

## Surreply: How and Why We Should Become Un-*Stuck!*

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Writing a “surreply” in a law review symposium is almost always a mistake. The author of the initial piece is inevitably motivated by conflicting and counterproductive impulses. Initially, the author will always experience an overwhelming feeling of gratitude that leading scholars took the time to write responses. I certainly feel this. The four responses to my article, *Stuck! The Law and Economics of Residential Stagnation*,<sup>1</sup> are serious, in-depth, and thoughtful. I am very grateful to their four respective authors. But focusing on one’s appreciation leads to saccharine responses, better fodder for thank you notes than for the pages of a law journal.

On the other hand, any author reading responses to his work will feel the ordinary pugilistic or debater’s instinct to respond to criticism. This leads to excessively defensive responses. Further, if the initial article—weighing in at a mammoth 77 pages—needs additional explanation, there are bigger problems than a surreply can handle. There is no winning.

But there are at least two reasons to write a surreply, and both are relevant here. First, if responses to an article contain exciting ideas, a surreply can combine their insights with his own to lay out a useful roadmap of new directions for future work. This applies to Sheila Foster’s and Sara Pratt’s responses.<sup>2</sup> Pratt

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1. David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78 (2017).

2. Sheila R. Foster, *The Limits of Mobility and the Persistence of Urban Inequality*, 127 YALE L.J. F. 480 (2017), <http://www.yalelawjournal.org/forum/the-limits-of-mobility-and-the-persistence-of-urban-inequality> [<http://perma.cc/CW7M-2NRQ>]; Sara Pratt, *Civil Rights*

focuses on the important role of racial discrimination in erecting barriers to mobility.<sup>3</sup> Foster argues that segregation and other problems internal to metropolitan areas will reduce the benefits that would otherwise accrue from reducing barriers to entry to metropolitan areas.<sup>4</sup>

Although I have a few disagreements with their comments, I agree with Pratt's and Foster's basic claims. Future efforts, by me or others, should wrestle with their insights directly. Combining their approaches with the ideas in *Stuck!* should lead to constructive pathways for research on interstate mobility, civil rights, law, and economic growth. These responses complicate and enhance the arguments I laid out in *Stuck!* in a productive and much appreciated fashion.

Second, if the responses present not only constructive critiques, but also very different views about the issues in question, a surreply can prove useful in pointing out exactly where important disagreements lie. Here, in their pieces, Michelle Wilde Anderson and Naomi Schoenbaum offer arguments that, while commonly held enough, strike me as importantly and acutely wrong.<sup>5</sup>

Anderson argues that Congress or some other decisionmaker can and should employ a set of policy solutions to revive declining metropolitan areas.<sup>6</sup> Further, she argues that infrastructure in these declining places should be replaced, without much regard to the lower population that these projects would serve.<sup>7</sup> Doing so will provide services to the many remaining residents and may make populations more mobile.

Rather than offering false hope that a government policy can resurrect formerly vibrant areas, I argue in *Stuck!* that a doctrine of graceful decline – allowing and encouraging populations, housing stocks, and governments to shrink to match existing economic conditions – is more realistic, promotes mobility, and generates better outcomes for more people.<sup>8</sup> Infrastructure spending should seek to accomplish the same goal, matching city size to current economic conditions, whether it requires more or less federal spending in declining areas. This is a

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*Strategies To Increase Mobility*, 127 YALE L.J. F. 498 (2017), <http://www.yalelawjournal.org/forum/civil-rights-strategies-to-increase-mobility> [<http://perma.cc/BZB7-RQ34>].

3. See Pratt, *supra* note 2, at 498.

4. See Foster, *supra* note 2, at 480.

5. Michelle Wilde Anderson, *Losing the War of Attrition: Mobility, Chronic Decline, and Infrastructure*, 127 YALE L.J. F. 522 (2017), <http://www.yalelawjournal.org/forum/losing-the-war-of-attrition> [<http://perma.cc/7AY2-XPM5>]; Naomi Schoenbaum, *Stuck or Rooted? The Costs of Mobility and the Value of Place*, 127 YALE L.J.F. 458 (2017), <http://www.yalelawjournal.org/forum/stuck-or-rooted> [<http://perma.cc/QQY5-VHVU>].

6. See Anderson, *supra* note 5, at 522-25.

7. *Id.* at 540-42.

8. Schleicher, *supra* note 1, at 132-149.

very significant disagreement, and I hope this Surreply clarifies the different options before policymakers.

