.

¹⁰¹ See, e.g., David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C.R.-C.L. L. REV. 427, 429-30 (2000) (creating metamarket and antimarket descriptions of middle class and ghetto communities to demonstrate historical construction and interrelationships).

¹⁰² U.S. DEPT. OF HOUS. & URBAN DEV., HOPE VI: BUILDING COMMUNITIES TRANSFORMING LIVES 7 (1999).

¹⁰³ *Id.* at 15.

¹⁰⁴ *Id.* at 8.

¹⁰⁵ *Id.* at 16.

mix of non-public housing units.¹⁰⁶ The ability of HOPE VI policies to affect racial concentration is a different matter, however, as is the effect of the policies on the concentration of poverty in surrounding communities.

The benefits of mixed income communities are ambiguous and contested.¹⁰⁷ Possible advantages of these communities include the benefits of interaction with higher income residents and networking opportunities,¹⁰⁸ the possibilities of cross-subsidy as market rate unit rents subsidize low income units and the reverse (subsidies for low income units lowering the rents for market rate units),¹⁰⁹ and better physical and social integration into surrounding communities.¹¹⁰ Critics argue that the benefits of higher income tenants as role models are often over-stated.¹¹¹ Resources used to attract higher income tenants are better spent on those for whom this housing is housing of the last resort, and the very tenants who are supposed to be helped are disadvantaged.¹¹² Maintaining the existing number of afford-

¹⁰⁶ *Id.* at 6.

¹⁰⁷ See Paul C. Brophy & Rhonda N. Smith, *Mixed-Income Housing: Factors for Success*, 3 CITYSCAPE: A J. OF POL'Y DEV. & RES. 3, 4-6 (1997) (noting the absence of conclusive research on the factors leading to successful mixed-income housing and suggesting theories for further study); Jill Khadduri & Marge Martin, *Mixed-Income Housing in the HUD Multifamily Stock*, 3 CITYSCAPE: A J. OF POL'Y DEV. & RES. 33, 33, 35, 63 (1997) (discussing how the benefits of mixed income housing "could exist without a special policy to create it"); James Rosenbaum et al., *Lake Parc Place: A Study of Mixed-Income Housing*, 9 HOUS. POL'Y DEBATE 703, 709-11 (1998) (discussing the benefits and shortcomings of integrated neighborhoods and integrated housing developments).

¹⁰⁸ Brophy & Smith, *supra* note 107, at 6.

¹⁰⁹ *Id.* at 28.

¹¹⁰ The mixed-income community concept is combined with New Urbanist principles to integrate HOPE VI public housing communities with the surrounding community. See *infra* notes 189-97 and accompanying text (discussing New Urbanism); see also Kristin D. Carpenter, *Promise Enforcement in Public Housing: Lessons from Rousseau and Hunderwasser*, 76 TUL. L. REV. 1073, 1098 (2002) (evaluating three components of HOPE VI redevelopment—New Urbanist design, income mixing, and lease enforcement—by applying Rousseau's social contract conception).

¹¹¹ Because of the many changes associated with HOPE VI and similar development to the traditional public housing model, it is difficult to assess what benefits accrue to public housing residents as a result of mixed income living arrangements, and what benefits are due to better tenant selection, security, or living arrangements. Furthermore, it is not clear that mixed income arrangements reduce poverty. Lawrence J. Vale, *Comment on James E. Rosenbaum, Linda K. Stroh, and Cathy A. Flynn's "Lake Parc Place: A Study of Mixed-Income Housing,"* 9 HOUS. POL'Y DEBATE, 749, 750 (1998) ("[Higher income r]ole models who have jobs and know how to get them are not necessarily also teachers, counselors, carpool drivers, and child-care providers.").

¹¹² W. David Koeninger, *A Room of One's Own and Five Hundred Pounds Becomes a Piece of Paper and "Get a Job": Evaluating Changes in Public Housing Policy from a Feminist Perspective*, 16 ST. LOUIS U. PUB. L. REV. 445, 449-50 (1997) (asserting that poor single women should not be displaced from public housing by higher male wage earners and that Section 8 vouchers are inferior substitutes for "hard" units of public housing for this disadvantaged group.); Yumi Wilson, *Housing Projects Must Open to Middle Class: New Federal Rules Could Keep Poor Out in the Cold*, S. F. CHRON., July 16, 1999, at A17 (predicting the results of mixed income tenancy requirements on low income families in San Francisco where the waiting list for public housing is at 15,000 persons), 1999 WL 2691362.

able housing units to very low-income populations is particularly important in areas with long waiting lists for public housing.¹¹³ Finally, they note the forced displacement of residents and substitution of heavily subsidized units for tax credit units. Because HOPE VI is the largest funding source available for public housing renovation and construction, advocates want it dedicated to maintaining or increasing the affordable housing opportunities available to low income residents and not diffused as grants for larger inner city redevelopment efforts.

However effective these mixed communities are, aggressive steps are taken under the HOPE VI program to make mixed-income developments attractive to higher income residents.¹¹⁴ Lower-income residents who are able to live in mixed income developments are often carefully selected.¹¹⁵ To insure the development's success, management companies institute screening requirements including "housekeeping inspections, family and head of household interviews and group orientations. Training programs [are also] set up in basic home maintenance."¹¹⁶

There are fewer public housing units rebuilt on site in HOPE VI communities.¹¹⁷ Residents not able to return must find housing elsewhere, and it is unclear how many residents HOPE VI construction displaces.¹¹⁸ Considerable anecdotal evidence suggests that one tragedy of HOPE VI is that the people who have suffered the deplorable conditions of these distressed developments (and helped the development to qualify for HOPE VI assistance) do not benefit from the development's reconstruction.¹¹⁹

For example, in Charlotte, North Carolina, despite the Housing Authority's statements that "it wanted most of Earle Village's 367 families to return to the improved neighborhood, only 44—or twelve percent—have

¹¹³ Waiting lists reach 15,000 in San Francisco, California; Wilson, *supra* note 112; 4,000 in Baton Rouge, Louisiana; J. Taylor Rushing, *EBR Housing assistance list is long*, BATON ROUGE ADVOC., Aug. 1, 1999, at 1B, 1999 WL 6112249; and 3,500 families in Charlotte, North Carolina; *Good Goals Gone Awry: Housing Loss, Failed Promises Flaw First Ward Effort*, CHARLOTTE OBSERVER, June 14, 1999, at 12A.

¹¹⁴ See *infra* note 162; see also U.S. DEPT. OF HOUS. & URBAN DEV., *supra* note 102, at 8.

¹¹⁵ Steve Kersch, *Job Description: A Chemist Who Can Make Housing Mix*, CHI. TRIB., June 27, 1999, § 16, at 1.

¹¹⁶ *Id.*

¹¹⁷ See *Darst-Webbe Tenant Ass'n Bd. v. St. Louis Hous. Auth.*, 202 F. Supp. 2d 938, 942-46 (E.D. Mo. 2001) (challenging HOPE VI revitalization plan and claiming a loss of approximately 760 low income housing units due to plan's implementation).

¹¹⁸ I use the term "displacement" to describe situations in which residents of demolished public housing developments wish to return to the development but are unable due to reduced density, higher rents, stricter screening criteria, or other similar reasons.

¹¹⁹ See, e.g., Anthony Burke Boylan, *CHA Residents Object to Voucher Plan*, CHI. TRIB., June 20, 1999, § 4 (writing of residents' fears that they will be driven from their homes because the CHA plan is designed to make land available to developers rather than to help public housing residents); NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 23 (stating that many displaced public housing residents did not return to housing developed under HOPE VI).

done so. Most of the rest moved to Charlotte's already overwhelmed supply of public-housing complexes and subsidized apartments."¹²⁰ In a nationwide audit of the HOPE VI program, the Office of the Inspector General found similar low percentages of returning residents.¹²¹

However, some commentators have found that most residents resist returning to the original development, and instead wish to use a Section 8 voucher to find other housing, especially in areas of higher income and less minority concentration.¹²² These voucher recipients have been frustrated by obstacles to obtaining their choice in housing. This last concern raises the issue of resegregation—that is, residents will have difficulty using Section 8 vouchers and will resettle in racially concentrated areas.¹²³

The mixed income strategy, a largely market-based response, is inadequate to reverse long existing forces of racial and economic segregation. The impact of this strategy on the redeveloped site can be dramatic, but more troubling is its effect on underlying discriminatory structures and on surrounding communities. Given the long history of intentional racism and the creation of institutional and legal structures to enforce and entrench this practice, strategies that do not engage this underlying apparatus will be ineffective in dismantling it. Mixed income communities may revitalize

¹²⁰ Carol D. Leonnig, *Success with Bricks, But Not with Earle Village's People*, CHARLOTTE OBSERVER, June 14, 1999, at 1A. A displaced low-income housing resident observes:

At night I look out the windows and I can see the lights over those pretty streets and houses over there . . . It's just a terrible, terrible gut-level feeling . . . I want to live a decent life like everybody else. Why aren't me and my kids good enough to live in those shiny new places?

Id.

In Baltimore, Maryland, Housing Authority records show that only 26% of the former 600 families at Lafayette Courts now live in one new HOPE VI development, and only 13% of 298 former families of Lexington Terrace live at another redeveloped HOPE VI project. Walter F. Roche, Jr., *Housing Reform's Victims: Density: A federal program aimed at revitalizing the city's public residential complexes has forced many former residents out of their homes*, BALT. SUN, Sept. 24, 2001, at 1A, 2001 WL 6170467.

¹²¹ The Audit Report reviewed thirteen sites as follows:

Site	Residents Returning	Site	Residents Returning
Atlanta	12%	Milwaukee	42%
Charlotte	16%	New Orleans	62%
Columbus	35%	San Antonio - Springview	8%
Dallas	*	San Antonio - Mirasol	11%
Detroit - Jefferies	**	San Francisco - Bernal Plaza	70%
Detroit - Parkside	**	San Francisco - Hayes Valley	64%
El Paso	51%		

* Dallas HOPE VI units are new, court-ordered developments; thus, there are no prior residents.

** The Detroit Housing Authority could not provide this information.

OFF. OF THE INSPECTOR GEN., U.S. DEP'T. OF HOUSING & URBAN DEV., NATIONWIDE AUDIT HOPE VI URBAN REVITALIZATION PROGRAM 15-16 (Dec. 1998), available at <http://www.hud.gov/oig/ig960001.pdf>. (last visited Sept. 20, 2002) (on file with the Connecticut Law Review).

¹²² *Id.* at 17.

¹²³ See *infra* Part III.B.2.c.

depressed pockets of cities for residential use, but they do nothing to empower those residents who cannot return to the HOPE VI community.¹²⁴

Moreover, rather than development being shaped by the initial goals of eliminating severely distressed public housing, the desire to create successful mixed-income communities begins to drive development objectives. Developments are evaluated more for their ability to leverage outside resources into mixed-income communities than for their level of distress.¹²⁵

The strength of market-based solutions is their attraction of private resources to underserved areas. For community development, however, the concern should also be empowerment of individuals. The contentious benefits of mixed income communities for poor persons support the idea that grassroots organizing, cross-racial and cross-neighborhood alliances, and other forms of progressive politics are effective supplements to market-based policies.¹²⁶ Market-based policies should not be abandoned. Indeed these policies have yielded many successes in inner-city development.¹²⁷ However, sometimes an over-reliance on market-based analyses and remedies leads to an inability to respond adequately to examples of market failure, as well as a clouded perception of when intervention is appropriate.¹²⁸ Instead, another approach to measuring the effectiveness of

¹²⁴ Jerry J. Salama, *The Redevelopment of Distressed Public Housing: Early Results from HOPE VI Projects in Atlanta, Chicago, and San Antonio*, 10 HOUS. POL'Y DEBATE 95, 111-12 (1999). Salama observed:

"Most of the redeveloped units will not be affordable to households that formerly lived on the sites. Although this may appear a harsh strategy at first blush, a comprehensive approach of demolishing the old and rebuilding new developments will be necessary to attract a critical mass of middle-income households with alternative housing choices."

Id.

¹²⁵ U.S. GEN. ACCT. OFF., HOPE VI PROGRESS AND PROBLEMS IN REVITALIZING DISTRESSED PUBLIC HOUSING 25 (July 1998); *see also* Salama, *supra* note 124, at 99-100 (noting that the strength of the broader housing market is an important factor in the success of mixed-income development).

¹²⁶ Scott Cummings proposes a renewal of the focus on progressive political action. *See* Cummings, *supra* note 54, at 492. In addition to critiquing market-based community economic development, he highlights several examples of progressively-based community action, including living wage movements, worker cooperatives, and job creation initiatives sponsored by the public sector. *Id.* at 465-83.

