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URBAN REDEVELOPMENT

RECENT analyses of housing conditions in the United States¹ have again called attention to the continued failure of our society to supply any but the highest income groups with healthful shelter in efficient communities at reasonable cost.² Focal points of current public discussion are the numerous and

1. See TWENTIETH CENTURY FUND, AMERICAN HOUSING (1944); NATIONAL COMMITTEE ON HOUSING, PROCEEDINGS OF NATIONAL CONFERENCE ON POSTWAR HOUSING (1944) (hereinafter cited as PROC. NAT. CONF. ON POSTWAR HOUSING). Some of the addresses made at the Conference were published in revised form in (1944) 34 SURVEY GRAPHIC, No. 4 (April).

For the most recent factual data see BUREAU OF THE CENSUS, SIXTEENTH CENSUS OF THE UNITED STATES: 1940 HOUSING (1943-). The best older statistical information was DEP'T OF COMMERCE, REAL PROPERTY INVENTORY (1934) which was limited in scope to 64 cities. See also WICKENS, RESIDENTIAL REAL ESTATE: ITS ECONOMIC POSITION AS SHOWN BY VALUES, RENTS, FAMILY INCOMES, FINANCING, AND CONSTRUCTION, TOGETHER WITH ESTIMATES FOR ALL REAL ESTATE (1941); WORKS PROGRESS ADMINISTRATION, DIV. OF SOCIAL RESEARCH, URBAN HOUSING: A SUMMARY OF REAL PROPERTY INVENTORIES CONDUCTED AS WORK PROJECTS, 1934-1936 (1938).

2. On housing see BAUER, MODERN HOUSING (1934); NAT. RESOURCES PLANNING BD., HOUSING: THE CONTINUING PROBLEM (June 1940); STONE AND DENTON, TNEC REP., TOWARD MORE HOUSING, Monograph 8 (1940); WOOD, INTRODUCTION TO HOUSING FACTS AND PRINCIPLES (1939); ARONOVICI, HOUSING THE MASSES (1939); PUBLIC ADMINISTRATION SERVICE, HOUSING AND WELFARE OFFICIALS CONFER: SUMMARY OF DISCUSSION AT JOINT CONFERENCE OF HOUSING AND WELFARE OFFICIALS (Publication No. 67) (1939);

widespread urban slums and blighted areas.³ These "life-inimical or life-destructive environments"⁴ offer graphic evidence of the seriousness and complexity of the problem: the overcrowding of inhabitants in closely-packed, obsolete, and neglected physical structures;⁵ the ravages of high rates of mortality,⁶ disease,⁷ crime,⁸ and juvenile delinquency;⁹ the drainage of municipi-

POST, CHALLENGE OF HOUSING (1938); CURRENT DEVELOPMENTS IN HOUSING (1937) 190 ANNALS; WRIGHT, REHOUSING URBAN AMERICA (1935).

For material dealing with the condition of our cities see SAABINEN, THE CITY: ITS GROWTH, ITS DECAY, ITS FUTURE (1943); SERT, CAN OUR CITIES SURVIVE? (1942); CONFERENCE ON URBANISM (Greer, ed.), PROBLEM OF THE CITIES AND TOWNS (1942); NAT. RESOURCES PLANNING Bd., BETTER CITIES (April 1942); MUMFORD, CULTURE OF CITIES (1938), especially cc. III-IV; NAT. RESOURCES COM., URBANISM COM., OUR CITIES - THEIR ROLE IN THE NAT. ECONOMY (1937); CHAMBER OF COMMERCE OF THE UNITED STATES, CONSTRUCTION AND CIVIC DEVELOPMENT DEP'T COM., BALANCED REBUILDING OF CITIES (April 1937); Greer, *City Replanning and Rebuilding* (1942) 18 J. LAND & P. U. ECON. 284 (reprinted in HARRIS, POSTWAR ECONOMIC PROBLEMS (1943) 207); Wirth and Shils, *Urban Living Conditions* in NAT. RESOURCES COM., URBAN PLANNING AND LAND POLICIES (1939) 163.

3. See WALKER, URBAN BLIGHT AND SLUMS (1938); SHULMAN, SLUMS OF NEW YORK (1938); FORD, SLUMS AND HOUSING, WITH SPECIAL REFERENCE TO NEW YORK CITY, 2 vols. (1936); FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS, WOOD, SLUMS AND BLIGHTED AREAS IN THE UNITED STATES (Housing Div. Bull. No. 1) (1935); Wright, *op. cit. supra* note 2, at 3-10; PRESIDENT'S CONFERENCE ON HOME BUILDING AND HOME OWNERSHIP, vol. III: SLUMS, LARGE-SCALE HOUSING, AND DECENTRALIZATION (1932) c. 1.

Various attempts have been made to distinguish "slums," "blighted areas," "sub-standard areas" and so on, and to define them in terms of different factors. See WALKER, *supra*, c. I; 1 FORD, *supra*, c. I. No attempt will be made here to draw distinctions; the difference is in general one of degree rather than of kind, although in the literature "blight" is often given overtones of economic (as contrasted with social) degeneration. See WALKER, *supra*, at 5-6; Fisher, *Economic Aspects of Zoning, Blighted Areas and Rehabilitation Laws* (1942) 32 AM. ECON. REV., No. 1 (March), SUPP., 331.

4. MUMFORD, CULTURE OF CITIES (1938) 422. Cf. AMERICAN PUBLIC HEALTH ASS'N, COM. ON HYGIENE OF HOUSING, HOUSING FOR HEALTH (1941) and BASIC PRINCIPLES OF HEALTHFUL HOUSING (2d ed. 1939).

5. See POST, *op. cit. supra* note 2, at 28-34; FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS, WOOD, *op. cit. supra* note 2, at 36-9. But the visual evidence is more impressive. See, e.g., ARONOVICI, *op. cit. supra* note 2, at 9-12; FEDERAL ADMINISTRATION OF PUBLIC WORKS, WOOD, *op. cit. supra* note 2, *passim*.

6. See 1 FORD, *op. cit. supra* note 3, c. XIV; WOOD, *op. cit. supra* note 2, c. VI.

7. See 1 FORD, *loc. cit. supra* note 6, and c. XV; WOOD, *loc. cit. supra* note 6; POST, *op. cit. supra* note 2, at 34-47.

8. See HALPERN, STANISLAUS AND BOTEIN, THE SLUM AND CRIME: STATISTICAL STUDY OF DISTRIBUTION OF ADULT AND JUVENILE DELINQUENCY IN THE BOROUGHS OF MANHATTAN AND BROOKLYN, NEW YORK CITY (1934); 1 FORD, *op. cit. supra* note 3, cc. XVI-XVII; WOOD, *op. cit. supra* note 2, c. VII; POST, *op. cit. supra* note 2, at 47-57.

9. See SHAW and MCKAY, JUVENILE DELINQUENCY AND URBAN AREAS: A STUDY OF RATES OF DELINQUENTS IN RELATION TO DIFFERENTIAL CHARACTERISTICS OF LOCAL COMMUNITIES IN AMERICAN CITIES (1942); HALPERN, STANISLAUS AND BOTEIN, *loc. cit. supra* note 8; WOOD, *loc. cit. supra* note 8; EBENSTEIN, LAW OF PUBLIC HOUSING (1940) 5, and material cited n. 9.

pal resources through excessive costs of fire and police protection and of welfare and social services;¹⁰ and, in the final stages of disintegration, the flight of population,¹¹ often from land naturally suited to residential use.

Planners and representatives of private interests are now endorsing, as a means both of eliminating slums and of supplying adequate housing, proposals widely known as "urban redevelopment."¹² Used in some contexts to mean the replanning of entire cities, the term more particularly connotes the rehabilitation or the clearance and complete rebuilding of substandard and blighted areas by private¹³ redevelopment corporations operating with the

10. A study of a Cleveland slum area revealed an \$11.50 per capita police protection cost as opposed to \$4.37 for the city as a whole and an annual public-health expenditure of \$2.02 per capita as compared with \$.64. NAVIN, ANALYSIS OF A SLUM AREA IN CLEVELAND (1934), cited in HANSEN AND PERLOFF, STATE AND LOCAL FINANCE IN THE NATIONAL ECONOMY (1944) 110-2. In six blighted Boston areas, the annual operating loss to the city was estimated to be \$79 per inhabitant; a strikingly similar situation was discovered in Cleveland. HANSEN AND PERLOFF, *loc. cit. supra*.

See Rhodes, FISCAL ASPECTS OF URBAN BLIGHT (1920) 20 TAXES 656; WOOD, *op. cit. supra* note 2, c. VIII; BAUER, CITIZEN'S GUIDE TO PUBLIC HOUSING (1940) 16, 21-2.

11. See FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS, WOOD, *op. cit. supra* note 3, at 18.

12. The literature on "urban redevelopment" is growing rapidly but is still largely in the form of pamphlets, mimeographed releases, magazine articles, and newspaper reports. Among the more formal contributions made to date are FEDERAL HOUSING AUTHORITY, HANDBOOK ON URBAN REDEVELOPMENT FOR CITIES IN THE UNITED STATES (1941); GREER AND HANSEN, URBAN REDEVELOPMENT AND HOUSING: PROGRAM FOR POST-WAR (Dec. 1941); PROC. NAT. CONF. ON POSTWAR HOUSING, especially at 8-57; NAT. ASS'N REAL ESTATE BDS., POST-WAR CITIES (1944); GREER, *A New Start for the Cities* (1944) 33 FORTUNE, No. 3 (Sept.) 153; CALIFORNIA HOUSING AND PLANNING ASS'N, CHART FOR CHANGING CITIES: PROGRESS REPORT ON URBAN REDEVELOPMENT (1944); TOWN HALL (Los Angeles), NEED FOR URBAN REDEVELOPMENT LEGISLATION IN CALIFORNIA (March 1944); NAT. INST. MUNIC. LAW OFFICERS, COM. ON POST-WAR PLANNING (Preliminary Report), AMERICAN CITIES AFTER THE WAR—PLAN FOR ELIMINATION OF BLIGHTED AREAS (June 1943).