Schoenbaum, like many others before her, romanticizes metropolitan areas left behind by the modern economy as places where people are “rooted.”<sup>9</sup> Residents of these places, she argues, will be happier, enjoy stronger social ties to their co-residents, and experience better family lives if they just stay in place.<sup>10</sup> It follows from her argument that we should not tempt people to move to more vibrant job markets by reforming state and local laws that limit entry thereto.<sup>11</sup>

This argument is misguided. Families and individuals can assess the relative attractiveness of locations for themselves. They can decide whether to move to hot job markets, despite the personal costs associated with moving, as long as regulations do not artificially make entry and exit too difficult. The high housing prices in places like San Francisco, Silicon Valley, Washington, and New York, and the population inflows to places like Houston and Atlanta, provide clear evidence that significant demand exists to move to places with higher wages and greater opportunity.

More worryingly, Schoenbaum’s anti-migration arguments provide a rationalization for the destructive and exclusionary behavior of residents of rich regions in promoting land-use restrictions, occupational licensing, and other regulations that limit the ability of outsiders to share in the economic gains enjoyed by “superstar” cities and regions.<sup>12</sup> It no doubt comforts the locationally-comfortable to be told that keeping people out of their towns and regions actually helps those who are physically excluded from regional economic success. In Schoenbaum’s telling, the homeowners of McLean, Virginia, Palo Alto, California, or Newton, Massachusetts, are not acting like a cartel, reducing supply, and keeping working people out by refusing to allow apartment buildings or new townhouses to be built.<sup>13</sup> Instead, they are humanitarians, keeping potential migrants out for their own good!

In contrast, in *Stuck!*, I argue that the policies supporting Schoenbaum’s vision are not to the benefit of the excluded or to society more broadly: they keep potential migrants from access to good jobs and render the country poorer and more unequal. In the name of family values and preservation of “rootedness,”

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9. Schoenbaum, *supra* note 5, at 470.

10. *Id.* at 464-70.

11. *Id.* at 474-79.

12. See Schleicher, *supra* note 1, at 114-22. See also Joseph Gyourko et al., *Superstar Cities*, 5 AM. ECON. J. ECON. POL’Y 167 (2013) (arguing that housing prices have grown in certain “superstar” areas, crowding out lower-income households).

13. Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 390-409 (1977) (arguing that suburban homeowners’ associations operate as cartels employing growth controls to reduce housing supply and increase their own home values).

she offers ideas that would worsen inequality of opportunity and reduce economic dynamism. This is another stark disagreement, and one that should be aired clearly.

#### I. USEFUL NEW DIRECTIONS: RESPONDING TO SARA PRATT AND SHEILA FOSTER

Sara Pratt's response agrees with the central points of *Stuck!*<sup>14</sup> Specifically, she agrees that lack of mobility is a major economic problem, caused primarily by state and local policy.<sup>15</sup> However, she challenges me on the grounds that limits on mobility have concentrated racial effects and indeed are often based on intent to exclude on the basis of race. Efforts to reduce limits on mobility that ignore race will therefore not be effective.<sup>16</sup> Instead, strong application of civil rights laws will be necessary, she argues, for improving mobility.<sup>17</sup>

I think Pratt is at least partially right. I argue that federal laws should target state and local laws that limit mobility, and civil rights laws are a type of federal law that can break down such barriers to mobility.<sup>18</sup> This is precisely why my article specifically mentions the Affirmatively Furthering Fair Housing regulations that Pratt helped develop when she served as an official in the U.S. Department of Housing and Urban Development<sup>19</sup> as an example of the type of effort the federal government could engage in to break down exclusionary barriers to entry.<sup>20</sup>

Policies that are formally race-neutral, however, can also improve mobility and in doing so, provide particular benefits to members of excluded minority

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14. I have a few narrow problems with her response. Contrary to her claim that my article ignores NIMBYism, Pratt, *supra* note 2, at 499, large sections of the article are devoted to the proposition that cities and neighborhoods use zoning for precisely this purpose, for example Schleicher, *supra* note 1, at 129. Additionally, the article does not ignore new research on Moving to Opportunity, as Pratt suggests. Pratt, *supra* note 2, at 503. In fact, the piece cites several of the same papers it is accused of ignoring. See e.g., Schleicher, *supra* note 1, at 106-07 (discussing Raj Chetty's study that Pratt accuses the article of overlooking).

15. Pratt, *supra* note 2, at 499-500.

16. *Id.* at 512 ("These examples suggest that modest incentives to encourage mobility for affordable housing residents or voucher holders will be doomed to fail because of discrimination.").