¹²⁷ Professor Susan Jones has written about the role of transactional lawyers and microenterprise in economic development. *See, e.g.*, Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUB. L. REV. 385, 386 (2000) (discussing the innovative strategy of microenterprise development and practical examples lawyers can use when representing the poor and homeless); Susan R. Jones, *Transactional Lawyers Supporting Economic Development in the Nation's Capital*, 9 J. AFFORDABLE HOUS. CMTY. DEV. L. 18, 19 (1999) (discussing the need for transactional lawyers to deploy their services to the people of low-income and distressed communities).

¹²⁸ The forced segregation of blacks in many cities produced a dual housing market in which the cost of a limited supply of housing in black areas was much higher than the cost of housing generally. HIRSCH, *supra* note 88, at 29. As a result, there is some indication that the demise of private racially restrictive covenants, employed among private homeowners to prevent neighbors from selling their houses to non-whites, was hastened and perhaps inevitable due to growing economic incentives on private parties to violate covenant provisions and sell their homes to blacks willing to pay high prices. *Id.* at 30. Followed to its logical conclusion, such market incentives would abrogate the need for legal

HOPE VI may be to examine the formation and growth of grassroots organizations comprised of public housing tenants or surrounding community members.¹²⁹ The ability of these groups to coalesce around and influence the redevelopment process may be more beneficial in a community empowering sense in the long run.¹³⁰

III. A LOCALISM EXAMINATION

I use the concept of localism to describe several interrelated ideas. First, localism expresses the idea of geographically discrete community economic development efforts. Second, localism expresses the belief that local control of decision-making is important. Moreover, it reflects an ideology that this local emphasis has been undervalued in recent housing and community development policies. Third, concepts of localism attempt to define and describe the interrelationship between communities and neighborhoods by examining how communities affect one another and attempt to include or exclude groups of people. Fourth, and related to the third idea, localism examines the formation and definition of community by looking at how a community defines itself, and asking who are the agents of the community, and what deference the law should accord such "community" expressions.¹³¹

This Article builds on a conception of community as dynamic instead of static, and interrelated as opposed to autonomous. By viewing community in this way, it is possible to view HOPE VI at the convergence of two distinct critiques—community economic development and localism—and simultaneously see it as a point of departure for future housing policy. This Part explores the implications of a renewed interest in localized decision-making in affordable housing and community development. The con-

intervention such as the remedy in *Shelley v. Kraemer*, 334 U.S. 1 (1948) (declaring state court enforcement of private covenant race restrictions unconstitutional). Indeed, it reduces decisions like *Shelley* to removing the legal cloud on voluntary property transfers in violation of existing covenants. See HIRSCH, *supra* note 88, at 30-31.

¹²⁹ Margaret Weir, *Power, Money, and Politics in Community Development*, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 139, 168 (Ronald F. Ferguson & William T. Dickens eds., 1999). Weir notes that "[o]ne of the central tensions community-based groups confront is securing financial resources while maintaining grassroots ties." *Id.*

¹³⁰ See *supra* note 35 (discussing the possibilities for public housing resident community organizing); see also Daniel Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 218-21 (1999) (exploring the history and tension between community empowerment, community development program requirements, and opportunities for collaborative lawyering); HAROLD A. MCDUGALL, BLACK BALTIMORE: A NEW THEORY OF COMMUNITY 22-24, 62 (1993) (illustrating the role of grassroots base communities in economic development in Baltimore).

¹³¹ This Article does not apply the concept of localism to debates on inter-local boundaries, regionalism, and the conversations on metropolitan governance. Nor does this Article explicitly examine the exercise of power by local governments (e.g., zoning or annexation powers). For treatments of these subjects, see *infra* note 133.

flict that arises in affordable housing is traditionally articulated as pitting affluent communities against impoverished communities or renewal efforts against the rights of displaced residents.¹³² By examining the interaction between HOPE VI policies and the community creation process, it is possible to recast affordable housing and community development conflicts in terms of how they affect engagement between people and how they affect community formation.

In this Part, I first flesh out this conception of localism focusing on the impact of place-based development. I then, in Part III.B, apply localism concepts—like boundaries and community definition described in Part III.A—to additional issues confronting HOPE VI development, such as obstacles to racial integration, better housing opportunities, and the impact of the projects' physical design. Through examining HOPE VI in light of these issues, this section explores the role of geographic space and a post-modern conception of community.

A. *Theories of Localism, Boundary Creation, and Place-Based Development*

Recent conversations involving localism may begin (somewhat artificially) with the work of Richard Briffault.¹³³ He examines instances of interlocal conflict, particularly conflicts between cities and neighboring suburbs.¹³⁴ These examinations illustrate the relative power and autonomy of local political structures in contrast to unchecked state control. Briffault uses examples of exclusionary zoning and school finance litigation to explore the tensions that arise from local governments' power to exclude populations deemed undesirable or in making decisions for the benefit of some communities having potentially harmful effects on other communities.¹³⁵

¹³² For an example of the conflict between higher and lower income communities, see *infra* notes 200-01. One of the principle tensions in HOPE VI is the effect of redevelopment on existing public housing tenants. See *supra* text accompanying notes 117-23.

¹³³ See generally Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990) [hereinafter *Our Localism*] (illustrating how the legal powers of American local governments enable these communities to retain local autonomy). Several scholars in the legal and non-legal fields, however, have explored city/suburban boundary issues prior to Briffault's 1990 article. See, e.g., JACKSON, *supra* note 19 (citing various technological and political developments such as the development of highways and annexation that have contributed to the decline of cities and emergence of suburbs); Jerry Frug, *City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980) (arguing that the law has contributed to the powerlessness of the American cities).

¹³⁴ *Our Localism*, *supra* note 133, at 2.

¹³⁵ As Briffault notes:

By enabling some localities to insulate themselves from the economic and social costs of growth and from poorer people and their problems, local land use authority may reinforce the class and cultural differences that drive communities apart and breed interlocal suspicion, tension and conflict. Local zoning authority may encourage the localities that benefit from it to believe in the legitimacy of local autonomy and to resist state intervention, on behalf of poorer communities or poorer people, in

Briffault and other scholars scrutinize the power that local governments, particularly suburbs, wield.¹³⁶ Suburban jurisdictions are relatively free to establish terms of their formation (such as boundaries and composition), to resist annexation by neighboring jurisdictions, to set their own zoning policies, and to make locally-based education decisions.¹³⁷ To resolve conflicts arising from these issues, courts often embrace the desires of the local constituency or the primacy of local determination and control.¹³⁸ Housing policies increasingly include plans for increased local implementation.¹³⁹

The hazard of localism (or the blind embrace of local determination) is due to a misconception of the role local institutions play in creating legal structures and correspondingly defining neighborhood boundaries and spaces.¹⁴⁰ Richard Ford uses the terms "transparency" and "opacity" to describe situations in which local governments are wrongly perceived as either invisible (transparent) and "mere delegates of state power, without autonomy or independent political significance[.]" or as "autonomous sovereigns" (opaque).¹⁴¹ The implications of the opacity misconception are that the boundaries created by these local government structures become impermeable. The misconception obscures the role that local institutions and governments play in the boundary-creating process.¹⁴²

land use and other matters that are assumed to be "local." The danger that local autonomy will degenerate into local parochialism and lead to an ideological predisposition to local solutions for problems that only some localities have the resources to solve is a dilemma of our localism.

Id. at 58.

¹³⁶ *Id.*

¹³⁷ See *id.* (arguing that all localities do not benefit equally from their zoning laws due to the autonomy provided by zoning laws).

¹³⁸ *Id.* at 1. "Localism as a value is deeply embedded in the American legal and political culture."

Id.

¹³⁹ See generally BIPARTISAN MILLENNIAL HOUS. COMM'N, *supra* note 66. The report of the Millennial Housing Commission is a recent example of this localism expression. Among other recommendations, the Commission noted that Congress should "[d]evolve decision-making to states and local governments, but within a framework of federal standards and performance objectives." *Id.*

¹⁴⁰ Briffault notes localism is:

[A] belief that land-use regulation, schools and tax policy ought to be controlled locally, with the interests of local residents as the exclusive desideratum of local decision makers. Localism reifies local borders, using invisible municipal boundary lines to delimit the range of local concern and the proper subjects of local compassion and treating the creation and maintenance of local borders as a basic right.

Our Localism, *supra* note 133, at 444.

¹⁴¹ *Boundaries of Race*, *supra* note 76, at 1861. Ford also warns against "analogiz[ing] local governments to private citizens, regarding them as unproblematically unified and self-validating entities, with rights against both outsiders and centralized authority." *Id.*

¹⁴² *Id.* at 1877. Ford writes: "My thesis . . . has been that political space does the work of maintaining racially identified spaces, while reified political boundaries obscure the role of political space and represent it either as the delegation of state power and therefore inconsequential, or as natural and therefore inevitable." *Id.*

Questions of community description inevitably arise. For example, it is important to determine what legal terms should be used to define boundaries between "communities,"¹⁴³ and (ultimately) how courts and legislators should recognize and identify the existence of a "community."¹⁴⁴ Gerald Frug argues that emphasis on the power of local communities, and assertions of meaning given to boundaries between communities like cities and suburbs are examples of a centered conception.¹⁴⁵ By centered, Frug describes the conception of local governments and local spaces as autonomous entities deserving of legal recognition and protection.¹⁴⁶ In contrast to a centered view, Frug describes an alternative, postmodern conception of communities based on a decentered, or situated conception.¹⁴⁷ This situated conception gives deference to local determination in the form of decentralized decision-making, but embraces the view that the identity and definition of a particular local community is contestable and fluid. The once unquestioned legitimacy and agency of this community is thereby called into doubt.¹⁴⁸ A postmodern critique of community agency would argue that communities are defined only in relationship with other communities, in contrast to conceptions of natural, internal, or autonomous community definition.¹⁴⁹

¹⁴³ For an examination of the intersection of local and regional government, see Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763 (2002) (arguing that some of the urban/suburban problems require regional solutions); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996) (presenting a mixed strategy for metropolitan governance that would allow local governments to retain most local control but also empower regional political institutions with authority to govern over certain issues such as land use and fiscal issues); Richard Thompson Ford, *Beyond Borders: A Partial Response to Richard Briffault*, 48 STAN. L. REV. 1173 (1996) (claiming that law and borders are not separate things but rather intersect constantly to define each other).

¹⁴⁴ Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371 (2001). Richard Schragger uses *Chicago v. Morales*, 527 U.S. 41 (1999), to explore alternative approaches to resolving the conflicts between local communities expressed in reaction to Chicago's Gang Congregation Ordinance. *Id.* Schragger explores three descriptions of community creation: 1) the contractarian community creation honors community norms and definitions by honoring the choice of the individuals of that community to consent to live together; *id.* at 387; 2) the deep community creation involves "shared experiences, deep attachments, mutual affection, and a sense of belonging;" *id.* at 393; and 3) the dualist community creation describes an "individual's engagement in a process of collective self-governance. The individual is constituted by his or her engagement in the dialogue that occurs during acts of collective decisionmaking." *Id.* at 398.

¹⁴⁵ Gerald E. Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 263 (1993).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 272.

¹⁴⁸ *Id.* at 294.

¹⁴⁹ This conception of the self is a common feature of postmodern theory typified by the work of Michel Foucault and Jacques Derrida. Postmodernism is a term that resists a simple definition. See GARY MINDA, *POSTMODERN LEGAL MOVEMENTS* 224, 225 (1995). Gary Minda writes that "[p]ostmodernism is neither a theory nor a concept Postmodernism brings out the diversity of multiple discourses and is skeptical of all universal knowledge claims. Postmodernism rejects the belief in stable, transcontextual foundations." *Id.*

Two themes of postmodern theory—power and the situated self—are applicable to the discussion in this Article. First, postmodernism explores the emanation of power through institutions and the way

This postmodern analysis criticizes a legal apparatus that legitimizes the authority of self-defined, local communities to wield powers of creation and exclusion. This authority is exercised without critical examination, and is an expression of Foucault's view of law as inevitably political and "an instrument of abuse through its legitimation of constructed norms."¹⁵⁰ Local communities define themselves through spatial boundaries (the city or county line), legal boundaries (such as zoning laws), and economic boundaries (such as minimum acreage requirements for lot sizes).¹⁵¹ These boundaries exclude those who do not "belong."