See also AMERICAN PLANNING AND CIVIC ASS'N (James, ed.), AMERICAN PLANNING AND CIVIC ANNUAL: 1943 (1943) 147-90 for a good selection of articles by Earle S. Draper (*Postwar Community Planning*), Walter H. Blucher (*Urban Redevelopment*), Alfred Bettmann (*Federal and State Urban Redevelopment Bills*), Hugh Potter (*The Need for Federal Action in Rebuilding Cities*) and Thomas S. Holden (*Postwar Urban Redevelopment*).

13. Great emphasis has been placed upon the importance of "private enterprise" as a goal in itself in the field of urban redevelopment. Care should be taken to define more closely what is being talked about: most urban redevelopment plans give to the corporation-instrumentality a semi-public character both in the powers exercised and in the degree of control provided; conversely, "public" housing is designed by private architects and is constructed by private contractors. See STRAUS, SEVEN MYTHS OF HOUSING (1944) c. IX, especially at 167-8.

The traditional terminology will be employed here, however, in deference to American political vocabulary. See, *e.g.*, letter of President Roosevelt to Mrs. Dorothy Rosenman, Chairman of the 1944 National Conference on Postwar Housing:

aid and under the control of local government.¹⁴ Ten states have enacted urban redevelopment laws,¹⁵ and several bills were introduced in the 78th Congress offering federal assistance at the price of federal supervision.¹⁶

"[Postwar housing] is primarily a job for private enterprise. Government must continue, however, to lend appropriate assistance to private enterprise in this undertaking, and to assume direct responsibility for doing only that part of the total job which private enterprise is unable to do itself."

PROC. NAT. CONF. ON POSTWAR HOUSING, 6-7. See also the principles enunciated at the same Conference by John Blandford, Jr., the Administrator of the National Housing Agency, including: "(10) *Housing is predominantly a job for private enterprise.* The task is so big that any other approach is unworkable and unrealistic. The acceptance of this principle is a starting point for housing progress (13) *The Federal Government's role in housing should be supplementary.* It should help private enterprise to serve the largest possible portion of the Nation's housing needs." *Id.* at 95.

14. For a more comprehensive definition of "urban redevelopment" see CALIFORNIA HOUSING AND PLANNING ASS'N, *op. cit. supra* note 12, at 4. The term will be used here in its narrower sense.

15. The first was enacted by New York in 1941. N. Y. Laws 1941, c. 892. This, the Urban Redevelopment Corporations Law, has, in effect, been superseded by the more liberal Redevelopment Companies Law. N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234. Also enacted in 1941 were Michigan's Urban Redevelopment Corporations Law and the Illinois Neighborhood Redevelopment Corporations Law. Ill. Laws 1941, pp. 431-60, H. B. 179, ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32 § 550; Mich. Acts 1941, No. 250, MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058. Following, in general, the terms of the 1941 New York and Michigan laws are those of Kansas, Kentucky, Missouri, and Wisconsin. Kan. Laws 1943, c. 118, KAN. GEN. STAT. ANN. (Corriell, Supp. 1943) §§ 17-4701 *et seq.*; Ky. Acts 1942, c. 36, KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) c. 99; Mo. Laws 1943, pp. 751-69, H. B. 239, MO. REV. STAT. ANN. (Supp. 1944) §§ 7875.18-7875.43; Wis. Laws 1943, c. 333, WIS. STAT. (1943) § 66.405. The New Jersey Redevelopment Companies Law is similar to the 1942 New York act as amended. N. J. Laws 1944, c. 169. The Indiana and Maryland statutes are somewhat different in form. Ind. Acts 1943, c. 307, IND. STAT. ANN. (Burns, Supp. 1943) §§ 25-4301 *et seq.*; Md. Laws 1943, c. 664.

A "Local Area Rehabilitation Act" (A. B. 1979) was passed by the California legislature in 1943 and pocket-vetoed by Governor Warren. See CALIFORNIA HOUSING AND PLANNING ASS'N, *op. cit. supra* note 12, at 20.

16. S. 953, "a bill to establish the Urban Redevelopment Agency and to provide financial assistance to the municipalities and urban areas of the United States for their development in accordance with plans therefor, and for other purposes," was introduced by Senator Elbert D. Thomas of Utah and referred to the Senate Committee on Post-War Economic Policy and Planning. 89 CONG. REC. 2835-6 (1943). The bill later had its reference changed to the Senate Committee on Education and Labor. 89 CONG. REC. 3737 (1943). A Committee Print of the bill, dated Dec. 10, 1943, modifies the original proposal in several particulars.

Senator Wagner, at the request of the Urban Land Institute, introduced S. 1163, "a bill to encourage the development of good neighborhood conditions in towns and cities by private enterprise with the collaboration of public enterprise; to provide public credit for the assembly of land in deteriorated urban areas for subsequent reconveyance by sale or lease for development and redevelopment by private enterprise and by public improvement; to encourage the widest possible extent of home ownership; to provide financial assistance

The failure of previous attempts to provide healthful and efficient housing for urban residents is well known. The high cost of land¹⁷ and the inability or unwillingness of the construction industry to adopt mass-production methods¹⁸ have combined to make individual homebuilding a luxury.¹⁹ The number of large-scale rental projects has been small and their clientele limited.²⁰ Public housing under the auspices of the United States Housing Authority and its successor, the Federal Public Housing Authority, has provided some facilities for the lower income third,²¹ but an enormous expansion of the program would be required to close the gap between demand and supply.²²

Failure to cope with urban decay has paralleled this failure to meet housing needs. Because the individual owner is seldom able to extend his control beyond the bounds of his own plot,²³ his home is frequently destroyed by the

to towns and cities, or appropriate instrumentalities thereof, for the purchase, assembly, and clearance of land in the interest of public safety, health, comfort, and welfare as a necessary preliminary to the development of good neighborhood conditions; to stimulate a great and continuing volume of economic activity and employment in the post-war period; to provide grants for metropolitan development plans, and for other purposes." The bill was referred to the Senate Committee on Banking and Currency. 89 CONG. REC. 5357 (1943).

17. See TWENTIETH CENTURY FUND, *op. cit. supra* note 1, at 23-30, 157-8, 296-300; ARONOVICI, *op. cit. supra* note 2, c. I; EDITORS OF "FORTUNE," HOUSING AMERICA (1932) c. 2. Cf. ABRAMS, REVOLUTION IN LAND (1939).

18. See TWENTIETH CENTURY FUND, *op. cit. supra* note 1, cc. 4-6; TNEC, HEARINGS, pt. 11, CONSTRUCTION INDUSTRY (1940), especially statement by Thurman Arnold, 5144-56 (reprinted in part in SCHNAPPER (ed.), PUBLIC HOUSING IN AMERICA (1939) 52); BAUER, CITIZEN'S GUIDE TO PUBLIC HOUSING (1940) 74-8; EDITORS OF "FORTUNE," *op. cit. supra* note 17, pt. I, cc. 3-4. Cf. *id.* at pt. II.

19. See BAUER, *op. cit. supra* note 18, at 17; NAT. RESOURCES PLANNING BD., ROLE OF HOUSEBUILDING INDUSTRY (July 1942); WOODBURY, APARTMENT HOUSE INCREASES AND ATTITUDES TOWARD HOME OWNERSHIP (Inst. for Economic Research, Studies in Land Economics: Research Monograph No. 4) (1931). Cf. ARONOVICI, *op. cit. supra* note 2, c. V.

20. See TWENTIETH CENTURY FUND, *op. cit. supra* note 1, at 231-3; BAUER, *op. cit. supra* note 18, at 72-4.

21. On public housing in general see STRAUS, SEVEN MYTHS OF HOUSING (1944), called by one reviewer "undoubtedly the most important book in housing since . . . Catherine Bauer's . . . *Modern Housing*." Adelson, Book Review (1944) 53 YALE L. J. 593, 594. See also BAUER, *op. cit. supra* note 18; REED AND OGG, NEW HOMES FOR OLD: PUBLIC HOUSING IN EUROPE AND AMERICA (1940); SCHNAPPER (ed.), PUBLIC HOUSING IN AMERICA (1939); STRAUS AND WEGG, HOUSING COMES OF AGE (1938); NAT. ASS'N HOUSING OFFICIALS, HOUSING YEARBOOK (published annually since 1935).

For a discussion of the legal problems raised see EBENSTEIN, *op. cit. supra* note 9, and *The Law of Public Housing* (1939) 23 MINN. L. REV. 879; Keyserling, *Legal Aspects of Public Housing* in NAT. RESOURCES COM., LEGAL PROBLEMS IN THE HOUSING FIELD (1939) 30-50; McDougal and Mueller, *Public Purpose in Public Housing: An Anachronism Reburied* (1942) 52 YALE L. J. 42 (reprinted in STRAUS, *supra*, app. A).

22. See statement of John Blandford, Jr., cited *supra* note 13.

23. See McDougal, *Legal Question* in CONFERENCE ON URBANISM, *op. cit. supra* note 2, at 42, 48.

deterioration of its environment. At some point in its degeneration such a building is typically sold or leased to poorer occupants even less equipped to defend the property or themselves against the encroachment of physical and psychological blight. Cooperative efforts to check this progressive disintegration of communities, by the establishment, for example, of "neighborhood protective and improvement districts,"²⁴ can rarely be secured before complete rehabilitation or redevelopment is required.²⁵ The drastic nature of the only remedy then feasible creates two further obstacles: the near impossibility of obtaining voluntary agreement among property owners in an area sufficiently large for effective restoration,²⁶ and the prohibitive cost of buying up the sections needing clearance and rebuilding.²⁷ If all holders of equities could be persuaded to participate in an "ownership pool," the problem of cost could be solved by the exchange of properties for proportional interests in a private corporation or trust,²⁸ but the difficulty of achieving unanimity among those concerned has been found almost universally insurmountable.²⁹ Nor has rehabilitation or rebuilding by outside investors had widespread success. In the absence of the power of eminent domain, the land must be purchased in the most secretive manner to keep prices within reason,³⁰ while the problem of the "hold-out" is never completely avoided.³¹ Even where the use of the public power of condemnation is authorized, as under the limited dividend corporation laws passed during the 1930s,³² the cost of assembling a blighted area proves too great unless the land can be subjected to a use more intensive than building practices and public controls usually permit.³³ And, although Section 10(a) of the United States Housing Act attempts to combine slum clearance with low-cost housing by requiring the demolition or rehabili-

24. See, e.g., Robbins, *Proposed Rehabilitation Procedures*, c. XVII in WALKER, *URBAN BLIGHT AND SLUMS* (1938) 207, 227-31, and *Common Problems in Rehabilitation Procedures*, c. XVI, *ibid.*, 191, 203; Nelson, *Urban Housing and Land Use* (1934) 1 *LAW & CONTEMP. PROB.* 158, 164-5.