Structures that facilitate community homogeneity and the creation of boundaries define and reinforce spatial definitions. Spatial definitions refer to characteristics of urban space like race and class that become immutably associated with a particular geographic area. Once these spatial definitions attach to an area, they become a permanent part of the character of an area, ingrained in the minds of observers and policy makers.¹⁵² For example, Richard Ford illustrates that contemporary race and class "neutral" laws will still foster racial and economic segregation in cities as a result of the effects of past laws that actively promoted racial and economic segregation.¹⁵³ Ford also illustrates that contemporary race "neutral" laws will continue to foster racial and economic segregation because of contemporary incentives for maintaining the status quo.¹⁵⁴ This analysis suggests that neutral development initiatives will not eradicate racial and economic segregation, and more likely, will further entrench race and class borders. As the borders become reified, they become more difficult to recognize and

in which society is organized, in contrast to ideas of power as pure, internal, or autonomous. Power exists because of the structure of relationships. Second, the very identity and being of an individual is partly constructed or constituted by the social role or position that she holds within the organizational scheme of the society and by the set of social relations that the individual's position holds vis-a-vis other positions. STEPHEN M. FELDMAN, *AMERICAN LEGAL THOUGHT FROM PREMODERNISM TO POSTMODERNISM: AN INTELLECTUAL VOYAGE* 42 (2000); see also JOHN R. GIBBONS & BOB REIMER, *THE POLITICS OF POSTMODERNITY* (1999).

¹⁵⁰ HELEN M. STACY, *POSTMODERNISM AND LAW: JURISPRUDENCE IN A FRAGMENTING WORLD* 73 (2001). Historian Kenneth Jackson expresses a similar sentiment about the federal government's adoption and standardization of racially discriminatory appraisal and insurance policies in the 1930s and 1940s. JACKSON, *supra* note 19, at 217. "The lasting damage done by the national government was that it put its seal of approval on ethnic and racial discrimination and developed policies which had the result of the practical abandonment of large sections of older, industrial cities." *Id.*

¹⁵¹ See NICHOLAS K. BLOMLEY, *LAW, SPACE, AND THE GEOGRAPHIES OF POWER* 3 (1994) (discussing the nexus between law and space in America, England, and Canada); see also Richard T. Ford, *Law's Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843 (1999) (exploring the effect of territorial jurisdiction on the creation of political and social identity).

¹⁵² *Boundaries of Race*, *supra* note 76, at 1857.

¹⁵³ See *id.*

¹⁵⁴ *Id.*; see also Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965, 1970 (2000) (arguing that "one may contribute to resegregation even though one places a positive value on living in an integrated neighborhood").

alter.¹⁵⁵

These spatial definitions are troubling to critics of place-based development which utilize community development programs that focus their resources on geographically discrete areas.¹⁵⁶ Critics emphasize the effect this development has on the creation of a particularized space with negative and reinforcing characteristics.¹⁵⁷ For example, Audrey McFarlane has criticized the policies of the Empowerment Zone for basing aid on the

¹⁵⁵ Richard Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365, 1365 (1997). Ford argues:

The Supreme Court treats racially segregated electoral districts as constitutionally suspect while generally insulating more severely segregated local governments from constitutional scrutiny. . . . [T]he reason for this discrepancy . . . [is that] [t]he Court generally describes the role of government in electoral reapportionment as the active creation of subdivisions, whereas it describes the role of state's role in local government formation as the passive recognition of private residential decisions A very different approach from that of the Court would allow racially defined electoral districts, wherein the dominant group must still negotiate with a broader political community at the legislative level in order to wield political power, and severely scrutinize racially defined local governments, wherein the dominant group directly exercises state power without the tempering influence of a broader political conversation.

Id.

¹⁵⁶ Federal and local intervention in place-based redevelopment for inner-cities has a long history. See generally Alice O'Connor, *Swimming Against the Tide: A Brief History of Federal Policy in Poor Communities*, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 77 (Ronald F. Ferguson & William T. Dickens eds., 1999).

A predominant image of federally funded development projects in cities is of urban renewal and slum clearance programs. As part of the Housing Act of 1949, local governments could apply for federal funds to raze blighted areas and redevelop them. *Id.* at 96-99. In most instances, blighted or slum residential areas were demolished and redeveloped into either higher income residential or commercial uses. There was no requirement that low-income housing that was destroyed be rebuilt. See *id.* at 96. The displacement that arose from this program earned urban renewal the moniker "Negro Removal." See, e.g., William H. Simon, *The Community Economic Development Movement*, 2002 U. WIS. L. REV. 377, 381 (2002) (discussing the history, policies, and strategies of community economic development); AMERICAN APARTHEID, *supra* note 78, at 56.

See generally JAMES ROBERT SAUNDERS & RENAE NADINE SHACKELFORD, URBAN RENEWAL AND THE END OF BLACK CULTURE IN CHARLOTTESVILLE, VIRGINIA: AN ORAL HISTORY OF VINEGAR HILL (1998) (collecting recollections from residents of town near Charlottesville, Virginia that was demolished under Urban Renewal and relocated.)

The Model Cities program was created in 1966 in large part as a reaction to the displacement and demolition caused by urban renewal. The goal of the program was to give community residents and leaders a greater voice in the planning and development process. During its waning years in the early to mid 1970s, the program was criticized for being driven more by outsiders (politicians and academics), and less by community residents. *Id.*

Model Cities gave way to other national programs providing an array of economic and tax incentives geared toward attracting businesses to the central city. These programs include Enterprise Zones, Empowerment Zones, and more recently, the New Market Tax Credit. See Dimitri Pappas, *A New Approach to a Familiar Problem: The New Market Tax Credit*, 10 J. OF AFFORDABLE HOUS. & CMTY. DEV. L. 323, 323, 325 (2001).

¹⁵⁷ There are, of course, place-based development success stories, such as the revitalization of the Boston, Massachusetts neighborhood through the Dudley Street Neighborhood Initiative, which is chronicled in PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD* (1994) (recounting the urban renewal success of the Dudley Street Neighborhood Initiative).

demographics of particular communities, emphasizing and reifying the boundaries between “normal” communities and the “Other.”¹⁵⁸ Empowerment Zone investment incentives exacerbate the spatial definitions created by the program’s eligibility criteria.¹⁵⁹ Moreover, McFarlane argues the development approach is a conservative vision, for only being able to effect change within a confined set of traditional norms, rules and principles which are insufficient to achieve meaningful change for affected communities because of its failure to address the underlying causes of community distress such as racial discrimination.¹⁶⁰

In HOPE VI, the place-based development characterized by the focus on mixed-income development is troubling not only for the dubious success of mixed-income developments generally but also because place-based development has led to the diversion of resources that could have been spent solely on public housing eligible families.¹⁶¹ The pattern of development is also troubling for the boundaries and spatial definitions it fosters. Facilitated by changes to public housing law,¹⁶² new HOPE VI developments achieve gentrification of a limited geographic area.¹⁶³ Reminiscent of the earliest associations of public housing with slum clearance, this pattern of demolition and targeted redevelopment reinforces the negative image of public housing generally and of public housing residents in particular. It evokes images of urban renewal by clearing “slum” uses for higher, more beneficial uses. Similarly, the beneficiaries of the better uses are not public housing residents. Instead, new middle and higher income families are brought in through the mixed-income model, and poorer public housing families are moved out of the area.¹⁶⁴ Services provided at the redeveloped site in shiny new community centers, like day care and self-sufficiency programs, are utilized more by new, higher-income families instead of by the original public housing residents they were targeted to

¹⁵⁸ Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 339 (1999).

¹⁵⁹ *Id.* at 343-349.

¹⁶⁰ *Id.* at 313. McFarlane notes that as a post civil rights-era strategy, development is an attractive approach for conservatives in that it promises equal opportunity rather than equal outcome. *Id.*

¹⁶¹ See *supra* Part II.

¹⁶² The two most salient changes are the repeal of the one for one replacement requirement and the grant of permission to leverage additional public and private funds. These changes make it economically viable for Housing Authorities to replace demolished public housing units with relatively fewer on-site units that are attractive to higher income residents. See *supra* text accompanying notes 29-36.

¹⁶³ The redevelopment plans for Heritage Crossing, a HOPE VI project in Baltimore, illustrate residents’ fears of displacement and gentrification. The Heritage Crossing plans call for 793 units of public housing to be torn down and replaced by just 75 units of public housing and 185 homeownership units with prices ranging from \$70,750 to \$93,000. M. Dion Thompson, *Sign of Hope on Site of Notorious High-Rise: Where Murphy Homes Stood, Homeowners will be Moving In*, BALT. SUN, June 14, 2001, at 1B.

¹⁶⁴ See *supra* notes 112-23 and accompanying text.

assist.¹⁶⁵ The overall message of this development is that vibrant communities are created only by demolishing public housing and replacing it by other types of housing.

B. *Localism and HOPE VI Implementation*

Analyzing HOPE VI through the lens of localism is instructive because it yields solutions to alleviate continuing housing and community disparities that have traditionally remained ambiguous and contested. Examining the connection between HOPE VI and localism concepts focuses the discussion on the forces that shape community creation and interaction. Moreover, it illuminates the central role that structural impediments like racial discrimination can play in subverting attempts at community development. This section begins the localism examination with the most promising possibilities for connection and interdependence among communities that a HOPE VI model might imagine. Then the Article considers the significant challenges to the fulfillment of this vision.

1. *Deconcentration and New Urbanism Principles—A Postmodern Connection Among Communities*

a. Deconcentration

Deconcentration can involve both the strategies of moving individuals to better neighborhoods and bringing higher income residents to areas of concentrated poverty. The strategy of moving higher income residents to redeveloped HOPE VI projects in mixed-income communities has been described above.¹⁶⁶ Although valid concerns are raised with this type of development, this approach to deconcentration does indicate a recognition of the interconnection and interdependence among communities. Similarly, moving public housing families to deconcentrated communities would equally acknowledge the permeability of barriers between communities. HOPE VI focuses on bringing higher income residents in, but does a correspondingly poor job of facilitating moves by affected public housing residents to better neighborhoods.

Section 8 vouchers can be used as replacement units for families displaced by HOPE VI demolition and revitalization.¹⁶⁷ These vouchers could

¹⁶⁵ NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at 28-29.

¹⁶⁶ See *supra* text accompanying notes 96-116.

¹⁶⁷ HOPE VI Revitalization and Demolition Notice of Funding Availability, 66 Fed. Reg. 11,651 (Feb. 26, 2001).

According to the 2001 NOFA, applicants for HOPE VI grant funds receive selection consideration for replacement of demolished units using both Section 8 vouchers and new hard units. Some of the factors to be considered in this category include the availability of relocation support to residents, including counseling about opportunities in non-poverty areas, and offering life skills programs to increase residents' ability for a smooth transition into new neighborhoods.

provide real mobility opportunities for residents who are unable or unwilling to return to the public housing development after revitalization, as a result of HOPE VI's emphasis on deconcentration goals.¹⁶⁸ Although not described expressly as a mobility program, there are a number of references in HOPE VI material to moving families to better areas.¹⁶⁹ One recent study, however, found that most affected residents moved to other public housing developments instead of into higher income communities through Section 8 voucher assistance.¹⁷⁰ City officials, even with the best of intentions, cannot resist using HOPE VI resources for general urban revitalization and gentrification, rather than for maximizing public housing resident mobility. Moreover, antidiscrimination law does not empower residents to capitalize on those opportunities for mobility that HOPE VI could provide. Finally, these micro-phenomena function in a regime that promotes massive demolition of public housing units, further restricting the choices of low income residents.¹⁷¹

A properly conceived mobility program has deconcentration potential and is an important recognition of the fact that nearby communities are

Applicants are assigned 5 points (out of a total of 100) under the categories of Relocation and Section 8 used to provide Affordable Housing. Two points are available by demonstrating an effective Relocation Support plan, and one point is available for each of the following: Community Outreach ("[A]n effective plan to involve faith-based, non-profit and/or other organizations and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. You must also describe an effective plan for working with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area."); Self-sufficiency ("[A]n effective plan to provide results-based community and supportive service program support to Section 8 relocatees to achieve and maintain their self-sufficiency."); and Tracking (including follow-up services). HOPE VI Revitalization and Demolition Notice of Funding Availability, 66 Fed. Reg. 11,637, 11,651 (Feb. 26, 2001).

¹⁶⁸ Among 2001 grantees, 7,923 public housing units will be demolished and 4,869 public housing rental units will replace them. Out of 6,046 current families, only 3,595 families are expected to return to the redeveloped HOPE VI site. U.S. Dep't of Hous. & Urban Dev., *National Fact Sheet, FY 2001 HOPE VI Revitalization Grant Awards* (2001), available at http://www.hud.gov/offices/pih/programs/ph/hopec6/grants/fy01/natl_factsheet.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁶⁹ For example, a 1999 HUD HOPE VI publication makes reference to making "12,000 Section 8 certificates to achieve mobility and deconcentration" available. HOPE VI BUILDING COMMUNITIES, *supra* note 19, at 5. The publication also emphasizes the goal of helping families to move to better neighborhoods. *Id.* at 10.

¹⁷⁰ KINGSLEY ET AL., *supra* note 39, at 7.

¹⁷¹ The difficulties of accomplishing deconcentration goals become particularly acute when massive demolition is combined with a shortage of affordable housing generally. There is an ever widening gap between the numbers of people who need access to affordable housing and the affordable housing stock available:

Without a dramatic shift in public policy, these adverse trends are unlikely to change in the near future. The number of poor renter households will continue to exceed the available supply of unsubsidized low-cost housing, further straining available housing assistance resources. Much of the current supply of unsubsidized low-cost housing is in serious disrepair and at risk of loss, while the number of subsidized units is projected to decrease because of expiring use restrictions and budget cuts.

William C. Apgar, *An Abundance of Housing for All but the Poor*, in HOUSING MARKETS AND RESIDENTIAL MOBILITY 121 (G. Thomas Kingsley & Margery Austin Turner eds., 1993).

interrelated. Studies support the finding that many residents gain improvements in housing and employment when they move to areas of lower poverty or lower levels of racial concentration.¹⁷² These gains, assessed against social and economic ills resulting from the concentration effects of high poverty areas, have generally supported mobility programs.¹⁷³ There is an aspiration, in HOPE VI, to achieve deconcentration by creating mixed-income communities through on-site HOPE VI revitalization.¹⁷⁴ There is a further goal of dispersing former public housing residents

¹⁷² One recent analysis summarized the anticipated benefits of mobility programs:

Dispersal Strategies

1. Families will experience improved job and educational opportunities when they move to middle-income neighborhoods.

Dispersal and Mixed-Income Strategies

2. Employed persons will provide role models for children and unemployed residents. Higher-income tenants will model good tenancy behavior (e.g., good housekeeping, respecting neighbors).

Mixed-Income Strategies

3. Communities will be more stable, with a lower turnover of residents than in traditional public housing.
4. Public services will be better because of efforts to attract higher-income residents and those residents' demand for quality services once they have moved in.
5. Maintenance and management will be more responsive because of the demands of higher-income tenants.
6. Institutions, public agencies, and commercial businesses are more likely to invest in a mixed-income community.
7. Resident services and programs may be built into developments' budgets in mixed-income developments.
8. There will be more public and political support for assisted housing if it is seen as benefiting[sic] a wider range of families.

Susan J. Popkin et al., *The Gautreaux Legacy: What Might Mixed-Income and Dispersal Strategies Mean for the Poorest Public Housing Tenants?*, 11 HOUS. POL'Y DEBATE 911, 927-28 (2000), available at http://www.fanniemae-foundation.org/programs/hpd/pdf/hpd_1104_popkin.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

Another study demonstrates that the exact method of moving to areas of higher income appears to matter. Rachel Garshick Kleit, *The Role of Neighborhood Social Networks in Scattered-Site Public Housing Residents' Search for Jobs*, 12 HOUS. POL'Y DEBATE 541 (2001), available at http://www.fanniemae-foundation.org/programs/hpd/pdf/HPD_1203_kleit.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review). Examining social networks and the development of social capital, Rachel Kleit found that residents living in small clusters of public housing units in non-poor areas had less contact with nonpoor neighbors than those public housing residents in scattered, single units. *Id.* at 560-63.

¹⁷³ Two Issue Briefs from HUD illustrate the benefits and tradeoffs of tenant-based versus project-based assistance. OFFICE OF POL'Y DEV. & RES., U.S. DEP'T OF HOUS. & URBAN DEV., ISSUE BRIEF NO. 1: VOUCHER RECIPIENTS ENJOY MUCH GREATER CHOICE ABOUT WHERE TO LIVE THAN RESIDENTS OF PUBLIC HOUSING AND ARE LESS LIKELY TO BE CONCENTRATED IN DISTRESSED NEIGHBORHOODS (Dec. 2000), available at <http://www.huduser.org/publications/pdf/voucher/pdf> (last visited Oct. 20, 2002) (on file with the Connecticut Law Review). The second brief concludes that the cost of assisting voucher recipients is less than the cost of assisting tenants in developments administered by large public Housing Authorities—notwithstanding that additional costs to voucher programs involving counseling and landlord outreach could make the costs more equivalent. OFFICE OF POL'Y DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., ISSUE BRIEF NO. 11: ECONOMIC COST ANALYSIS OF DIFFERENT FORMS OF ASSISTED HOUSING (Dec. 2000), available at <http://www.huduser.org/publications/pdf/economic.pdf> (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁷⁴ See discussion *supra* text accompanying notes 96-116.

throughout a metropolitan area using Section 8 vouchers, although the reality differs from the goal.

The history and lessons of two large scale mobility efforts, the Gautreaux program and the Moving to Opportunity ("MTO") Program, are instructive in imagining how HOPE VI could incorporate mobility efforts. Gautreaux was originally crafted as a desegregation strategy arising out of judicial findings of segregation and racial discrimination by the Chicago Housing Authority and HUD.¹⁷⁵ Participating public housing families and those on the waiting list were given Section 8 vouchers to move to predominantly white suburban Chicago neighborhoods.¹⁷⁶ Included with Section 8 assistance, counseling assistance was available to help families find housing in new neighborhoods and to make the adjustment to these new communities.¹⁷⁷ One of the components of the Gautreaux program that differentiates it from MTO is that Gautreaux used race as the main criterion for selecting suburban areas eligible to participate in the program. MTO uses income instead of race as the determining factor. Studies of families participating in Gautreaux generally found that employment and educational opportunities increased.¹⁷⁸ Some concerns, however, such as the voluntariness of the program, warrant mention. Gautreaux attracted those residents most motivated and eager to move outside of the central city. This potential "creaming"¹⁷⁹ of the best families makes predictions about

¹⁷⁵ Finding intentional racial segregation in Chicago public housing, the Court ordered a region-wide desegregation plan that was upheld in the Supreme Court. *Hills v. Gautreaux*, 425 U.S. 284, 305-6 (1975).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* See also Margery Austin Turner, *Moving Out of Poverty: Expanding Mobility Choice Through Tenant-Based Housing Assistance*, 9 HOUS. POL'Y DEBATE 373, 373-77 (1998) (discussing tenant-based housing assistance (Section 8 certificates and vouchers) and the effectiveness and results of the Gautreaux and Moving to Opportunity programs), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_0902_turner.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review); Joseph Seliga, Comment, *Gautreaux a Generation Later: Remediating the Second Ghetto or Creating the Third?*, 94 NW. U. L. REV. 1049, 1049-56 (2000) (discussing the circumstances leading up to the first *Gautreaux* decision).

¹⁷⁸ See, e.g., James E. Rosenbaum, *Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the Gautreaux Program*, 6 HOUS. POL'Y DEBATE 231, 231-44, 263-64 (1995) (discussing the employment and educational opportunities available to Gautreaux program participants), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_0601_rosenbaum.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁷⁹ The difference between a focus group that is "creamed" and not is often very subtle: Applying for the program is largely a matter of luck and persistent telephoning on registration day, since many more people try to call than can get through. The program also has three selection criteria: To avoid overcrowding, late rent payments, and building damage, it does not admit families with more than four children, large debts, or unacceptable housekeeping. None of these criteria is extremely selective, and all three reduce the eligible pool by less than 30 percent. Although these criteria make those selected an above-average group compared with housing project residents, they are not a "highly-creamed" group. All are very low income blacks, are current or former welfare recipients, and have lived most of their lives in impoverished inner-city neighborhoods.

Rosenbaum, *supra* note 178, at 234.

larger scale or less voluntary relocations difficult to predict.

The MTO program was designed to improve on the data collected under the Gautreaux program.¹⁸⁰ MTO was authorized as a five year residential mobility demonstration program involving five cities.¹⁸¹ The structure of the program allows researchers to minimize the “creaming” effect; that is, researchers are able to follow participants who are not necessarily as motivated as the Gautreaux movers. Not surprisingly, some of the early lessons from the program emphasize the importance of renter education, landlord education and outreach, and studying the ability of surrounding housing markets to absorb low income renters.¹⁸²

Mobility efforts reflect several postmodern values. First, these programs minimize the relevance of neighborhood boundaries. Residents are theoretically able to cross freely over geographic boundary lines that once signified an impenetrable barrier. Second, these programs increase the interaction between people from different communities, consonant with Frug’s theory of a community of strangers.¹⁸³ Third, new immigrants begin to participate in the dialogue that defines the norms and structures of that community.¹⁸⁴

¹⁸⁰ The MTO program enrolled about 5,000 families. JOHN GOERING ET AL., MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM: CURRENT STATUS AND INITIAL FINDINGS 1, 4-5 (Sept. 1999), available at <http://www.huduser.org/publications/pdf/mto.pdf> (last visited Oct. 20, 2002) (on file with the Connecticut Law Review). These families were then randomly assigned into one of three groups—the MTO Treatment Group, the Section 8 Comparison Group, and the In-place Control Group. *Id.* Members of the MTO Treatment Group were given Section 8 vouchers to be used in areas of low poverty concentration. *Id.* MTO Treatment Group members were also given extensive counseling and housing search assistance by local nonprofit organizations. *Id.* Section 8 Comparison Group members were given ordinary Section 8 vouchers (not restricted to certain areas by poverty rate) and whatever assistance the Public Housing Authority would normally provide Section 8 recipients. *Id.* In-Place Control Group members did not receive Section 8 vouchers, but continued to receive project based assistance. *Id.* By tracking and researching the families in all three groups, researchers hope to formulate conclusions about opportunities in non-poverty areas with extensive help, opportunities from the normal operation of the Section 8 program, and the opportunities for families remaining in relatively poor, urban areas. *Id.*

¹⁸¹ Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152, 106 Stat. 3672, 3716-17 (1992), amended by Pub. L. No. 103-120, § 3, 107 Stat. 1144, 1148 (1993), repealed by Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 550(f), 112 Stat. 2518, 2610 (1998). MTO was authorized as § 152 of the Housing and Community Development Act of 1992. The five cities, which were selected in 1994, are Baltimore, Boston, Chicago, Los Angeles, and New York. GOERING ET AL., *supra* note 180, at 32.

¹⁸² See GOERING ET AL., *supra* note 180, at 19-46 (discussing early lessons from the MTO study). Researchers will continue to monitor the results to see what effect neighborhood has on the success of residents. *Id.* at 47-51.

¹⁸³ Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1049 (1996) (“The city is . . . a ‘world of strangers,’ a world very different from that of a village or small town where, it is often said, ‘everyone knows each other.’”).

¹⁸⁴ Keith Aoki’s description of postmodern architecture argues that: planners sought to be less authoritarian and more sensitive to community input and pre-existing urban conditions. This change accompanied shifts in architectural taste and theory, which generally turned away from a belief in law-like rules of design promoted by architectural modernism and began re-examining the ambiguous roles of history and context.

On the other hand, Briffault cautions that “[t]he core of local legal autonomy is defensive and preservative[.]”¹⁸⁵ A conception of community as the voluntary expression of a group of individuals desiring to live in a certain manner may not be consonant with an immigration of Section 8 voucher holders. Individuals may or may not decide to rent to these voucher holders, and may be under pressure from their neighbors to exclude them.¹⁸⁶ Similarly, a conception of community that reflects the shared history and background of residents seems incompatible with an immigration of Section 8 voucher holders who are presumptively outsiders, and who probably do not share common background experiences with the members of the existing community. Yet a conception of community that emphasizes opportunities for dialogue and discussion among members may offer the most promise for HOPE VI mobility goals. Such a program should emphasize spaces for new arrivals to participate in decision making and the setting of community norms.¹⁸⁷

b. New Urbanism

HOPE VI has employed the most extensive application of the principles of New Urbanism to revitalize inner city areas.¹⁸⁸ New Urbanism seeks to transform barracks-style or high-rise public housing into urban spaces more in conformity with the surrounding area or to transform large, anonymous tracts of land into smaller, more community friendly spaces within neighborhoods.¹⁸⁹ This planning concept attempts to blur physical

Aoki, *supra* note 65, at 792.

¹⁸⁵ *Our Localism*, *supra* note 133, at 355. Briffault addresses the contradictions between a mobility norm and a participation norm of localism. *Id.* at 392-403. Compare Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 423-24 (1956) (describing the mobility norm), with Frug, *supra* note 183, at 1067-73 (describing the participation norm).

¹⁸⁶ The strongest expression of the contractarian view is Tiebout's conception of localities offering competing mixes of services and taxes to attract residents. If residents become dissatisfied with a locality, they will leave for a locality with a more attractive offer. Tiebout, *supra* note 185, at 418-19.

Similarly, another scholar defines local government as “a manifestation of revealed choice based on the collective individualism of its citizens.” Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 609 (1997). Poindexter would limit “individual/collective will” by adopting “hypemorms” to regulate exclusion based on difference. *Id.* at 638.