25. It is, of course, doubtful whether blight can in most circumstances be checked even if a cooperative effort is made unless that effort is carefully integrated with planning for the whole community.

26. See Robbins, *Common Problems in Rehabilitation Procedures*, *supra* note 24.

27. See Robbins, *Problems in Land Assembly*, c. XV in WALKER, *op. cit. supra* note 24, at 172-7.

28. For a summary of various proposals see Robbins, *Proposed Rehabilitation Procedures*, *supra* note 24.

29. Robbins, *Problems in Land Assembly*, *supra* note 27, at 177.

30. *Id.* at 174.

31. *Id.* at 172-5.

32. Laws were enacted by Arkansas, California, Delaware, Florida, Kansas, New Jersey, Ohio, North Carolina, South Carolina and Texas, in addition to the better known New York State Housing Law of 1926. N. Y. Laws 1926, c. 823, re-enacted in Laws 1939, c. 808.

33. Only 6,925 dwelling units have been built under the New York law. See *TWENTIETH CENTURY FUND, AMERICAN HOUSING* (1944) 274.

tation of an unfit building for each new one constructed,³⁴ cheaper outlying property has generally been selected for project sites,³⁵ leaving the required equivalent elimination of substandard structures to be accomplished in more indirect and less thorough fashion.³⁶

Thus the major obstacles which have blocked the replacement of urban slums with new housing facilities have been, first, the impracticability of attempting to assemble the control of the land, and, second, the excessive cost of site acquisition and clearance. The urban redevelopment statutes are designed to minimize these difficulties while providing sufficient public supervision to guarantee the maintenance of acceptable standards of land use and building construction and the integration of redevelopment projects with surrounding areas and with public housing efforts. To solve the problem of land assembly the acts authorize the exercise of eminent domain by either the municipality³⁷ or the redevelopment corporation.³⁸ Although the problem of the cost of

34. 50 STAT. 891 (1937), 42 U. S. C. § 1410(a) (1940).

35. See STRAUS, *op. cit. supra* note 21, c. IV.

36. *Id.* at 64.

37. Seven of the laws have such a provision, that contained in the Michigan statute being typical: "A city may, upon request by a redevelopment corporation, and after a certificate of approval of condemnation with respect to the real property in question has been issued [by the supervising agency] . . ., acquire, or obligate itself to acquire, for such redevelopment corporation any real property included in such certificate of approval of condemnation, by condemnation." MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058 (16) (2); N. Y. Laws 1941, c. 892, § 16(2); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.210(2); WIS. STAT. (1943) § 66.405(14) (b). Under the later New York statute, "A municipality may take property by condemnation for a redevelopment company, provided the contract or contracts [between the municipality and the redevelopment company] . . . contain a requirement that the company shall pay to the municipality all sums expended or required to be expended by the municipality in the acquisition of such real property, provision as to the time . . . and manner of securing payment thereof, and provisions requiring that the municipality receive, before proceeding with the acquisition of such real property, such assurances as to payment or reimbursement by the redevelopment company, or otherwise, as the local legislative body may deem advisable." N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 20. The New Jersey provision is similar. N. J. Laws 1944, c. 169, § 20. The Maryland Act gives the Land Development Commission the power and authority to "Use power of eminent domain to condemn and acquire land in the slums and blighted areas for the purposes set forth in this Article, but in no case shall the Land Development Commission have the right to exercise the power of condemnation unless at least sixty per cent of the area of the slums or blighted areas involved in the particular plan for redevelopment has been acquired by purchase or option." Md. Laws 1943, c. 664, p. 873. The 1941 New York statute has a similar provision, with the figure set at fifty-one per cent. N. Y. Laws 1941, c. 892, § 3.

38. Redevelopment corporations are given the right to exercise the power of eminent domain in Illinois after acquiring by purchase or securing options to purchase sixty per cent or more of the land within the development area and after the issuance of a certificate of approval by the local Redevelopment Commission, and in Indiana after the issuance of a certificate of approval by the local planning commission or board, or, if none such, by the State Administrative Building Council, and after at least two-thirds of the area has been

acquiring and clearing the site is met less directly, most of the statutes provide for public assistance, six offering the redeveloper some degree of tax abatement.³⁹

Urban redevelopment is admittedly not a complete solution to the problem of either rehousing or rebuilding. Blight has no clearly defined boundaries,⁴⁰ and the fundamental causes of decay are generally deeply imbedded in the community;⁴¹ yet redevelopment projects must necessarily be limited in size and area. Moreover, urban redevelopment as now proposed would rarely offer housing to low-income families.⁴² Its sponsors advocate the continuation of the public housing program⁴³ or the use of rent certificates,⁴⁴ or recommend that the shelter requirements of those unable to afford an economic rent to be met by "filtration."⁴⁵ But within these limitations⁴⁶ urban rede-

acquired or is held under option. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, §§550.9(S), 550.42; IND. STAT. ANN. (Burns, Supp. 1943) § 25-4307. The only condition precedent to the use of the power under the Kansas and Missouri laws is the issuance of a certificate of approval by the supervising agency. KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4716(2); MO. REV. STAT. ANN. (Supp. 1944) § 7875.37(1). Under the 1941 New York act the acquisition of fifty-one per cent of the property and a certificate of approval are required. N. Y. Laws 1941, c. 892, §§ 3, 17.

39. KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4711; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3053(12); N. J. Laws 1944, c. 169, § 26; N. Y. Laws 1941, c. 892, § 12; N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 26; WIS. STAT. (1943) § 66.405(10).

40. See WRIGHT, REHOUSING URBAN AMERICA (1935) 8.

41. See WALKER, URBAN BLIGHT AND SLUMS (1938) c. III.

42. The purpose of the Maryland statute is stated to be "the elimination of certain blighted areas and slums in Baltimore City and the erection of low rent housing and collateral facilities" (Md. Laws 1943, c. 664, p. 871), but no further reference is made to the latter goal.

43. See FEDERAL HOUSING ADMINISTRATION, HANDBOOK ON URBAN REDEVELOPMENT (1941) pt. X; GREER AND HANSEN, *op. cit. supra* note 12, at 14, 19-22; CALIFORNIA HOUSING AND PLANNING ASS'N, CHART FOR CHANGING CITIES (1944) 16-7.

44. Reported in CALIFORNIA HOUSING AND PLANNING ASS'N, *op. cit. supra* note 43, at 16; TOWN HALL (Los Angeles), NEED FOR URBAN REDEVELOPMENT LEGISLATION IN CALIFORNIA (March 1944) 6.

45. "Filtration" is the successive occupation of housing by lower and lower income groups (as the housing becomes progressively older). The process is described in TWENTIETH CENTURY FUND, *op. cit. supra* note 33, at 183-5 and 409-14, and defended as involving "nothing unmoral or antisocial" in NEW YORK STATE ASS'N REAL ESTATE BRS., POST WAR PLANNING AND HOUSING COM., POST WAR PLANNING AND HOUSING (1944) 17. See also BAUER, CITIZEN'S GUIDE TO PUBLIC HOUSING (1940) 48-53.

46. Urban redevelopment is further limited, in some states, to cities of a particular size. The Maryland statute is explicitly limited to Baltimore, while the laws of Kansas, Kentucky, Michigan and Missouri are in effect applicable only to Kansas City and Wichita, Louisville, Detroit, and St. Louis, respectively. Md. Laws 1943, c. 664; KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4703; KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.010; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3053(3); MO. REV. STAT. ANN. (Supp. 1944) § 7875.20.

velopment appears to offer a hopeful approach to the task of rehousing our urban population in healthful and efficient communities. A more accurate estimate of the probable usefulness of urban redevelopment requires a closer examination of the specific problems which have stimulated its invention.

THE POWER TO ASSEMBLE LAND

The first step in the reconstruction of a blighted area is reassembly of the control of the land, and the only feasible method of securing unified control is the use, or the threat of the use, of the power of eminent domain.⁴⁷ While all the state urban redevelopment laws provide some procedure for condemning property,⁴⁸ a potential legal difficulty is created by the reluctance of courts⁴⁹ to sanction the enforced transfer of property interests from one owner to another in the absence of a compelling public purpose.⁵⁰ It has been questioned in some quarters whether condemnation for redevelopment comes within traditional judicial concepts of "public use." However, the lamentable facts of slum conditions and housing needs and the clear demonstration in past failures of the ineffectiveness of less drastic measures supply impressive evidence of public purpose. And, although there is as yet no direct legal authority on the point,⁵¹ a finding of public use is strongly supported by what was said

47. See EBENSTEIN, *LAW OF PUBLIC HOUSING* (1940) 68-9. A supplementary reason for the use of eminent domain in preference to private purchase is that defects in title may be cured by condemnation. See ORGEL, *VALUATION UNDER THE LAW OF EMINENT DOMAIN* (1936) § 833. Cf. 2 NICHOLS, *EMINENT DOMAIN* (2d ed. 1917) §§ 380-1 (when owner is under disability).

48. See notes 37 and 38 *supra*.

49. See 1 LEWIS, *EMINENT DOMAIN* (3d ed. 1909) § 251. The United States Supreme Court has left the matter largely to the states. As Moody, J., said in *Hairston v. Danville & W. Ry.*, "No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the state court as a taking for public uses in conformity with its laws." 208 U. S. 598, 607 (1908).

50. See Nichols, *The Meaning of Public Use in the Law of Eminent Domain* (1940) 20 B. U. L. REV. 615; 1 LEWIS, *EMINENT DOMAIN* (3d ed. 1909) § 250; 1 NICHOLS, *EMINENT DOMAIN* (2d ed. 1917) § 37. On the source of this requirement see Grant, *The Higher Law Background of the Law of Eminent Domain* (1931) 6 WIS L. REV. 67.

51. One case, in New York, was decided largely on the basis of a special amendment to the Constitution. *Murray v. LaGuardia*, 291 N. Y. 320, 52 N. E. (2d) 884 (1943), *cert. denied*, 321 U. S. 771 (1944). Article XVIII of the New York Constitution, adopted in 1938, authorizes the legislature to "provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both purposes, and for recreational and other facilities incidental or appurtenant thereto." However, the language of the court reflects an enlightened recognition of the values of slum clearance and redevelopment which suggests that the statute would have been upheld even in the absence of the constitutional provision.