For a countervailing view, see STACY, *supra* note 150, at 114 (“The individual, rather than *tabula rasa* and writing one's own identity through a process of agency and will is, according to Lacan merely ‘born into’ identity. Life for an individual is a process of living within pre-determined constraints.”)

¹⁸⁷ “[I]n a postmodern world on cultural pluralism, the jurisprudential focus is upon how different groups can communicate with and understand one another, and resolve their legal conflicts.” STACY, *supra* note 150, at 177. This view is also consonant with the civic republican tradition.

¹⁸⁸ Charles C. Bohl, *New Urbanism and the City: Potential Applications and Implications for Distressed Inner-City Neighborhoods*, 11 HOUS. POL'Y DEBATE 761, 761-62 (2000), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1104_bohl.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁸⁹ *Id.* at 762. Keith Aoki provides an historical treatment of the influence of architecture on suburbanization and urban planning. Aoki, *supra* note 65, at 699-703. He describes architectural post-modernism as “roughly . . . a move from harshly geometric purism of the glass slab to the quaint, the vernacular, the stylish, and the ornamented.” *Id.* at 822.

signs of boundaries demarcating “good” from “bad” neighborhoods. The goal is to link one community with another. This design, in addition to spatial design within the “community,” is oriented toward facilitating interaction with neighbors. New Urbanism emphasizes common spaces, parks, porches and similar approaches that encourage neighbors to talk with one another.¹⁹⁰ An additional aim of New Urbanism is to avoid the criticism of past urban renewal programs by offering alternatives to massive demolition and clearance projects. It is “now being applied to public housing projects involving the rehabilitation and retrofitting of existing buildings, and the addition of new sections to existing neighborhoods.”¹⁹¹

The NewHolly community in Seattle, Washington is an example of New Urbanism principles applied to HOPE VI.¹⁹² First, the housing development is now integrated into the surrounding community, evidenced in part by the sale price of housing available on the former public housing site.¹⁹³ Second, the NewHolly community has a broad number of financial partners reflecting the involvement of both the private and public sectors.¹⁹⁴

See also Neal Kumar Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039, 1047-48 (2002) (exploring less conventional methods of crime control by focusing on manner of construction and design in cities, neighborhoods, and buildings); Emily Talen, *The Social Goals of New Urbanism*, 13 HOUS. POL’Y DEBATE 165, 165-70 (2002) (discussing the goals of New Urbanism), available at http://www.fanniemaeoundation.org/programs/hpd/pdf/hpd_1301_talen.pdf (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁹⁰ Bohl, *supra* note 188, at 762-63.

¹⁹¹ *Id.* at 770. Bohl notes that:

New Urbanism is a movement in architecture and planning that . . . organiz[es] development into neighborhoods that are diverse, compact, mixed use, pedestrian oriented, and transit friendly. . . . The neighborhood is limited to an area approximating a 5- to 10-minute walk from center to edge, ensuring that all neighborhood activities are within convenient walking distance of residents. Within the neighborhood are a variety of housing types and land uses, a mix of shops, services, and civic uses capable of satisfying many of the residents’ daily needs. Streets are designed for pedestrian use, with generous sidewalks, street trees, and on-street parking to provide a buffer from street traffic and make walking a safer and more appealing option. Buildings are generally low- to mid-rise, set close together, and built close to the street to promote pedestrian use and help define neighborhood public space in the form of streets, squares, and plazas. Small parks and civic institutions are given prominent sites and dispersed throughout the neighborhood.

Id. at 762-63.

¹⁹² The Congress of New Urbanism awarded the architects of NewHolly the 2002 Charter Award for their work integrating NewHolly into the surrounding neighborhood. See Ctr. for New Urbanism, *Charter Award Winners 2002*, at <http://www.cnu.org> (last visited Oct. 20, 2002) (on file with the Connecticut Law Review).

¹⁹³ Seattle Hous. Auth., *Homeownership Page for the NewHolly Development*, at <http://www.sea-pha.org/development/newholly/homeownership.html> (last visited Oct. 20, 2002) (on file with the Connecticut Law Review). The average sale price of a home in the first phase of construction was \$230,600. There were 148 homes sold in Phase I. *Id.*

¹⁹⁴ The financial partners involved in the project leveraged the nearly \$50 million HUD grant into approximately \$275 million. The partners include HUD, the State of Washington, the Washington State Housing Finance Commission, the City of Seattle, Fannie Mae, Bank of America, Key Bank, Washington Mutual Bank, and the Federal Home Loan Bank of Seattle. See NewHolly Redevelopment, at <http://www.sea-pha.org/development/newholly/newholly.html> (last visited Oct. 18, 2002) (on file with the Connecticut Law Review).

Third, community building, especially through education, is an important piece of the project.¹⁹⁵

The connection between design principles and community goals can be complicated. Whether New Urbanism goals are consistent with prevailing social goals, or whether its principles are adequate to achieve these goals remains to be seen. One recent comparison between community goals and New Urbanism charter principles¹⁹⁶ concluded that the effect of New Urbanism on community social goals, defined as social interaction and psychological aspects of community (such as membership, influence, need fulfillment, and shared emotional connection), was difficult to define precisely because of the presence of independent variables beyond the control of the designer.¹⁹⁷ The effect of New Urbanism principles on facilitating social interaction is more clear. Variables inherent in social interaction, however, like instances of exclusion and exclusiveness, and their impact on community formation are more difficult to predict.

2. *The Challenges to Broader Community Engagement—Segregation, Discrimination, and Access to Affordable Housing*

a. Race and Segregation

Race is often central to community formation.¹⁹⁸ Because of current antidiscrimination law, however, HOPE VI only makes vague, aspirational pronouncements about the need to remedy racially segregated areas and grant local governments the flexibility for achieving this goal.¹⁹⁹ HOPE VI fails to correct specific, identifiable racially discriminatory harms with targeted, race-based remedies that strike at the heart of housing segrega-

¹⁹⁵ The onsite community center, the NewHolly Neighborhood Campus, features a branch of the Seattle Public Library, a Continuing Education Center, classes from South Seattle Community College, child care and preschool services, a farmer's market-type facility where residents can grow and sell their own food, and a variety of youth and family services. See Seattle Hous. Auth., *NewHolly Neighborhood Campus Page*, at <http://www.sea-pha.org/development/newholly/nhcampus.html> (last visited Oct. 18, 2002) (on file with the Connecticut Law Review).

¹⁹⁶ See CONG. FOR THE NEW URBANISM, CHARTER OF THE NEW URBANISM (1998). One commentator outlined the elements of this Charter:

The Charter . . . comprises a list of 27 principles, each of which is accompanied by an essay from a leading architect, planner, or policy maker that explains it in greater detail. The principles move from general to specific and are organized into three categories: The Region: Metropolis, City, and Town; Neighborhood, District, and Corridor; and Block, Street and Building.

Talen, *supra* note 189, at 171.

¹⁹⁷ Talen, *supra* note 189, at 167-68 (for examples of psychological aspects of community).

¹⁹⁸ See *supra* notes 82-85 and accompanying text.

¹⁹⁹ The pattern of recent Supreme Court decisions is described by some as reactionary to a perceived over-reaching by liberals promoting an antidiscrimination agenda. Jed Rubenfeld, *The Anti-Antidiscrimination Agenda*, 111 YALE L.J. 1141, 1177 (2002). "[T]he current Court's constitutional case law has to be understood less in terms of its ostensible doctrinal reasoning, and more in terms of an underlying agenda, founded on a deeply held but as yet poorly theorized sense that antidiscrimination law in this country has taken a very wrong turn." *Id.*

tion.²⁰⁰ Instead, Housing Authorities must rely on proxies for race—like income level—to alter long entrenched discriminatory patterns.²⁰¹

A race neutral approach unfairly pits the interests of one community against the interests of another or against the ability of a community's residents to preserve their "identity" against an unwanted influx of outsiders. Instead of framing the conflict in a way that forces a court to choose a winning and losing community, a better approach would consider how the policy affects the formation of the communities themselves. That would mean that existing community boundaries and definitions not be regarded as absolute. Instead, a community's status would be examined in relation to surrounding communities.

²⁰⁰ *United States v. Sec'y of Hous. & Urban Dev.*, 239 F.3d 211 (2d Cir. 2001), *cert. denied*, 534 U.S. 1054 (2001) [hereinafter *Yonkers*] and *Walker v. City of Mesquite*, 169 F.3d 973 (5th Cir. 1999), *reh'g denied*, 181 F.3d 98 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000), illustrate contrasting approaches to findings of long-standing, pervasive housing segregation. The *Yonkers* court ordered the construction of subsidized housing in specific, non-minority areas. *Yonkers*, 239 F.3d at 215. In contrast, the *Walker* court struck down a race-conscious plan to build housing in non-minority areas and instead ordered the continued use of Section 8 vouchers to achieve integration. *Walker*, 169 F.3d at 987-88. The *Walker* court supported the objections of neighboring community associations to the construction of subsidized housing in their neighborhood. *Id.* at 979; *see also* Martha R. Mahoney, *Whiteness and Remedy: Under-Ruling Civil Rights in Walker v. City of Mesquite*, 85 CORNELL L. REV. 1309, 1309 (2000) ("[C]riticiz[ing] a trend in recent cases protecting white plaintiffs and argu[ing] that courts must not develop 'rules' protecting whiteness as a core concern of the requirement that race-conscious remedies for racial discrimination be narrowly tailored."); Thomas Peter Abt, Comment, *Another Dream Deferred? Walker v. City of Mesquite and the Threat to Meaningful Desegregation Remedies*, 7 GEO. J. POVERTY L. & POL'Y 123, 125 (2000) (indicating that favoring the interest of homeowner groups in cases such as *Walker* "has disturbing implications for the future of race-conscious remedies used to achieve racial desegregation"). *But cf.* Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 HARV. C.R.-C.L. L. REV. 289, 365-68 (2002) (suggesting that the remedy ordered in *Yonkers* was ineffective and that better alternatives existed).

A finding by the court of past intentional racial discrimination by a city or local public housing authority does not guarantee that a court will sanction a race-based remedial measure, but such a remedy has been upheld in other instances of intentional discrimination and employed in several housing consent decrees. *See* U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEV. & RESEARCH, BASELINE ASSESSMENT OF PUBLIC HOUSING DESEGREGATION CASES: CROSS-SITE REPORT: VOLUME 1 (Apr. 2000) (describing housing consent decrees intended to provide remedies to minority plaintiff class members); U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POL'Y DEV. & RESEARCH, BASELINE ASSESSMENT OF PUBLIC HOUSING DESEGREGATION CASES: CASE STUDIES: VOLUME 2 (Apr. 2000) (examining desegregation through an assessment of the impact of desegregation settlements).

²⁰¹ Consider the pace of progress stemming from the *Mount Laurel* decisions of the New Jersey Supreme Court. *S. Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975), and *S. Burlington County NAACP v. Township of Mount Laurel*, 456 A.2d 390 (N.J. 1983), are generally known as *Mount Laurel I* and *Mount Laurel II*, respectively. The *Mount Laurel* decisions found that exclusionary suburban zoning prevented construction of low and moderate income housing in most of the suburban areas in the states. *Mount Laurel I*, 336 A.2d at 723; *Mount Laurel II*, 456 A.2d at 415-16. The remedy was focused on economic criteria instead of racial criteria. *See Mount Laurel I*, 336 A.2d at 717. Twenty years after the first decision, a Ford Foundation study found that housing opportunities had increased for low and moderate income households, but the *Mount Laurel* remedies had been much less successful in either opening up housing opportunities for poor urban residents in suburban locations where they had been intentionally excluded before, or opening up housing opportunities in predominantly white suburbs for segregated black and latino populations living in urban areas. Florence Wagman Roisman, *The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the Mount Laurel Study*, 27 SETON HALL L. REV. 1386, 1387-88. (1997) [hereinafter *The Role of the State*].

HUD's deconcentration rule is an example of the tension in recent policy initiatives that focus more on income mixing than persistent racially segregated housing patterns.²⁰² The first part of the regulation is designed to bring higher income residents into lower income developments, and lower income residents into higher income developments.²⁰³ Public housing authorities are required to compare the income levels of specific developments with the income level of a housing authority's portfolio as a whole.²⁰⁴ For those specific developments that fall outside of a designated income range,²⁰⁵ the Housing Authority must either justify the disparity within enumerated criteria²⁰⁶ or include plans for ameliorating the disparity in its admissions policy.²⁰⁷

In contrast to the detailed requirements of income deconcentration, Housing Authority obligations under the "Affirmatively Furthering Fair Housing" section are much more generalized. Housing Authority policies "should be designed to reduce racial and national origin concentrations" through "affirmative steps . . . includ[ing] but . . . not limited to, appropriate affirmative marketing efforts; additional applicant consultation and information; and provision of additional supportive services and amenities to a development."²⁰⁸ HUD can challenge a Housing Authority's certification of compliance with this regulation if HUD finds that a Housing Authority's policies perpetuate segregation, contribute to new segregation, or do not reduce existing segregation.²⁰⁹ However, there is not the formal

²⁰² Deconcentration of Poverty and Fair Housing in Program Admissions, 24 C.F.R. § 903.1 (2002). The rule applies to all HOPE VI developments receiving grant awards in the year 2001 and after. Grantees in previous years are exempt if they certify and demonstrate that adherence to the rule would violate previous contractual agreements. *Id.* § 903.2(b)(2)(v).