To obviate constitutional questions, the General Assembly of Maryland proposed an amendment to the State Constitution providing in part that "The Baltimore Redevelop-

in the cases upholding the exercise of eminent domain to eradicate slums under the public housing laws.⁵² The courts there took notice that "slum districts with their filthy, congested, weather-exposed living quarters are breeding places of disease, immorality and crime" and that "the existence of such districts depresses the taxable value of neighboring property" depriving local and state governments of revenue while at the same time being a source of "great expense in combating disease, crime and conflagration originating in such localities."⁵³ Generally the validation of the statutes did not depend upon their coordinate purpose, the supplying of shelter to low-income families;⁵⁴ indeed, the laws were often upheld despite rather than because of their housing-for-a-special-class feature.⁵⁵

Five of the urban redevelopment statutes raise the additional question⁵⁶ of whether the public use is destroyed by the delegation of the power of eminent

ment Commission shall have authority to use the power of eminent domain to acquire any land needed for any redevelopment project; provided, however, that the Baltimore Redevelopment Commission shall have first obtained options upon or shall have purchased at least 50 percentum of such land area required for any such redevelopment project." Md. Laws 1943, c. 649. The amendment was submitted to the voters at the general election in November, 1944, and adopted.

52. See cases cited in McDougal and Mueller, *Public Purpose in Public Housing* (1942) 52 YALE L. J. 42, n. 13.

53. Green, C. J., in *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 83, 123 S. W. (2d) 1085, 1087 (1939) summarizing the reasoning of *Marvin v. Housing Authority of Jacksonville*, 133 Fla. 590, 183 So. 145 (1938); *Spahn v. Stewart*, 268 Ky. 97, 103 S. W. (2d) 651 (1937); *State ex rel. Porterie v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938); *New York City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. (2d) 153 (1936); *Wells v. Housing Authority of Wilmington*, 213 N. C. 744, 197 S. E. 693 (1938); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938); *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938).

54. See, e.g., *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 283, 295, 23 N. E. (2d) 665, 669 (1939): "The real purpose of the statute is . . . the elimination of slums and unsafe and unsanitary dwellings, and the provision by public funds of low-rent housing is only a means by which the main object is to be accomplished." See also *Williamson v. Housing Authority, etc., of Augusta*, 186 Ga. 673, 679, 199 S. E. 43, 48 (1938); *Edwards v. Housing Authority of City of Muncie*, 215 Ind. 330, 336, 19 N. E. (2d) 741, 744 (1939); *State ex rel. Porterie v. Housing Authority of New Orleans*, 190 La. 710, 735, 182 So. 725, 733 (1938); *Rutherford v. City of Great Falls*, 107 Mont. 512, 517, 86 P. (2d) 656, 658 (1939); *Romano v. Housing Authority of City of Newark*, 123 N. J. L. 428, 432, 10 A. (2d) 181, 183 (1939).

55. See, e.g., *Edwards v. Housing Authority of City of Muncie*, 215 Ind. 330, 336, 19 N. E. (2d) 741, 744 (1939); *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 84, 123 S. W. (2d) 1085, 1088 (1939); *Mumpower v. Housing Authority of City of Bristol*, 176 Va. 426, 449, 11 S. E. (2d) 732, 741 (1940). See also *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 283, 293-6, 23 N. E. (2d) 665, 668-9 (1939); *Rutherford v. City of Great Falls*, 107 Mont. 512, 520, 86 P. (2d) 656, 660 (1939).

56. It may be that the courts will also refuse to follow the distinction between the exercise of eminent domain by a redevelopment corporation and the exercise of the same

domain to private corporations.⁵⁷ But such a delegation would also appear to come within the definition modern courts have given to "public use." While a narrow interpretation of the term, limiting it to "use by the public,"⁵⁸ was given some support in the latter part of the nineteenth century,⁵⁹ more recent cases have returned to the earlier view that a demonstration of "public benefit" is sufficient.⁶⁰ Thus the diversion of water for a private mill,⁶¹ the taking of land by a lumber company for a private logging railroad,⁶² the construction of a private aerial bucket line,⁶³ and a drainage system for a single owner's land⁶⁴ have all been held to justify the exercise of eminent domain. Further, if the courts find in slum clearance alone the necessary public benefit, it would appear that the extent of public control of the subsequent use of the land so accumulated need not be subject to judicial scrutiny. However, it is to be expected that there will be an insistence upon continued public supervision.⁶⁵ And this would seem a desirable result since the mere razing of blighted areas is only the first step toward supplying healthful and efficient housing.

power by a municipality *in behalf of* a private corporation. This is the position taken by Lehman, C. J., dissenting in *Murray v. LaGuardia*, 291 N. Y. 320, 332, 52 N. E. (2d) 884, 889 (1943), and by Untermyer, J., dissenting, s.c., 266 App. Div. 912, 913 (1st Dep't 1943).

57. See note 38 *supra*.

58. See Nichols, *supra* note 50, at 617-8; 1 NICHOLS, EMINENT DOMAIN (2d ed. 1917) 129, and cases cited n. 17; 1 LEWIS, EMINENT DOMAIN (3d ed. 1909) § 258, and cases cited n. 37.

59. See Nichols, *supra* note 50, at 617-8.

60. As Judge Bodine said in *Romano v. Housing Authority of City of Newark*:
 ". . . there is no more reason why the legislature of our state may not, under its power of eminent domain, take private property in order to effect slum clearance than that it may take private property in order to provide for roads, railroads and swamp clearances. *It can delegate and has delegated such authority to private corporations and commissions in order to effect its purpose.* The only limitation upon the power to take in such cases is the necessity of affording just compensation for the property taken."

123 N. J. L. 428, 434, 10 A. (2d) 181, 184 (1939) (emphasis supplied).

61. *Chase v. Sutton Mfg. Co.*, 58 Mass. 152 (1849). See also cases cited in 1 NICHOLS, EMINENT DOMAIN (2d ed. 1917) § 83, n. 19 and n. 20.

62. *Goose Creek Lumber Co. v. White*, 219 Ky. 739, 294 S. W. 494 (1927).

63. *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527 (1906).

64. *Manning v. Metropolitan Dist. Comm.*, 270 Mass. 348, 169 N. E. 910 (1930).

65. This was the position taken by Judge Julius H. Minor of the Circuit Court of Cook County in holding the Illinois Neighborhood Redevelopment Corporation Law unconstitutional in *Zurn v. Chicago*, Dec. 24, 1943, now on appeal to the state Supreme Court:

" . . . it must be clear not only that such a transfer serves some dominant public purpose, but that the use of the property subsequent to its condemnation is so controlled by law as to insure that this public purpose will continue to be served. . . . The restrictions in the instruments of sale, conveyance, etc., are not adequate to safeguard the subsequent use in the public interest. . . . To justify the taking of private property from the owner without his consent, even for adequate

FINANCING URBAN REDEVELOPMENT

Assuming that the right to exercise eminent domain can be established, the cost of acquiring the land and preparing it for rebuilding is the major barrier confronting urban redevelopment. Substandard areas are almost universally overvalued,⁶⁶ while, ideally,⁶⁷ their use following condemnation will be less intensive than before.⁶⁸ Thus the inflated acquisition price will be higher than is warranted by the probable income from a rational use of the land.⁶⁹

Technically the problem of land cost is created by the constitutional requirement⁷⁰ that in a taking by eminent domain "just compensation" must be given.⁷¹ As interpreted by the courts⁷² this involves the indemnification of the owner for his loss as measured by the "market value" the property would

consideration, the law must extend its control over the property after it has been condemned to insure its devotion to the declared public purposes and uses."

Cf. dissent of Lehman, C. J. (one justice concurring) in *Murray v. LaGuardia*, 291 N. Y. 320, 332, 52 N. E. (2d) 884, 889 (1943) and dissent, in lower court, of Untermyer, J., 266 App. Div. 912, 913-4 (1st Dep't 1943).

66. See BAUER, *MODERN HOUSING* (1934) 17-8, 246; STRAUS, *SEVEN MYTHS OF HOUSING* (1944) 75. For example, the cost of acquiring and conditioning a proposed 128-acre site in Detroit has been estimated at \$3,667,000 while its estimated value for redevelopment purposes is only \$1,071,000. DETROIT CITY PLAN COMM., *ANALYSIS OF A METHOD OF FINANCING URBAN REDEVELOPMENT* (Publication No. 22) (June 1944).

67. Compare the first major urban redevelopment project, Metropolitan Life Insurance Company's "Stuyvesant Town," which will increase the population of the 75-acre area from about 11,000 to approximately 25,000, resulting in a density of 132 families (373 persons) per acre. See Holden, *Postwar Urban Redevelopment in AMERICAN PLANNING AND CIVIC ANNUAL: 1943*, 180, 186; Windels, *Private Enterprise Plan in Housing Faces First Test* (1943) 32 NAT. MUNIC. REV. 284, 287.

68. Various estimates of what is proper (and practicable) density have been made. Nathan Straus, former Administrator of the United States Housing Authority, insists that "A density greater than twenty families to the acre is undesirable and a density of more than fifty families to the acre should be forbidden by law in all new housing projects, private as well as public." STRAUS, *op. cit. supra* note 66, at 68. See also *id.* at 56-9.

69. See NAT. ASS'N REAL ESTATE BDS., *POST-WAR CITIES* (1944).

70. The explicit "just compensation" clause of the Fifth Amendment has been extended to cover a taking by a state via the due process clause of the Fourteenth Amendment. *Chicago, Burlington & Quincy R. R. v. Chicago*, 166 U. S. 226 (1897). In addition, a "just compensation" requirement is included in all but two state constitutions. See ORGEL, *VALUATION UNDER THE LAW OF EMINENT DOMAIN* (1936) 5.

71. See 2 LEWIS, *EMINENT DOMAIN* (3d ed. 1909) c. XX; 1 NICHOLS, *EMINENT DOMAIN* (2d ed. 1917) c. XIII; ORGEL, *op. cit. supra* note 70, summarized in companion volume, 1 BONBRIGHT, *VALUATION OF PROPERTY* (1937) c. XIV. See also Comment, *Damages Where Land is Taken by Public Authority* (1939) 4 JOHN MARSHALL L. Q. 368. For a technical discussion of the problem see SCHMUTZ, *CONDEMNATION: APERAISEN'S HANDBOOK* (1938).