²⁰³ *See id.* § 903.2(b), (c).

²⁰⁴ *Id.* § 903.2(c)(1)(i)-(iii). The regulation is not applicable to small or special needs developments, or to HOPE VI developments approved before the effective date of the rule. *See id.* § 903.2(b)(2)(i-v).

²⁰⁵ The Established Income Range is 85% to 115% of the portfolio-wide average income. *Id.* § 903.2(c)(1)(iii).

²⁰⁶ *Id.* § 903.2(c)(1)(iv)(A)-(D). Examples of explanations or justifications under the rule include, but are not limited to, the following: Developments under consent decrees or other court action, developments participating in other deconcentration efforts approved or reviewed by HUD, developments because of their size or location promote deconcentration (scattered sites or small developments), or "[t]he income characteristics of the covered development or developments are sufficiently explained by other circumstances." *Id.*

²⁰⁷ *Id.* § 903.2(c)(1)(v)(A)-(D). The regulation gives some examples of actions to improve the deconcentration policies of Housing Authorities: Incentives for lower income residents to move to higher income communities or vice versa through "rent incentives, affirmative marketing plans, or added amenities," focusing physical improvements on lower income developments in order to encourage higher income families to move there, adopting a working families preference for lower income developments, and skipping over families on the waiting list for public housing. *Id.*

²⁰⁸ *Id.* § 903.2(d)(2), (ii).

²⁰⁹ *Id.* § 903.2(d)(3)(A)-(B).

plan for racial integration that exists for income integration described above.

b. The Fair Housing Act

The interrelationship among nearby communities and the struggle over the terms of community definition are more pronounced under a Fair Housing Act²¹⁰ analysis. The Fair Housing Act examines a housing development's impact on integration as a whole in addition to policing individual acts of discrimination against potential homeowners and renters. Two questions arise when considering the impact of the Fair Housing Act on HOPE VI: (1) how might the Act resolve the tension between its goals of anti-discrimination²¹¹ and integration²¹² when applied to HOPE VI developments and (2) how can the integration mandate of the Act be employed to affect HOPE VI policy choices? Both questions examine how much the Fair Housing Act would sanction race conscious planning in the administration of HOPE VI and what forms this planning could take.

The integration/anti-discrimination conflict arises most directly when limiting the numbers of minority tenants in a development due to fears of tipping, and in refusing to locate a public housing development in a particular neighborhood because of the racial composition of that neighbor-

²¹⁰ Title VIII of the 1968 Civil Rights Act, 42 U.S.C. §§ 3601-3619 (2000) (setting forth detailed provisions on housing discrimination); *see also* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2000) (providing that "[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."); 42 U.S.C. § 1981 (2000) (prohibiting discrimination in the enforcement of contracts); 42 U.S.C. § 1982 (2000) (prohibiting discrimination in the purchase and sale of property). *See generally* ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION (2002) (providing an in-depth analysis of the Fair Housing Act and other sources of fair housing law).

²¹¹ 42 U.S.C. § 3604(a) (2000). The Fair Housing Act generally makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." *Id.*

²¹² The statute places "[t]he authority and responsibility for administering this Act . . . in the Secretary of Housing and Urban Development [HUD]." *Id.* § 3608(a). The Act requires "[a]ll executive departments and agencies [to] administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further the purposes of [the Fair Housing Act]." *Id.* § 3608(d). The Act also mandates that "[t]he Secretary of Housing and Urban Development shall . . . administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the Act]." *Id.* § 3608(e)(5). For a discussion of the differences between "purposes" and "policies" language in § 3608(d) and 3608(e), *see* Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1025 n.78 (1998). Although the meaning of "affirmatively to further the policies" is not enumerated in the statute, it has been interpreted by courts to mean the promotion of integration: "Action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973). *See also* NAACP v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 155 (1st Cir. 1987) (stating that goals in legislative history "suggest[] an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases").

hood. Under a Fair Housing Act analysis, some courts favor the integration mandate of the Act while others focus on the nondiscrimination goal.²¹³ The statutory tension between integration and non-discrimination is seemingly solved when the race conscious housing plan does not have the additional effect of denying specific housing units to racial minorities (as in *Walker v. Mesquite*). Race conscious housing plans remain vulnerable to attack, however, as impermissible racial classifications under the Equal Protection Clause.

The integration mandate of the Fair Housing Act could be useful in affecting HOPE VI policy.²¹⁴ This mandate is an effective tool in holding actors responsible for housing activities that have a disparate impact on minorities or that perpetuate segregation.²¹⁵

²¹³ In *Otero*, the New York Housing Authority denied minority applicants admission to public housing because of fears of segregation. *Otero*, 484 F.2d at 1124. The court relied on the duty of HUD, and by implication the Housing Authority, to promote integration. *Id.* at 1133-34. *But cf.* *United States v. Starrett City Assocs.*, 840 F.2d 1096, 1103 (2d Cir. 1988) (holding "that Title VIII does not allow . . . rigid racial quotas of indefinite duration to maintain a fixed level of integration . . . by restricting minority access to scarce and desirable rental accommodations").

See also *Burney v. Hous. Auth. of Beaver*, 551 F. Supp. 746, 770 (W.D. Pa. 1982) (finding that the Housing Authority's plan to preserve integration was discriminatory in violation of Title VIII); Robert C. Farrell, *Integrating by Discriminating: Affirmative Action that Disadvantages Minorities*, 62 U. DET. L. REV. 553 (1985) (reviewing the case law on the integration/nondiscrimination conflict and questioning whether integration benefits minorities); Bruce S. Gelber, *Race-Conscious Approaches to Ending Segregation in Housing: Some Pitfalls on the Road to Integration*, 37 RUTGERS L. REV. 921 (1985) (reviewing the constitutional and statutory constraints on the validity of race-conscious plans designed to promote integration in housing); Rodney A. Smolla, *In Pursuit of Racial Utopias: Fair Housing, Quotas, and Goals in the 1980's*, 58 S. CAL. L. REV. 947, 1015 (1985) (describing various integration plans and concluding that minorities "should not be asked to suffer new 'officially approved' race discrimination merely because white prejudice . . . may lead to white flight"); Marc A. Kushner, Note, *The Legacy of Race-Conscious Access Quotas Under the Fair Housing Act of 1968*, 9 CARDOZO L. REV. 1053 (1988) (arguing that quotas are legal under the Fair Housing Act).

²¹⁴ Congress intended the statute to be broadly construed. See *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 208 (1972). In the legislative history, the statute's principal sponsor, Senator Mondale, stated:

Negroes who live in slum ghettos, however, have been unable to move to suburban communities and other exclusively White areas. In part, this inability stems from a refusal by suburbs and other communities to accept low-income housing. . . . An important factor contributing to exclusion of Negroes from such areas, moreover, has been the policies and practices of agencies of government at all levels.

SCHWEMM, *supra* note 210, at § 21:1 (quoting 114 Cong. Rec. 2277 (1968)).

Several scholars have written about the applicability of the Fair Housing Act to similar programs. See Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155 (1996) (applying Fair Housing laws to Section 8 subsidies); Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617 (1999) (applying Fair Housing laws to suggest new framework to eradicate redlining); *The Role of the State*, *supra* note 201 (applying Fair Housing laws to the LIHTC program); cf. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067 (1998) (arguing that racism creates obstacles to fair housing).

²¹⁵ Plaintiffs do not have to demonstrate intent, only discriminatory effect, in order to prove a violation of the Fair Housing Act. This burden of proof is important to the extent that courts are increasingly unwilling to recognize discrimination absent overt circumstances. Michael Selmi, *Proving Intentional Discrimination: The Reality of Supreme Court Rhetoric*, 86 GEO. L.J. 279, 284 (1997) (finding that the pattern of Supreme Court decisions on discrimination since the 1960s indicates that the

The *Shannon* decision delineates how HUD should affirmatively further integrative goals.²¹⁶ In *Shannon*, local residents, business owners, and civic associations sought to prevent the construction of Fairmount Manor, an affordable housing project in Philadelphia, Pennsylvania.²¹⁷ The plaintiffs' substantive complaint was that the site chosen for this type of project would increase "the already high concentration of low income black residents in the East Poplar Urban Renewal Area."²¹⁸ Their procedural complaint was that HUD did not consider the project's effect on racial concentration in the East Poplar neighborhood or in Philadelphia as a whole and had no procedures for doing so.²¹⁹ The court concluded that compliance with the mandate for affirmatively furthering integration required HUD to "utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socioeconomic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts."²²⁰ The court went on to clarify that:

[W]e [are not] suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at the site in question clearly out-

Court is willing to find discrimination in overt instances but generally reluctant to infer discrimination from subtler circumstances).

Although the issue of whether the Fair Housing Act's prohibitions extend to practices evidencing a discriminatory effect without a showing of intent have been the subject of much debate, the majority rule endorses a discriminatory effects standard. In the circuit courts, this standard has been defined as either a multifactor balancing standard or a two-part burden shifting standard. See *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977), *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 939 (2d Cir. 1988). The *Arlington Heights* court stated the multifactor balancing standard:

Four critical factors are discernible from previous cases. They are: (1) how strong is the plaintiff's showing of discriminatory effect; (2) is there some evidence of discriminatory intent, though not enough to satisfy the constitutional standard of *Washington v. Davis*; (3) what is the defendant's interest in taking the action complained of; and (4) does the plaintiff seek to compel the defendant to affirmatively provide housing for members of minority groups or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.

Arlington Heights, 558 F.2d at 1290.

In the two-part burden shifting standard, courts first evaluate the sufficiency of the plaintiff's claim of discriminatory pattern or effect. See *Town of Huntington*, 844 F.2d at 939. Then the burden shifts to the defendant to justify their actions. See *id.*

²¹⁶ *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809, 821 (3d Cir. 1970).

²¹⁷ *Id.* at 811-12. In this program, authorized under § 221(d)(3) of the Housing Act of 1954, HUD provided mortgage insurance on housing owned by eligible entities. *Id.*

²¹⁸ *Id.* at 812.

²¹⁹ *Id.*

²²⁰ *Id.* at 821.

weighs the disadvantage of increasing or perpetuating racial concentration.²²¹

Applied to HOPE VI, *Shannon* suggests that Housing Authorities which apply for HOPE VI funds should include in their applications an analysis of the racial composition of the surrounding neighborhood and, more importantly, an informed analysis of how redevelopment of the HOPE VI site will affect the surrounding neighborhood.

The HOPE VI pattern of primarily building replacement public housing units on the same site as the previously demolished units may advance deconcentration goals but will not further housing choice or integration goals. It is comparatively easier to reduce the number of public housing units on a particular site through massive demolition. More complex and visionary is encouraging greater community receptivity to the placement of affordable housing developments and encouraging the creation of "truly integrated and balanced living patterns."²²² The Fair Housing Act is useful to identify the harms that result from only building public housing in areas of existing economically or racially concentrated housing, and the importance of having a method for assessing the impact of demolition and development decisions.

The principles articulated in *Shannon* still apply to HOPE VI demolition and development. It is important to consider carefully the racial and economic impact of HOPE VI on surrounding neighborhoods. At a minimum, Housing Authority applicants should be required to conduct a racial impact assessment of HOPE VI demolition and replacement applications.²²³ Insofar as this assessment uncovers fair housing violations, HUD should require Housing Authorities to institute remedial measures including enhancement of their Section 8 program and enhancement of off site housing acquisition and development in areas of low concentrations of poor and minority residents in order to qualify for a HOPE VI grant.²²⁴

Two goals of HOPE VI redevelopment, "expand[ing] assisted housing opportunities in non-minority neighborhoods . . . [and] reinvest[ing] in minority neighborhoods"²²⁵ could be advanced not only by reducing the number of public housing residents at the redeveloped site but also by de-

²²¹ *Id.* at 822.

²²² *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (quoting 114 CONG. REC. 3422 (1968)).