72. The amount of compensation is held by the courts to be a judicial, rather than a legislative, question, and statutory attempts to limit valuations have not been well received. See *Monongahela Navigation Co. v. United States*, 148 U. S. 312 (1892); ORGEL, *op. cit. supra* note 70, § 10.

have in an exchange between a willing buyer and a willing seller.⁷³ The criterion applied is thus the value of the land for the most lucrative use which the law will permit. In addition, infrequency of actual sales leaves unchallenged over-optimistic popular estimates of value based upon assumptions of continued urban expansion which are typically unwarranted.⁷⁴ Two attempts are made in the state statutes, however, to limit the award to the landowner. The first is the denial of any increase in that award on the basis of an increase in value caused by the planning or commencement of the redevelopment.⁷⁵ Second, in four states, evidence may be submitted "bearing upon the insanitary, unsafe or substandard conditions in the premises, or the illegal use thereof, or the enhancement of rentals from such illegal use."⁷⁶ While this is as far as the present acts go, the latter provision suggests eliminating the need for compensating the landowner for buildings unfit for human occupancy by strict enforcement of demolition statutes enacted under the police power.⁷⁷

73. See ORGEL, *op. cit. supra* note 70, c. II.

74. "The hangover of false value arises largely from the continuance of popular belief in a coming future use of the property for industrial or commercial purposes or for apartment development. The belief, based on earlier rapid growth of our cities and on unfounded expectations that such growth will continue, has no economic justification, but it does exist. . . . Experience shows that blighted land may cost up to four or five times as much as it is worth for its new use." NAT. ASS'N REAL ESTATE BDS., *Post-War Cities* (1944) unnumbered page 15.

The Federal Housing Authority suggests that one way to reduce awards in condemnation proceedings before a jury is to take the jury "out to the site and let the members see the physical decay, and convince them: that it is the result of long-time trends, and not the result of the depression or the bottom of a neighborhood cycle that is sure to rise again automatically; that automobiles, roads, population trends, living standards, etc., are involved; that the odds are against the ability of individual property owners to bring back the character of the whole neighborhood, without which they could not hope to secure sustained income from their property." FEDERAL HOUSING AUTHORITY, *HANDBOOK ON URBAN REDEVELOPMENT* (1941) 81, par. 293.

75. The standard provision reads that "the award of compensation shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance or reconstruction, or proposed assembly, clearance or reconstruction for the purposes of this act of the real property in the development area." KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4716(3); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.240(3); MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(17)(3)(c); MO. REV. STAT. ANN. (Supp. 1944) § 7875.37(2)(b); N. Y. LAWS 1941, c. 892, § 17(4)(c). A similar provision is included in N. J. LAWS 1944, c. 169, § 20, N. Y. LAWS 1942, c. 845, as amended by LAWS 1943, c. 234, § 20, and WIS. STAT. (1943) § 66.405(15)(b)(1). There is no such provision in the Illinois, Indiana and Maryland laws.

See also *United States v. Miller*, 317 U. S. 369 (1943).

76. KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.240(4); MICH. STAT. ANN. (Henderson, Supp. 1943) § 5.3058(17)(3)(d); N. Y. LAWS 1941, c. 892, § 17(4)(d); WIS. STAT. (1943) § 66.405(15)(b)(2).

See also ORGEL, *op. cit. supra* note 70, §§ 31-3.

77. See STRAUS, *op. cit. supra* note 66, at 75: "Value in slum property arises chiefly out of the existence of conditions that are often illegal and always inhuman. By defini-

However, such statutes have not been vigorously enough enforced to test the extent of their possible usefulness.⁷⁸ As a result there is as yet scant authority for the application of the English system of paying only the value of the site cleared of unsafe buildings.⁷⁹ Nor does legal precedent lend encouragement to the suggestion⁸⁰ that compensation for the land be measured by its value for the proposed rather than the present use.⁸¹

It is now generally agreed that some form of public subsidy in the acquisition and clearance of land will be required if urban redevelopment is to have more than a negligible utility.⁸² Yet it is at this point that present statutes are most disappointing. A forthright approach to the problem would be municipal purchase of the land, either for the specific purpose of immediate redevelopment or as part of an extensive land-planning program,⁸³ followed by

tion, a slum is a building or group of buildings unfit for use as dwellings. Therefore, by standards which are valid elsewhere, the use of a slum as a dwelling should be forbidden and, as a dwelling, the building should have no value." See also BAUER, *op. cit. supra* note 66, at 246; CONFERENCE ON URBANISM, PROBLEM OF THE CITIES AND TOWNS (1942) 76; NAT. ASS'N HOUSING OFFICIALS, HOUSING FOR THE UNITED STATES AFTER THE WAR (May 1944) 35.

On demolition see McIntire and Rhyne, *Demolition, Vacation or Compulsory Repair of Substandard Buildings in Connection with Housing Programs* (1939) 4 LEG. NOTES ON LOCAL GOV. 205; INST. MUNIC. LAW OFFICERS, McINTYRE, REPORT No. 37 (June 1938) and McINTYRE AND RHYNE, REPORT No. 38 (Aug. 1938); Comment, *Police Power—Its Use in Connection with Slum-Clearance* (1939) 7 GEO. WASH. L. REV. 520; 2 FORD, SLUMS AND HOUSING (1936) c. XXV (*Demolition: Existing Practices in New York City*) and *id.* at 602-11; Hoben, *Demolition of Unfit Housing* in NAT. ASS'N HOUSING OFFICIALS, HOUSING OFFICIALS' YEARBOOK 1936 (1936) 147; NAT. ASS'N HOUSING OFFICIALS, DEMOLITION OF UNSAFE AND INSANITARY HOUSING (April 1934).

78. See Barton, *Low Cost Housing and Slum Clearance: A Comparative Study of English and American Law* (Unpublished thesis in Yale Law School Library, 1941) c. III; Keyserling, *Legal Aspects of Public Housing* in NAT. RESOURCES COM., LEGAL PROBLEMS IN THE HOUSING FIELD (1939) 30, 48.

For a review of the experience of 21 cities in compulsory repair, vacation or demolition of dwellings, see INST. MUNIC. LAW OFFICERS, McINTYRE, *op. cit. supra* note 77, at 5-13.

79. See STRAUS, *op. cit. supra* note 66, at 49; REED AND OGG, NEW HOMES FOR OLD (1940) 40-1. Cf. BAUER, *op. cit. supra* note 66, at 246.

80. See, *e.g.*, the proposal of Alfred Bettman in CONFERENCE ON URBANISM, *op. cit. supra* note 77, at 70.

81. ". . . the question is what has the owner lost, not what has the taker gained." Holmes, J., in *Boston Chamber of Commerce v. Boston*, 217 U. S. 189, 195 (1910). See generally ORGEL, *op. cit. supra* note 70, § 12 and c. VI.

82. See, *e.g.*, PROC. NAT. CONF. ON POSTWAR HOUSING, 24, 102.

83. See Comment, *Public Land Ownership* (1943) 52 YALE L. J. 634; NAT. RESOURCES PLANNING Bd., LAND COM., PUBLIC LAND ACQUISITION IN A NATIONAL LAND-USE PROGRAM, pt. II: URBAN LANDS (1941) 15-36; Buttenheim, *Urban Land Policies* in NAT. RESOURCES COM., URBANISM COM., URBAN PLANNING AND LAND POLICIES (1939) 312-23.

For methods of land acquisition see NAT. RESOURCES PLANNING Bd., LAND COM., *supra* at 18-29; Buttenheim, *supra*, at 225-57; Comment (1943) 52 YALE L. J., *supra*, at 638-53.

its sale or lease to the redevelopment corporation at a price commensurate with the income to be derived from the proposed project. With the exception of the Maryland act, however, the state laws either stipulate that the corporation must reimburse the municipality for "all sums expended" in acquiring the redevelopment area⁸⁴ or mention only private condemnation⁸⁵ (presumably leaving participation by local government to depend upon other sources of power⁸⁶). Instead of direct subsidies clear in purpose and measurable in amount, the statutes offer public assistance in more subtle forms, with chief reliance placed upon tax abatement.⁸⁷ Commonest is the provision that whole or partial exemption may be given on any increase in the assessed value of the land as improved by redevelopment for a period to be determined by agreement between the corporation and the local taxing authority.⁸⁸ The

The weapons available include strict tax foreclosure (see HILLHOUSE AND CHATTERS, *TAX REVERTED PROPERTIES IN URBAN AREAS* (1942); NAT. RESOURCES PLANNING BD., *LAND COM.*, *supra*, at 23-5; Buttenheim, *supra*, at 241-2, and material cited n. 48a) and excess condemnation (see NAT. RESOURCES PLANNING BD., *LAND COM.*, *supra*, at 22; Buttenheim, *supra*, at 235-9, and material cited n. 47; Comment (1943) 52 *YALE L. J.*, *supra*, at 650-3; WALKER, *URBAN BLIGHT AND SLUMS* (1938) c. XXVII).

84. See note 37 *supra*.

85. See note 38 *supra*. The 1941 New York law provides for both private and public condemnation.

86. See Comment, *Public Land Ownership* (1943) 52 *YALE L. J.* 634, 645-53.

87. See note 42 *supra*. The Indiana, Kentucky, and Missouri laws have no favorable provisions on taxation, while the Illinois Neighborhood Redevelopment Corporations Law specifically provides that the corporations organized under it "shall be subject to the same taxation, general and special, as to their assets, tangible and intangible, and as to their capital stock, as is imposed by law upon the assets and capital stock of private corporations for profit." *ILL. REV. STAT.* (Bar Ass'n Ed., 1943) c. 32, § 550.15.

The Maryland law authorizes the Land Development Commission to "make agreements with local taxing authorities under which the annual use value shall be the principal factor in determining the value for taxation of the land sold by the Land Development Commission and all improvements effected thereon." *Md. Laws 1943*, c. 664, p. 874.

Under the Kansas statute, "all of the tracts, pieces and parcels or ground which are to be used under said development plan as public parks, public playgrounds, public parking space or public open spaces or commons, or which will be included in the relocation or reopening of any public streets, boulevards or alleys, and which thus will be withdrawn from private ownership, occupation or use, but which shall become and remain public places" are exempt from assessment for taxation. *KAN. GEN. STAT. ANN.* (Corrick, Supp. 1943) § 17-4711(1).

88. The 1941 New York law authorizes a local legislative body "to exempt real property held by redevelopment corporations during a maximum exemption period, which shall not exceed ten years, from any increase in any local tax over the maximum local tax." *N. Y. Laws 1941*, c. 892, § 12(1). The Wisconsin provision is the same, but the Michigan and New Jersey provisions are phrased in terms of "exemption from increase in assessed value." *WIS. STAT.* (1943) § 66.405(10)(a); *MICH. STAT. ANN.* (Henderson, Supp. 1944) § 5.3058(12)(1); *N. J. Laws 1944*, c. 169, § 26(a). The maximum period of exemption under the New Jersey and 1943 New York statutes is 25 years, but the New York law is the only one which offers the municipality the option of exempting only *part* of the increase in the assessed valuation. *N. Y. Laws 1942*, c. 845, as amended by *Laws 1943*, c. 234, § 26.

New Jersey law offers an alternative method: exemption from all state and local taxes and special assessments as "public property devoted to an essential public purpose" with payment in lieu of taxes for services, improvements or facilities furnished, such payment not to exceed the last tax levied on the property prior to its acquisition by the redevelopment company.⁸⁹

Whatever form the subsidy of urban redevelopment takes,⁹⁰ however, it is unlikely that local governments can carry the entire financial burden.⁹¹ Even if increasing allegiance is given to the decentralization of political authority, the probability remains that only the Federal Government commands the necessary tax resources and fiscal techniques.⁹² A formula for federal assistance which is administratively sound, politically acceptable,⁹³ and sufficiently stimulating to private enterprise and capital⁹⁴ has not yet been devised. Already available, although temporarily in abeyance because of the war housing program,⁹⁵ is the insurance by the Federal Housing Authority of mortgages on redevelopment projects.⁹⁶ More significant is the proposal embodied in the Thomas Bill⁹⁷ that advances of federal funds be made to municipalities for land acquisition and clearance with repayments dependent upon the income from a comprehensive redevelopment program.⁹⁸ This would

89. N. J. Laws 1944, c. 169, § 26(b). Cf. Rhyne, *Scope and Possibilities of Service Payments in Lieu of Property Taxes*, in TAX INSTITUTE, *WARTIME PROBLEMS OF STATE AND LOCAL FINANCE* (1943) c. IX (dealing primarily with the problem caused by widespread exemption from taxation of land owned by the Federal Government).

90. Indirect subsidies not provided in the present statutes might include the closing of unnecessary streets and the transfer of the land to the redevelopment company at a nominal figure (see CONFERENCE ON URBANISM, *op. cit. supra* note 77, at 76) and the purchase by the municipality of land to be used as parks or other open space. The latter procedure, under N. J. Laws 1929, cc. 201-2, was upheld in *Simon v. O'Toole*, 103 N. J. L. 32, 155 Atl. 449 (1931), *aff'd*, 108 N. J. L. 549, 158 Atl. 543 (1932).

91. See PROC. NAT. CONF. ON POSTWAR HOUSING, 18; HANSEN AND PERLOFF, *op. cit. supra* note 10.

92. See *id.* at 26-33, 36-42.

93. See *id.* at 28 and 37.

94. Although urban redevelopment has not been fully explored as an instrument of business cycle policy, the purpose of stimulation of private enterprise could provide a further reason for federal financial assistance. See GREER AND HANSEN, *URBAN REDEVELOPMENT AND HOUSING: PROGRAM FOR POST-WAR* (Dec. 1941) 2.

95. See Ferguson, *The Federal Housing Administration's First War Year* in NAT. ASS'N HOUSING OFFICIALS, *HOUSING YEARBOOK*, 1943 (1943) 49, 54.

96. See FEDERAL HOUSING AUTHORITY, *LARGE SCALE RENTAL HOUSING INSURANCE* (Administrative Rules and Regulations under Section 207 of Title II of the National Housing Act, as amended June 3, 1939) (1940); TWENTIETH CENTURY FUND, *AMERICAN HOUSING* (1944) 266-73.

97. See *supra* note 16.

98. S. 953, Com. Print, Tit. II.

See Hansen, in PROC. NAT. CONF. ON POSTWAR HOUSING, 37, and in (1944) 34 SURVEY GRAPHIC at 204. A one per cent interest charge on the unpaid portion is suggested. Municipal debt-limit problems could be avoided by having the municipalities pledge not their full faith and credit but merely to make such repayments as returns permitted.

provide direct and clearly admeasurable federal assistance. In the alternative it has been suggested that provision be made for federal guarantee of long-term municipal or urban land authority revenue bonds to be accompanied by grants-in-aid where the income from the municipal program proves insufficient to cover fixed charges, interest and amortization.⁹⁹ Inherent in this technique is the requirement that the bonds be so issued as to avoid, where necessary, municipal debt limitations without substantially lessening their attractiveness to investors.¹⁰⁰ A more recent proposal is that the Federal Government extend long-term non-interest-bearing loans.¹⁰¹ It has also been urged that investment in urban redevelopment be induced by manipulation of the federal income tax; in addition to the exemption of municipal bonds issued to finance land assembly,¹⁰² these suggestions have included tax abatement on income invested in local land authority bonds¹⁰³ (recommended by the National Association of Real Estate Boards as a substitute for the direct subsidization of land assembly¹⁰⁴) and liberal depreciation allowances on buildings constructed by private redevelopers.¹⁰⁵ The dangerous weaknesses (and perhaps the purpose) of these proposed tax devices, however, is that the cost of the hidden subsidy would never be apparent and that its form would not provide a mechanism for public control of redevelopment plans and results.

PUBLIC CONTROLS

Determining the appropriate extent and technique of public control is a problem closely related both to the grant of the power of eminent domain

It is assumed that this would mean that in many cases the Federal Government would never be completely reimbursed. *Ibid.* See also Potter, in PROC. NAT. CONF. ON POSTWAR HOUSING, 28.

99. See Hansen, in PROC. NAT. CONF. ON POST-WAR HOUSING, 37-8, 39-42, and in (1944) 34 SURVEY GRAPHIC at 204.

100. As revenue bonds, the bonds could be issued without regard to any debt limitation. See Hansen in PROC. NAT. CONF. ON POSTWAR HOUSING, 38. See also Potter, *id.* at 28.

101. See NAT. ASS'N REAL ESTATE BDS., POST-WAR CITIES (1944) *passim*.

102. See Potter, in PROC. NAT. CONF. ON POST-WAR HOUSING, 30. The exemption of municipal bonds from federal income taxation has been under fire for many years, however, and future tax laws may remove this attraction to investors in the securities of local government. See, e.g., Studenski, *Bond Exemption—An Unjustified Subsidy to State and Local Borrowing* in TAX INSTITUTE, WARTIME PROBLEMS OF STATE AND LOCAL FINANCE (1943) c. VIII.

103. Described but not supported by Professor Hansen in PROC. NAT. CONF. ON POSTWAR HOUSING, 38-9.

104. See N. Y. Times, Feb. 24, 1944, p. 29, col. 1, 2; NAT. ASS'N REAL ESTATE BDS., *op. cit. supra* note 101, *passim*.

105. See Potter, in PROC. NAT. CONF. ON POST-WAR HOUSING, 31. It should be noted that the subsidy here has moved very far from the original purpose of assisting in the assembly and clearance of land, and unless it is to be viewed as an indirect means of achieving this purpose it must be justified on other grounds.

and to plans for public assistance in the financing of urban redevelopment. In general, supervision under the present state statutes is divided between the local planning authority and a state or local supervising agency. The planning authority is responsible for examining the need for redevelopment of the area selected, exacting compliance with the city plan, if any,¹⁰⁵ and assuring the maintenance of satisfactory standards of building construction and land planning.¹⁰⁷ The supervising agency regulates the issuance of stock¹⁰³ and periodically checks financial statements and audits reports.¹⁰⁹ Six statutes limit for different periods dividends and the interest payable on income debentures.¹¹⁰ After certification of the proposed development the corporation

106. The state acts all recognize the importance of the planning function. The 1941 New York law requires that the development plan be "in accord with the master plan, if any, of the city" while the Michigan law uses the wording "master plan, or city map, if any." N. Y. Laws 1941, c. 892, § 4(3) (b); MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(4) (3) (b). One provision or the other is used in Kentucky, Missouri, Wisconsin, and Kansas, the last state hopefully eliminating the phrase "if any." KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4704(3); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.050(1) (b); MO. REV. STAT. ANN. (Supp. 1944) § 7875.21(3) (b); WIS. STAT. (1943) § 66.405(4) (c) (2).

There is a similar provision in Illinois. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.17(3) (c). The 1942 New York act limits approval of the planning commission on this point to "height and bulk of structures, density of population and percentage of land coverage by structures as to their conformity with the purposes of this act and with the master plan, if any," a provision followed in the New Jersey law. N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 15(1); N. J. Laws 1944, c. 169, § 15(1). The Maryland law provides that redevelopment plans "shall be approved by the Commission on City Plan of Baltimore City and conformed to any zoning uses and regulations." Md. Laws 1943, c. 664, p. 873. No mention is made in the Indiana statute of master plans.

107. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, §§ 550.17, 550.25, 550.36; IND. STAT. ANN. (Burns, Supp. 1943) § 25-4303; KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4704(3); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.050; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(4) (3); N. J. Laws 1944, c. 169, § 15; N. Y. Laws 1941, c. 892, § 4(3); N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 15; WIS. STAT. (1943) § 66.405(4) (c).

108. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, §§ 550.38-550.40; KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4708; KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.160; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(9); MO. REV. STAT. ANN. (Supp. 1944) § 7875.30; N. J. Laws 1944, c. 169, §§ 9-10; N. Y. Laws 1941, c. 892, § 9; N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, §§ 9-10; WIS. STAT. (1943) § 66.405(7).

109. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.25(5); KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4710; KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.180; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(11); MO. REV. STAT. ANN. (Supp. 1944) § 7875.32; N. J. Laws 1944, c. 169, § 21; N. Y. Laws 1941, c. 892, § 11; N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 21; WIS. STAT. (1943) § 66.405(9).

110. KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4712; MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(13); MO. REV. STAT. ANN. (Supp. 1944) § 7875.26; N. J. Laws 1944, c. 169, §§ 8, 11; N. Y. Laws 1941, c. 892, § 13; N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, §§ 8, 11; WIS. STAT. (1943) § 66.405(11). These limitations appear to be a recognition of the probable inadequacy of other public controls. As-

may not without approval alter the plan, transfer property, or dissolve or reorganize before completion of the project.¹¹¹

That active protection of the public interest beyond existing zoning ordinances¹¹² and building codes¹¹³ is required seems obvious from the present state of our cities. It is accepted as axiomatic by almost all proponents of urban redevelopment that the keystone of government supervision should be a comprehensive integrated plan for the use of the resources of the community¹¹⁴ and that a similar plan for the project area and its environs should be a prerequisite to public approval of the redevelopment.¹¹⁵ In this manner the

suming that public subsidy were provided only to the extent necessary to assemble and clear the land and assuming that the form of government financial assistance, federal and local, made it possible to measure accurately and to regulate its amount, there would seem no reason for such controls. Indeed, it is to be hoped that urban redevelopment will prove an operation profitable to the redeveloper as well as to the community as a whole.

111. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, §§ 550.13, 550.23; KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4706; KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.140; MICH. STAT. ANN. (Henderson, Supp. 1944) §§ 5.3058(4), (7); MO. REV. STAT. ANN. (Supp. 1943) §§ 7875.21(5), 7875.28; N. J. LAWS 1944, c. 169, §§ 16, 23; N. Y. LAWS 1941, c. 892, §§ 4(5), 7; N. Y. LAWS 1942, c. 845, as amended by LAWS 1943, c. 234, §§ 16, 23; WIS. STAT. (1943) §§ 66.405(4)(e), (5).

112. See BASSETT, ZONING (1940); G. B. SMITH, THE LAW AND PRACTICE OF ZONING (1937).

113. See MCGOLDRICK, GRAUBARD AND HOROWITZ, BUILDING REGULATION IN NEW YORK CITY (1944); CHAMBER OF COMMERCE OF THE UNITED STATES, CONSTRUCTION AND CIVIC DEVELOPMENT DEPT., BUILDING CODES—AN ESSENTIAL TOOL IN URBAN REDEVELOPMENT (n.d.).

114. See BLACK, PLANNING FOR THE SMALL AMERICAN CITY (Public Administration Service No. 87) (1944); ACTION FOR CITIES: A GUIDE FOR COMMUNITY PLANNING (Public Administration Service No. 86, published under the sponsorship of the American Munic. Ass'n, the American Soc. of Planning Officials, and the International City Managers' Ass'n) (1943); SEGOE *et al.*, LOCAL PLANNING ADMINISTRATION (1941); WALKER, PLANNING FUNCTION IN URBAN GOVERNMENT (1941); CHAPIN, COMMUNITIES FOR LIVING (1941); BASSETT, THE MASTER PLAN (1938); BASSETT *et al.*, MODEL LAWS FOR PLANNING CITIES, COUNTIES, AND STATES (1935).

115. As Senator Thomas said in a statement issued at the time S. 953 was introduced:

"All students of the subject agree that no sound plans can be made for the redevelopment and rehabilitation of any area without a comprehensive plan of the whole urban community. The redevelopment plan of any area must fit into the master or comprehensive plan of the whole city or metropolitan region."

89 CONG. REC 2836 (1943). See also the statement by Ira S. Robbins (Acting New York State Commissioner of Housing) in PROC. NAT. CONF. ON POSTWAR HOUSING, 21:

"Unless we adopt master plans, we are going to indulge in a spending spree that will only result in cities with new substandard areas, either in the old places or in new ones. They will have the same old disadvantages, to make an understatement, that is, lack of proper housing, lack of places for recreation, parks and playgrounds, undue density of population, traffic hazards, and what not."

See also statements by Professor Hansen, *id.* at 36, Walter H. Blucher, *Urban Redevelopment* in AMERICAN PLANNING AND CIVIC ANNUAL: 1943, 157, 165, Hugh Potter, *Need*

existence of sufficient economic potentialities to guarantee employment and income to the inhabitants of the area can be tested,¹¹⁶ the stabilization of property values encouraged,¹¹⁷ and the development itself protected.¹¹⁸ Within the redevelopment area the necessity for planning a community with adequate educational, recreational, social and service facilities is also generally recognized,¹¹⁹ finding its clearest expression in the "neighborhood unit" concept.¹²⁰

for *Federal Action in Rebuilding Cities* in AMERICAN PLANNING AND CIVIC ANNUAL: 1943, 175, Guy Greer, in CONFERENCE ON URBANISM, PROBLEM OF THE CITIES AND TOWNS (1942) 65-6, and NEW YORK STATE ASS'N OF REAL ESTATE BRS., POST WAR PLANNING AND HOUSING COM., POST WAR PLANNING AND HOUSING (1944) 2.

116. See McDougal, *Legal Question* in CONFERENCE ON URBANISM, PROBLEM OF THE CITIES AND TOWNS (1942) 42, 44:

"It is of course well recognized today that a study of the economic function and structure of a community—including a realistic prophecy of its probable future—is an indispensable preliminary to any effective planning."

117. See ARONOVICI, HOUSING THE MASSES (1930) 13-4.

118. The alternative is to protect the development by encircling it with a meat of open-space (as was done in the so-called "green-belt" towns but which is impracticable in urban areas) or to build part of the development in the form of a protective wall of buildings facing inward, a device to be used in "Stuyvesant Town." See "*Stuyvesant Town*" (editorial), N. Y. Times, June 2, 1943, p. 24, col. 3.

119. See statement of Jerrold Loebl, President of the Chicago Building Congress, PROC. NAT. CONF. ON POSTWAR HOUSING, 13:

"Merely to build new buildings in old slums can only perpetuate the present evil of the sub-standard areas of our cities. It cannot cure it. The smoke-laden air, the dangerous streets, the inefficient and needless transportation, the distant and meager parks and playgrounds, and the city's gray and unwholesome environment, unfit for growing children—all these would remain unchanged."

Six of the state redevelopment laws require that the planning commission (or its equivalent) find "that public facilities, including, but not limited to school, fire, police, transportation, park, playground and recreation, are presently adequate, or will be adequate, at the time that the development is ready for use, to service the development area." KAN. GEN. STAT. ANN. (Corrick, Supp. 1943) § 17-4704(3); Ky. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.050(1) (e); MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3053(4) (3) (e); MO. REV. STAT. ANN. (Supp. 1943) § 7875.21(3) (e); N. Y. LAWS 1941, c. 892, § 4(3) (e); WIS. STAT. (1943) § 66.405(4) (c) (5). Illinois has a similar provision. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.17(3) (d). The 1942 New York law, as amended in 1943, and the New Jersey law provide for approval by the planning commission of "provision, if any, for business or commercial facilities, . . . adequacy and planned rearrangement of street facilities and provisions for light, air, cultural and recreational facilities as to their conformity with the purposes of this act and their adequacy for accommodation of the density of population contemplated by the plan or plans of the project." N. Y. LAWS 1942, c. 845, as amended by LAWS 1943, c. 234, § 15(2); N. J. LAWS 1944, c. 169, § 15(2). Maryland and Indiana do not have any such express provisions.

120. For discussions of the "neighborhood unit" concept, see PERRY, HOUSING FOR THE MACHINE AGE (1939); ADAMS, DESIGN OF RESIDENTIAL AREAS (1934) cc. X, XII; PERRY, *The Neighborhood Unit* in 7 REGIONAL SURVEY OF NEW YORK AND ITS ENVIRONS (1929) 21. For an example of its application to urban redevelopment see PERRY, REBUILDING OF BLIGHTED AREAS: A STUDY OF THE NEIGHBORHOOD UNIT IN REPLANNING AND

Less widely appreciated is the importance of integrating the project with plans for the city as a whole.¹²¹

One serious deficiency in the present structure of public planning controls is already apparent, however. Although most of the acts require the filing of a schedule of proposed rents,¹²² urban redevelopment does not now encompass the housing of those who cannot afford an economic charge.¹²³ Since the substandard facilities to be eliminated by clearance are now providing shelter of sorts for low-income families, the leveling of slum areas will cause more discomfort than it cures unless paralleled by and integrated with a low-cost housing program. Eight of the statutes make approval of a redevelopment project by the planning authority contingent upon a finding that "undue hardship" to the present occupants of the area will not result,¹²⁴ but it seems

PLOT ASSEMBLAGE (1933); for an example of its use in the conservation of a deteriorating area see FEDERAL HOME LOAN BANK BOARD, *WAVERLY: A STUDY IN NEIGHBORHOOD CONSERVATION* (1940). See also ADAMS, *supra*, c. XIII; FEDERAL HOUSING AUTHORITY, *STRUCTURE AND GROWTH OF RESIDENTIAL NEIGHBORHOODS* (1933) and *PLANNING PROFITABLE NEIGHBORHOODS* (1938).

121. See, e.g., the comments of Maurice E. H. Rotival in *CONFERENCE ON URBANISM*, *op. cit. supra* note 116, at 23-4.

The plans for Metropolitan Life's "Stuyvesant Town" are disappointing. "No school is to be provided within the project. Children living in Stuyvesant Town will have to cross the busy widened streets surrounding the project; persons living outside will have to walk around it. To many people this drastically violates sound principles of neighborhood planning; they have called it a medieval walled town. . . . Some people have said that Stuyvesant Town may become a shining example of what not to do in urban redevelopment." Holden, *supra* note 67, at 186-7.

122. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.17(1)(n); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.030(1)(1); MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(4)(1)(1); MO. REV. STAT. ANN. (Supp. 1944) § 7875.21(1)(1); N. Y. LAWS 1941, c. 892, § 4(1)(m); WIS. STAT. (1943) § 66.405(4)(a)(12).