²²³ See Nat'l Hous. L. Project, *HUD's Fair Housing Duties and the Loss of Public and Assisted Housing*, 29 HOUS. L. BULL. (Jan. 1999), available at <http://www.nhlp.org/html/hlb/199/199fairhsg.htm> (last visited Oct. 18, 2002) (on file with the Connecticut Law Review).

²²⁴ Courts have given great deference to siting decisions reached by HUD provided that there was an information gathering method in effect that informed the siting decision. See, e.g., *Bus. Ass'n of Univ. City v. Landrieu*, 660 F.2d 867, 873 (3d Cir. 1981).

²²⁵ Department of Housing and Urban Development, HOPE VI Revitalization and Demolition Notice of Funding Availability, 66 Fed. Reg. 11,913, 11,926 (Feb. 26, 2001).

veloping public housing units in other areas of the city that have low concentrations of poor and minority residents. The current HOPE VI NOFA requirements do not require Housing Authorities to employ this pattern of redevelopment, and indeed recent NOFA requirements appear to hinder it.²²⁶ Plans by Housing Authorities to use Section 8 vouchers to accomplish similar goals of deconcentration are largely aspirational, and Housing Authorities with poor records of effective use of Section 8 to accomplish deconcentration goals are not prohibited from receiving a HOPE VI grant.²²⁷

The goal of carefully studying the impact of demolition and development activities on the surrounding neighborhood is not to prohibit all demolition. Instead, Housing Authorities should be thoughtful about the circumstances. Demolition can be beneficial, especially to the extent that some public housing should not have been initially built in concentrated neighborhoods.

c. The Results of Section 8 Discrimination

HUD relies on movements to other public housing developments and

²²⁶ 2002 NOFA, *supra* note 30, at 49,783. Reflecting an apparent delay in implementation of previously funded HOPE VI communities, this NOFA states that “[i]f you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.” *Id.*

²²⁷ An apparently promising assessment tool is the Section 8 Management Assessment Program (“SEMAP”) Certification. SEMAP is governed by 24 C.F.R. § 985 (2002). *See also* U.S. Department of Housing and Urban Development, Notice PIH Notice 98-50 (HA), Section 8 Management Assessment Program Final Rule and Certification Form (Oct. 6, 1998), *available at* <http://www.hud.gov/offices/pih/publications/notices/1998.cfm> (last visited Oct. 13, 2002) (on file with the Connecticut Law Review). Housing Authorities are required to submit information regarding the effectiveness of their Section 8 program, including how well Housing Authorities record information about housing opportunities in areas of low racial and poverty concentration and how well Housing Authorities facilitate residents’ desires to rent in those areas. *See* Form HUD-52648, Expanding Housing Opportunities (2000), *available at* <http://www.hudclips.org> (last visited Oct. 13, 2002) (on file with the Connecticut Law Review). Deconcentration bonus points are available for Housing Authorities that either have a majority of Section 8 assisted families living in low poverty areas or have made substantial gains over the last one or two fiscal years. *See* Form HUD-52648, Deconcentration Bonus Indicator and Addendum for Reporting Data for Deconcentration Bonus Indicator (2000), *available at* <http://www.hudclips.org> (last visited Oct. 13, 2002) (on file with the Connecticut Law Review). There is again a more detailed focus on income integration rather than racial integration. Although Housing Authorities are rated based on their SEMAP performance, the SEMAP certification is primarily an information gathering program and not a prescription for how Housing Authorities must operate their Section 8 program and, thus, it remains unclear how effective SEMAP will be in affecting segregation in the Section 8 program. *See* 24 C.F.R. § 985.1(a) (2002). A favorable SEMAP performance score is not a prerequisite under HOPE VI to allowing Housing Authorities to use Section 8 vouchers to accomplish much of their HOPE VI deconcentration goals.

An additional information gathering assessment that has potential for effective application in desegregation efforts is the creation of Annual and Five Year Plans. Beginning in the summer of 2001, Housing Authorities are required to submit these plans to HUD per the second part of the Deconcentration of Poverty and Fair Housing in Program Admissions rule. *See* 24 C.F.R. § 903.3-903.25 (2002). The Annual Plan contains a snapshot of a Housing Authorities ongoing operations as well as information on how the Housing Authority plans to address the jurisdictions housing needs and issues of racial and poverty concentration. *Id.* The Five Year Plan expands on these forecasts. *Id.*

on Section 8 vouchers to find new homes for residents whose public housing units have been demolished. To the extent that most families relocate to other public housing developments²²⁸ and there are barriers to the effective use of vouchers in the private housing market, such as landlords' ability to discriminate against voucher recipients, the likelihood of realizing deconcentration goals (and promoting integration) is undermined.²²⁹ Relatedly, residents unable to effectively utilize Section 8 vouchers can create a damaging competition in surrounding communities that has a destabilizing effect on those communities. Therefore, a carefully conceived mobility assistance program is necessary to both facilitate effective use of vouchers and prevent undue displacement of neighboring community residents.

Although the dramatic physical redevelopment of HOPE VI may help to dispel traditional notions of how public housing communities appear, the program has achieved considerably less success in changing prevalent negative attitudes about former public housing residents. Discrimination on the basis of Section 8 status is not prohibited by the Fair Housing Act, and thus, Section 8 discrimination "enables landlords to use it as a proxy for other legally prohibited kinds of discrimination, such as that based on race, ethnicity, national origin, gender, family status, or disability."²³⁰

Residents who attempt to employ Section 8 vouchers encounter difficulty finding landlords who are willing to accept them.²³¹ There is generally a submarket of landlords who are familiar with the requirements of the program and willing to rent to voucher recipients. Participation in the program however, remains voluntary.

The organization charged with administering Chicago's Section 8 program is faced with expanding demand for vouchers as a result of mandatory unit to voucher conversion²³² and the HOPE VI program. They enlisted the Urban Institute to study the barriers that prevent Section 8 holders from successfully obtaining housing.²³³ When the study began, the

²²⁸ See NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, at iii.

²²⁹ Philip D. Tegeler et al., *Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation*, 30 HARV. C.R.-C.L. L. REV. 451 (1995).

²³⁰ Beck, *supra* note 214, at 155.

²³¹ Greg Cannon, *Apartment Rents Up In East County, Way Up*, LEDGER DISPATCH, July 9, 1999, at 01. It is particularly difficult to find willing landlords in jurisdictions experiencing a tightening rental market of rising rents and lower vacancies. *Id.*

²³² QHWR of 1998, Pub. L. No. 105-276, 112 Stat. 2461, 2589 (codified at 42 U.S.C. § 1437 (2000)).

²³³ Susan J. Popkin & Mary K. Cunningham, *CHAC Section 8 Program: Barriers to Successful Leasing Up*, THE URB. INST., Apr. 1999, at 1. The Urban Institute study described four types of discrimination: 1) racial discrimination; 2) discrimination against families with children; 3) discrimination against Section 8 tenants; and 4) discrimination against former public housing high rise residents now attempting to use Section 8 vouchers. *Id.* at 23. This latter discrimination, in particular, illustrates the need for effective service delivery to residents relocating from demolished public housing.

success rate of Section 8 holders finding housing was approximately sixty-eight percent.²³⁴ The Urban Institute conducted six focus groups with individuals who had failed to find housing. They determined that discrimination against Section 8 holders was “disturbingly common” and that discrimination against Section 8 holders was often a proxy for discrimination against low-income minority families.²³⁵

Housing discrimination experienced by residents who leave public housing imposes costs on the surrounding community, which include raising the possibility that residents will relocate from demolished public housing to communities of continuing high racial and economic concentration.²³⁶ When discrimination exists, Section 8 recipients cannot compete for housing in the middle-income market where their vouchers enable them to compete. Landlords in the middle-income market either will not rent to these recipients, or voucher recipients face higher rents reflecting landlords’ perception of the higher costs of renting to them.²³⁷

Instead of using their vouchers in middle-income markets—areas of higher income and commonly areas of more racial integration—recipients must search in lower income housing markets.²³⁸ These areas often have racial and economic concentrations that resemble the areas that the voucher holders are attempting to leave. The quantity of affordable housing is limited, and an influx of a large number of new renters into a community un-

²³⁴ *Id.* at 1.

²³⁵ *Id.* at 23. Discrimination against Section 8 holders in Chicago is prohibited by city ordinance. *Id.* at 25. However, the Urban Institute found that individuals unsuccessful in finding housing each encountered at least one landlord who refused to accept Section 8. *Id.* The authors of the study hypothesize that many landlords are unaware that Section 8 discrimination is illegal, or do not fear repercussion because victims of discrimination must bring a complaint either before CHAC, Inc. (the organization administering Chicago’s Section 8 program) or the Human Rights Commission. *Id.* Victims of discrimination are either unaware of their rights or are more concerned with finding a unit before their voucher expires. *Id.*

²³⁶ Residents of surrounding neighborhoods are also harmed insofar as they are either on the waiting list for public housing or are otherwise eligible for public housing. This group is particularly hard hit by the decrease in numbers of public housing units through demolition coupled with a shortage of affordable housing generally. They face competition for Section 8 vouchers from public housing residents displaced by HOPE VI, and to the extent that they live in the surrounding neighborhoods of HOPE VI development, they face rental competition from relocatees.

²³⁷ Landlords may perceive a higher cost in renting to Section 8 tenants because of dealing with HUD bureaucracy, or because of the perception that these tenants as less reliable, and more prone to damaging the apartment. Section 8 tenants will therefore have to devote a greater proportion of their income toward rent. See Beck, *supra* note 214, at 159.

²³⁸ See JOHN F. KAIN & JOHN M. QUIGLEY, HOUSING MARKETS AND RACIAL DISCRIMINATION: A MICROECONOMIC ANALYSIS 294 (1975) (arguing that blacks restrict their house searching to the ghetto, because of the large amounts of time and money needed to find desirable housing outside of this area).

able to absorb all of them may destabilize that community.

A massive immigration of poor renters may lead to an outmigration of existing, higher income residents who move based on the expectation of future arrivals. A property owner's decision whether to upgrade or downgrade properties, or whether to stay or move to another neighborhood, can be strongly influenced by individual perceptions of the future direction of the quality of the immediate or surrounding community. In forming these perceptions, people may consider an individual action as representative of a more general trend.²³⁹ This phenomenon, referred to as neighborhood tipping, can often lead to sudden neighborhood change.²⁴⁰ Over time, the impact of neighborhood dynamics²⁴¹ will cause the community to become a predominantly low-income community.

Another possible explanation of the sudden neighborhood change is gentrification and the displacement of pre-existing low income tenants. Voucher holders compete with other low-income renters for housing, some of whom are non-voucher holders. Rents are bid up in this competition.²⁴² Renters not holding vouchers can pay a greater share of their income for rent or be priced out of the neighborhood. Renters displaced in this competition will occupy lower quality units (as landlords find it economical to reduce maintenance and rent lower quality units), double up with other families, or become homeless.²⁴³

²³⁹ JEROME ROTHENBERG ET AL., *THE MAZE OF URBAN HOUSING MARKETS: THEORY, EVIDENCE, AND POLICY* 274 (1991) (stating that neighborhood behavior is strongly influenced by flawed expectations in unstable or ambiguous situations). In the past, real estate agents facilitated this perception through blockbusting. Financial institutions facilitated neighborhood deterioration through patterned disinvestment called redlining. See *AMERICAN APARTHEID*, *supra* note 78 (arguing that the Home Owners' Loan Corporation initiated and institutionalized the practice of redlining).

²⁴⁰ *United States v. Starrett City Assoc.*, 840 F.2d 1096, 1099 (2d Cir. 1988) (defining tipping as the phenomenon where, as the minority population increases and the community becomes poor, white residents migrate out of the community).

²⁴¹ Neighborhood dynamics refers to the changes in housing markets as a result of changes in perceptions of neighborhood quality, massive immigration or outmigration, and redlining by financial institutions. See Jenifer J. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. PUB. INT. L.J. 239, 260-62 (1996). For an economic analysis of neighborhood change, see James T. Little, *Contemporary Housing Markets and Neighborhood Change*, in *RESIDENTIAL MOBILITY AND PUBLIC POLICY* 126-149 (W.A.V. Clark & Eric G. Moore eds., 1980).

²⁴² See Beck, *supra* note 214, at 180. According to Beck, rents levels increase in a housing market with discrimination where competition between voucher and nonvoucher holders exists. *Id.* The rent increase is higher because the greater demand for housing in a particular submarket is spread among a smaller supply of housing. *Id.* Without discrimination, the housing demand of voucher holders would be spread across low and middle income housing submarkets. *Id.*

Because of residential segregation, blacks generally pay more than whites for housing of the same quality. See Joe T. Darden, *Accessibility to Housing: Differential Residential for Blacks, Hispanics, American Indians, and Asians*, in *RACE, ETHNICITY, AND MINORITY HOUSING IN THE UNITED STATES* 112 (Jamshid A. Momeni ed., 1986); JOHN YINGER, *CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION* 109 (1995) ("Black and Hispanic households are far more likely than white households to live in overcrowded conditions, to live in housing with severe or moderate structural problems, or to devote an excessive share of their income toward housing.").

²⁴³ Beck, *supra* note 214, at 178-79.

New construction typically does not occur in these low income housing markets because landlords cannot charge rents high enough to justify the cost.²⁴⁴ However, there is incentive for new construction in the middle income market if demand is sufficient. Absent discrimination, an influx of Section 8 holders into middle income markets would induce landlords to build more housing there, alleviating the competition and displacement in the lower income market and providing opportunities for Section 8 holders to rent in areas of low racial and economic concentration.

The HOPE VI Application Kit includes a section for Housing Authorities to describe their plans for assisting residents with relocation.²⁴⁵ This is one of many rating factors in the competition for HOPE VI grants. However, it is not mandatory that Housing Authorities include a sophisticated counseling program. As noted above, studies like the successful Gautreaux program have highlighted the effectiveness of a comprehensive mobility assistance program in the success of a Section 8 program.²⁴⁶

In the HOPE VI program, residents who elect not to return to the redeveloped site are sometimes lost (fall out of the tracking system) or they find housing in racially and economically concentrated areas—often close to the original site.²⁴⁷ Housing Authorities have been slow to develop effective tracking and reporting mechanisms,²⁴⁸ and HUD has been slow to encourage these mechanisms because of its promotion of local operation and innovation.²⁴⁹ There has, thus, been little systematic oversight of the pattern of resident relocation in the HOPE VI program.

²⁴⁴ Salama argues that Section 8 sometimes induces new construction in neighborhoods and that this new construction would alleviate the problem of a lack of units. Salama, *supra* note 124, at n.12. However, he acknowledges that certain factors must be present. *Id.* The low rents commanded in the lower income housing markets are often insufficient to support new units that are built to comply with local building code standards. *Id.* But see generally DANIEL R. MANDELKER AND ROGER MONTGOMERY, *HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES* (1973) (arguing that price-per-unit is actually higher in slum areas and that this raises the costs of urban renewal projects).

²⁴⁵ Funding Availability Revitalization of Severely Distressed Public Housing (HOPE VI Revitalization and Demolition) (2000), available at http://www.hud.gov/pih/programs/ph/hope6/hope6_fy2000fundinfo.html (last visited Jan. 29, 2003) (on file with the Connecticut Law Review).

²⁴⁶ See *supra* Part III.A; see also Turner, *supra* note 177 (explaining findings from the Gautreaux program).

²⁴⁷ Leonnig, *supra* note 120.

²⁴⁸ Commentators note that there is no comprehensive source of HOPE VI data available. HUD appears to have several data collection procedures implemented to track individual sites, but to date the agency has not made the information public. Finally, any financial information that HUD may provide to Congress in required annual reports is similarly unavailable. See NAT'L HOUS. L. PROJECT ET AL., *supra* note 16, 33-36.

²⁴⁹ *Id.* at 33.

IV. CONCLUSION

HOPE VI and corresponding statutory changes seek to reinvent public housing by changing many of the rules and procedures associated with the institution. The new rules maximize demolition, limit new construction of replacement hard units of public housing, and emphasize the use of Section 8 vouchers to resettle displaced residents. These particular modes of reinvention are neither inevitable nor are they the only imaginable alternatives. By examining the assumptions and components of this reinvention, it is possible to conceptualize changes that better enhance the economic and social mobility opportunities of public housing residents.

The specters of discrimination and segregation complicate policy-makers' efforts to identify mobility opportunities. These are true specters because they are only supposed to exist in our imagination and in our history. They are at most fading enemies faced and trounced in the civil rights wars of the 1960s. But these foes linger, kept behind a legal veil of ignorance. Housing policy alternatives viewed from within law's resistance to race consciousness restrict the freedom of choice of poor persons generally and poor persons of color in particular. These specters reinforce the validity of current conceptions of race and space.²⁵⁰

The HOPE VI strategy could have been different. Instead of a program focused on demolition and dispersal through Section 8, HOPE VI could have been imagined as a program promoting scattered site public housing.²⁵¹ The majority of replacement housing for demolished public housing could have been developed off site to remedy past *de jure* segregated siting decisions.²⁵² This assault on the status quo could alter the way that neighborhoods view subsidized housing. We could imagine an array of affirmative mandates to grant-recipient Housing Authorities requiring demolition and reconstruction of public housing that creates dramatically

²⁵⁰ BLOMLEY, *supra* note 151. One central problem in any project of social change is that of conceiving of other possible systems of social ordering and legality. If the categories of liberalism and legal discourse are as constitutive of social life and social understanding as the critics claim, then there is no apparent position to which one can remove oneself in order to conceive of legal alternatives. *Id.* at 22.

²⁵¹ See Hendrickson, *supra* note 66, at 87 (arguing that adoption of the Gautreaux model would call for the construction of scattered site public housing).

²⁵² See Young v. Pierce, 628 F.Supp. 1037 (E.D. Tex. 1985). The opinion provides a detailed narrative of the history of *de jure* segregation in public housing. *Id.* at 1045. In large part, segregation in public housing is a result of Housing Authorities employing race conscious tenant occupancy methods in order to maintain racially homogenous communities. *Id.* As these methods were abandoned, racial and subsequently economic segregation remained as a result of the larger spatial, demographic, and economic transformations affecting central cities generally. *Id.*

HUD is in litigation in many cities over the segregation of its housing developments. Professor Florence Wagman Roisman has prepared a partial list of desegregation suits in which HUD is a defendant. Florence Wagman Roisman, *Long Overdue: Desegregation Litigation and Next Steps to End Discrimination and Segregation in the Public Housing and Section 8 Existing Housing Programs*, 4 CITYSCAPE: J. OF POL. DEV. & RES. 171 (1999).

smaller public housing communities in both non-poor and non-minority sections of a metropolitan area. Redevelopment on the same site as the demolished public housing would be managed to conserve HOPE VI resources for scattered site developments instead of being used for mixed-income success. In the spirit of local flexibility and in lieu of federal mandates, HOPE VI could provide incentives for local Housing Authorities and cities alike to build scattered site housing. These incentives would ostensibly overcome neighborhood resistance to the introduction of subsidized housing into their communities, as in the *Walker* litigation.²⁵³ In *Walker*, an entrenched, predominantly white community feared that the Dallas Housing Authority would not properly maintain new public housing constructed at its border, resulting in lower property values and higher crime.²⁵⁴ Scattered site development funded by HOPE VI and built under the principles of New Urbanism could overcome these negative perceptions.

In a recent study of the early results from some HOPE VI developments, the changes to the public housing regime and the enactment of HOPE VI policies were viewed as necessary to improve the public housing stock.²⁵⁵ The study argued that the repeal of "one for one replacement" legislation was crucial to making HOPE VI demolition and new construction cost effective.²⁵⁶ Additional replacement housing at new sites should be considered "bonus"—to the extent HOPE VI developments have additional resources (other than the federal grant) and are created in strong real estate markets, additional replacement housing is possible.²⁵⁷ Otherwise, this money is needed to subsidize the HOPE VI project so it is more attractive for mixed income residents—the underlying assumption being that this type of tenant configuration will foster the long term success of the project.

This line of reasoning has meant that the lion's share of HOPE VI development occurs on site with the redevelopment of fewer demolished public housing units and, through leveraging of other financing, the inclusion of low income housing tax credit rental units, market rate rental units, subsidized homeownership units, and unsubsidized homeownership units. A

²⁵³ See *Walker v. City of Mesquite*, 169 F.3d 973, 975 (5th Cir. 1999) (seeking relief against Dallas Housing Authority's construction of two new public housing projects adjacent to plaintiffs' neighborhood). In comparing efficiencies and judging the fairness of subsidy allocations between site redevelopment versus off-site scattered redevelopment, site acquisition factors are important variables. To the extent that local housing authorities can convert publicly owned buildings throughout an area to public housing units then acquisition costs can be minimized. If housing authorities are forced to bargain with private landowners and building owners, then costs can quickly rise. Bell and Parchomovsky propose a series of incentives inspired by law and economics. See Bell & Parchomovsky, *supra* note 154, at 1973 (proposing four techniques that alter the payoff structure for participants in the housing market and that combat the panic leading to white flight).

²⁵⁴ *Walker*, 169 F.3d at 980.

²⁵⁵ Salama, *supra* note 124, at 113.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

large share of HOPE VI resources are used on site to enhance the development's appeal for higher income residents. On site redevelopment is attractive to HUD for rebuilding dilapidated high rise projects, and it is advantageous to local Housing Authorities because they already have site control and need not battle communities that resist new public housing in their neighborhood. It is also appealing to municipalities as federally funded revitalization projects redevelop deteriorated urban sites. These forces ratify and reinforce racial segregation through the use of HOPE VI funds.

HOPE VI can also be imagined as a program to remedy specific findings of past racial discrimination in a jurisdiction. These findings could be detailed on the application for HOPE VI funding. A requirement of past racial discrimination by the applicant Housing Authority or the surrounding community need not be mandatory, but developments with such a history would receive comparatively more points in their application evaluation than jurisdictions without such discrimination. If *Walker* were applied to HOPE VI, it would retard both scattered site construction of smaller HOPE VI developments in non-minority neighborhoods, and a race conscious application of Section 8 vouchers for residents displaced by HOPE VI construction. The consequence of continuing hostility to race conscious remedies is the false promise of race neutral remedies and the perpetuation and affirmation of resistance to racial integration in communities.

The fundamental challenge of law in changing patterns of disinvestment, poverty, or segregation in urban areas is overcoming the tension between law as a neutral, detached arbiter of right and wrong, and law as expression of majoritarian values.²⁵⁸ What are the majoritarian values that the current law reflects? A recent national survey found that "[d]epending on the question, . . . 40 percent to 60 percent of all whites say that the average black American is faring about as well and perhaps even better than the average white."²⁵⁹ This perception contradicts data that paint a much

²⁵⁸ See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992) (suggesting that the American legal system denies the impact of race in its decision-making); Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (arguing that the *Brown* decision was not based on neutral principles as suggested by some scholars).

Yamamoto summarizes five limitations of antidiscrimination law: It tends to protect the social and political status quo, it defines race and racial categories too narrowly, it ascribes categories and remedies to racial disputes that depart from real-world experience, it contains procedural hurdles to remedying substantive claims, and it is vulnerable to constriction and manipulation by conservative political interests. Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 844-52 (1997).

²⁵⁹ The survey was conducted by *The Washington Post*, the Henry J. Kaiser Family Foundation, and Harvard University. Richard Morin, *Misperceptions Cloud Whites' View of Blacks*, WASH. POST, July 11, 2001, at A1. For example:

Half of all whites—50 percent—say that the average black is about as well off as the average white in terms of the jobs they hold Again, the hard data are less positive: A third of all whites hold professional or managerial jobs, compared to slightly more than one-fifth of all blacks, according to census data. Blacks are about twice

starker picture of black gains in America.²⁶⁰

Programs like HOPE VI operate within the shadows and structures of current antidiscrimination law, and there the colorblind principle is ascendant. They operate in the real world of limited budgets, community fears and opposition, imperfect transportation systems, and systemic shortages of affordable housing. Public housing opportunities are limited, sometimes substandard, and politically vulnerable. Programs that direct resources toward public housing are in themselves valuable, and for those tenants who can capitalize on these programs, beneficial to an individual family's living condition. However, programs like HOPE VI prevent policy makers from addressing the root causes of racial and economic segregation in housing.

The HOPE VI program in the abstract holds promise to reverse decades of poor site selection decisions made by local public housing authorities and endorsed by HUD. However, its implementation reveals the same patterns of discrimination—programs focused on revitalizing cities instead of the poor people within those cities—that have led to the distressed communities which we see today.

as likely as whites—23 versus 12 percent—to hold lower-paying, less prestigious service jobs. Blacks also are more than twice as likely to be unemployed; in May [2001], the jobless rate for blacks stood at 8 percent, compared with 3.8 percent among whites.

Id.

²⁶⁰ RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF THE LEGAL IMAGINATION* 17 (1994). The authors note:

As a result of its covert nature, many persons of the majority race, even those of good will, consistently underestimate the extent of racism in society. Persons of color, who are on the receiving end of it, generally report much more racism than do whites and naturally place a greater priority on remedying it. This puzzles some whites, who wonder whether blacks are exaggerating or trying to guilt-trip them to gain an unfair advantage. The problem is perspective: Imagine that one's body were somehow magnetically charged. One would go through life astonished at how many metal filings there are in the world and how much we need a cleanup operation.

Id.