123. See note 42 *supra*.

124. The 1941 New York law requires a finding "that there will be available for occupation by families, if any, then occupying dwelling accommodations in the development area legal accommodations at substantially similar rentals in the development area or elsewhere in a suitable location in the city, and that the carrying into effect of the development plan will not cause undue hardship to such families." N. Y. LAWS 1941, c. 892, § 4(3)(g). Similar provisions were used in Michigan, Missouri and Wisconsin. MICH. STAT. ANN. (Henderson, Supp. 1944) § 5.3058(3)(g); MO. REV. STAT. ANN. (Supp. 1944) § 7875.21(3)(g); WIS. STAT. (1943) § 66.405(4)(c)(7). In Illinois and Kentucky the execution of the development plan must not "cause undue hardship to the families, if any, occupying dwelling accommodations in the development area" to such an extent as to outweigh the public purpose of the projects. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.17(3)(e); KY. REV. STAT. (Stat. Rev'n Comm. Ed., 1942) § 99.050(1)(g).

The Indiana, Kansas and Maryland laws have no such provisions. The 1942 New York law as amended in 1943 and the New Jersey law provide only for approval by the local legislative body as to "the availability of other suitable dwelling accommodations for families living in the area or part thereof to be affected by the plan or plan of the project." N. Y. LAWS 1942, c. 845, as amended by LAWS 1943, c. 234, § 15; N. J. LAWS 1944, c. 169, § 15.

extremely doubtful whether this provision in itself furnishes sufficient protection. Further, while a few of the statutes refer vaguely to the possibility of informal collaboration with public housing authorities,¹²⁵ the mechanics of effective integration have not been established.¹²⁶

The scope of the control of urban redevelopment by the Federal Government will undoubtedly be closely related to the extent of federal financial assistance. The Thomas Bill proposed the establishment of an Urban Redevelopment Agency with limited supervisory powers.¹²⁷ Advances to a municipality for land acquisition would depend upon the existence of a local planning authority and upon the adoption of a master plan encompassing at least the location of transportation and communication facilities, the proposed use of land resources, a statement of the maximum density of inhabitants and percentage of land coverage to be allowed, and an analysis of population growth and of industrial and other economic resources. In addition, a general development plan for the project area, including a time schedule of clearance and rebuilding, and a statement by municipal authorities of the limitations, restrictions, and regulation to be imposed would be required.¹²⁸ Assuming the adequacy of the local planning process and its successful integration with state and regional patterns, federal supervision of the content of the plans adopted could be kept at a minimum. The Federal Government, however, is in a position to encourage the establishment of special planning and administrative units where the geographical limits of present local governments prevent effective redevelopment.¹²⁹ There may also be a need for preventing interstate bidding for large-scale investment through a competitive laxity of controls. Further, the Federal Government can supply valuable aid in the accumulation and analysis of basic economic, demographic, and sociological data; the proposed Urban Redevelopment Agency would seem justified even though research were its sole function.¹³⁰

125. See, *e.g.*, N. Y. Laws 1941, c. 892, § 4(8) and Wis. STAT. (1943) § 66.405(4)(g).

126. New Jersey is a potential exception to this general rule, having established a Department of Economic Development with ultimate responsibility for both public housing and urban redevelopment. N. J. Laws 1944, c. 85.

127. S. 953, Com. Print, Tit. I. The Urban Land Institute bill assigns the functions it would establish to the National Housing Agency. S. 1163, §§ 2(c), 2(d), 3. The National Association of Real Estate Boards recommends the establishment of "an over-all agency" to be called the Federal Community Development Authority and to absorb the National Housing Agency. See NAT. ASS'N REAL ESTATE BDS., POST-WAR CITIES (1944).

128. S. 953, Com. Print, Tit. II, § 12. Cf. S. 1163, § 3(a)(2).

129. Redevelopment in the New York and Chicago metropolitan areas will clearly require some form of interstate coordination. The problem might be approached through one of two directions: building down from the national level (as was done in the TVA) or up from the state level through the use of interstate compacts (following the example of the Port of New York Authority).

130. The work done by the Department of Agriculture for rural America suggests a parallel organization to deal with urban problems.

How long public control should be maintained is a final issue to be resolved. Public ownership of the land in project areas might facilitate continued supervision, but, although the Thomas Bill was based upon the leasing rather than the sale of land to the redevelopment corporation,¹³¹ only two of the present state laws offer the municipality an alternative to transferring complete title.¹³² This general failure to permit experimentation with public ownership does not appear sound; it is not necessary to believe in the nationalization of land¹³³ to suspect that the exercise of public control through restrictions on property privately owned may not prove entirely adequate.¹³⁴ A further cause for concern is presented by escape clauses in three of the statutes. The Illinois law states that public supervision and regulation shall end when the redevelopment "has been achieved."¹³⁵ Under the 1943 New York and the New Jersey statutes the corporation may secure release at any time from all restrictions by repaying the municipality the amount of tax assistance previously granted plus five per cent interest.¹³⁶ If public ownership of the land is not considered desirable, permanent regulation should at least be guaranteed. The rebuilding of cities must be a continual process with constant modification as changing social needs and goals dictate. Otherwise today's plan may ossify into tomorrow's problem.

CONCLUSION

The present urban redevelopment statutes are an important, and in theory a partially successful, attempt to solve the problems of land assembly, financing, and public control which will face any program directed at the elimination of slums, the rebuilding of cities, and the housing of the entire population in adequately planned communities at reasonable cost. Urban redevelopment

131. S. 953, Com. Print, Tit. II, § 12(e). The Urban Land Institute bill provides for "reconveyance by sale or by lease." S. 1163, § 1.

132. Md. Laws 1943, c. 664, p. 873; Wis. STAT. (1943) § 66.405(14)(b).

133. See the Final Report of the British Expert Committee on Compensation and Betterment (known as the "Uthwatt Report") presented to Parliament in September, 1942. The report is summarized in STRAUS, SEVEN MYTHS OF HOUSING (1944) app. B.

134. See, e.g., FEDERAL HOUSING AUTHORITY, HANDBOOK ON URBAN REDEVELOPMENT (1941) which states as one of its "basic principles" "that the land in redeveloped blighted areas shall be owned by the community and leased (a) to private interests which will build and own the structures thereon and (b) to any public housing agencies which may build and own the structures thereon. . . . This policy of municipal ownership of land and long leaseholds in these blighted areas safeguards the future. It assures the community that it will not be necessary to pay heavy penalties at some later time to acquire land in order to eliminate undesirable conditions or undertake any new redevelopments that may be needed then." *Id.* at 85, par. 304.

135. ILL. REV. STAT. (Bar Ass'n Ed., 1943) c. 32, § 550.26(2).

136. N. J. Laws 1944, c. 169, § 24(1); N. Y. Laws 1942, c. 845, as amended by Laws 1943, c. 234, § 24.

as currently proposed, however, is only a truncated effort to cope with the total problem of efficient communities and healthful homes. It fails particularly to make provision for the rehousing of lower-income families. Unless integration with public housing efforts can be achieved, this economic group can be expected to lose more than it gains from being uprooted out of existing quarters, inadequate as they may be, by the clearance of substandard areas. Further, there are indications that those primarily concerned with the rebuilding of cities on the one hand and with low-cost housing on the other will be forced to compete in the public forum for the limited funds available. Since rebuilding and rehousing are integral and interdependent parts of the same basic program, it would be unfortunate if this competitive position were to weaken the cause of both and delay complete public understanding of the soundness of investment by government in urban redevelopment.¹³⁷

Sufficient public financial assistance to absorb the difference between the cost of acquiring and preparing sites and the value of the land for low-density housing is essential to the success of urban redevelopment. In the absence of effective government aid, redevelopment, if undertaken at all, may be expected to follow the lead of public housing in concentrating upon suburban areas which can be acquired cheaply, leaving untouched the central slums more in need of rebuilding.¹³⁸ The alternative is to subject the land to such intensive use that the value of redevelopment is lost.

137. See, e.g., Greer, *A New Start for the Cities* (1944) 33 *FORTUNE*, No. 3 (Sept.) 153, 184, 186.

138. For a vigorous and partially persuasive defense of this policy see STRAUS, *op. cit. supra* note 133, cc. IV-V.

Catherine Bauer distinguishes "three distinct economic types of 'slum,' each with an entirely different bearing on the problem of clearance": (1) the "exploitation-slum" (an overvalued insanitary central slum-area, high priced because of profits reaped by landlords from its congestion), (2) the "speculation-slum" (an insanitary rundown area not necessarily overcrowded in which possible future intensity of use rather than present profits keeps values high), and (3) the "blighted area" (an advanced stage of (1) or (2), a dejected area no longer profitable or with hope of profit because of an exodus of inhabitants). She concludes that to attempt to eliminate directly either of the first two types "(under any conceivable present policy of condemnation or compensation) is not to promote good housing, but to subsidize the most exploitive and speculative branches of the real-estate interest." BAUER, *MODERN HOUSING* (1934) 244-5.

This overlooks, however, the social and economic costs of not eliminating "the exploitation-slum" and "the speculation-slum." The prospect of waiting for these areas to degenerate so far that a flight of population will reduce their fictitious values is not a happy one. It seems clear "that this remedy would not only run counter to the community's interest in the orderly process of putting land to its best use, but, through the costliness to the public of the continued existence of blighted neighborhoods, would ordinarily be more expensive in the long run than paying the current price and writing off whatever excess there is above a value dictated by a fair return from the prospective use." NAT. ASS'N HOUSING OFFICIALS, *HOUSING FOR THE UNITED STATES AFTER THE WAR* (May 1944) 35.

But the source of most serious skepticism is that to date, with the exception of two proposed projects in New York¹³⁹ induced by a specially tailored amendment to the 1942 law,¹⁴⁰ there has been no urban redevelopment. While this may be due to the nature of a war economy, the earlier lack of success of the FHA in stimulating large-scale rental housing suggests that the causes lie deeper. It is therefore important that neither urban redevelopment nor any other proffered panacea be permitted to delay the continued exploration of all possible approaches to the goal of healthier and more efficient cities. If the problems of land cost and public control can be solved, however, urban redevelopment would seem to offer one very hopeful technique for rehousing and rebuilding.

139. In addition to its "Stuyvesant Town" development, the Metropolitan Life Insurance Company is planning a 12-acre Harlem project to be known as "Riverton." See *N. Y. Times*, Sept. 18, 1944, p. 21, col. 1.

140. *N. Y. Laws* 1943, c. 234. See Moses, letter dated June 2, 1943, *N. Y. Times*, June 3, 1943, p. 20, col. 7.