17. *Id.* at 517-19.

18. Schleicher, *supra* note 1, at 150-54.

19. See Sara Pratt, RELMAN, DANE & COLFAX PLLC, <http://www.relmanlaw.com/attorneys/PrattS.php> [<http://perma.cc/7W9Q-WNCF>] ("Ms. Pratt also participated in numerous policy development initiatives during her time at HUD. Her work included the development of the proposed and final rule on Discriminatory Effects under the Fair Housing Act, the proposed and final rule on the obligation to affirmatively further fair housing . . .").

20. Schleicher, *supra* note 1, at 151.

groups. For instance, reducing homeownership subsidies and property tax benefits for long tenures are formally race-neutral policies, but in application would reduce the incentives for local governments to pass exclusionary zoning regimes. They would also make for a fairer tax regime, providing substantial benefits to minorities, among others, who own homes at lower rates and have been historically excluded from many such subsidies.<sup>21</sup>

But Pratt is right to focus attention on the specific benefits of using civil rights tools in this effort. Because exclusion is often racially disparate in effect and intent, laws aimed at discriminatory exclusion will likely be effective at improving mobility.

The aggressive application of targeted civil rights laws frequently provides such widespread benefits. As Lani Guinier and Gerald Torres argue, minorities often serve as “miner’s canaries” for deep-seated problems in American society.<sup>22</sup> Minorities disproportionately feel the negative effects of many policies or practices, but these policies and practices do not affect minorities alone. Civil rights laws and litigation that challenge policies with disparate impacts thus protect the entire population, not only those who suffer from discrimination. When the Fair Housing Act is used to challenge zoning laws in Yuma, Arizona, or Garden City, New York, the cases are brought on behalf of racial minorities, but their results promote better housing policy for all.<sup>23</sup>

Breaking down racially exclusionary policies is an important end in itself. But the aggressive use of civil rights laws like the Fair Housing Act may provide other benefits as well. Applying the arguments from *Stuck!*, it follows that using the Fair Housing Act in the way Pratt suggests may not only lead to a fairer society, but also a richer one that suffers from less unemployment and economic inequality. If zoning rules (and other policies) that limit the capacity of minorities and others to move to opportunity are struck down, this will facilitate effective monetary policy, economic growth, and efficacious social welfare policies for the reasons laid out in the piece. The macroeconomic benefits of civil rights laws are

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21. I critique homeownership subsidies in detail in the article. Schleicher, *supra* note 8, at 127–30. For a recent examination of how these subsidies operate to the detriment of racial minorities, among other groups, see Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. TIMES (May 9, 2017), <http://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html> [<http://perma.cc/58PX-Z4VS>] (“While most white families own a home, a majority of black and Latino families do not. Differences in homeownership rates remain the prime driver of the nation’s racial wealth gap.”).

22. LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11 (2002).

23. Pratt, *supra* note 2, at 502.

understudied, but Pratt's useful and important response shows that future work should explore exactly these questions.<sup>24</sup>

Sheila Foster's response is similarly friendly, although it too offers important challenges and suggests some real limits to my argument.<sup>25</sup> She argues that even if barriers to entry in growing job markets are reduced, intraregional segregation and stratification will make interregional mobility less attractive and useful, particularly for working people.<sup>26</sup> I think this, as stated here, is true. If many hot metropolitan areas were less segregated and had fewer internal barriers to mobility (and fewer tax benefits for local governments that engage in exclusionary activities), they would attract more lower-income migrants today, and they

24. Gavin Wright has written a number of excellent pieces on the subject. See Gavin Wright, *The Economics of the Civil Rights Revolution*, in TOWARD THE MEETING OF THE WATERS: CURRENTS IN THE CIVIL RIGHTS MOVEMENT IN SOUTH CAROLINA 383 (Winfred B. Moore & Orville Vernon Burton eds., 2008) ("Economics and economic history are usually neglected stepchildren at sessions on Civil Rights history"); Gavin Wright, *The Regional Economic Impact of the Civil Rights Act of 1964*, 95 B.U. L. REV. 759 (2015) (assessing the economic gains for African Americans of the Civil Rights Act). Also, and bearing more directly on this point, the report issued by Jason Furman in the article characterizes the AFFH as a response to economic problems created by exclusionary zoning. Jason Furman, Chair, Council of Econ. Advisers, Barriers to Shared Growth: The Case of Land Use Regulation and Economic Rents, Remarks at the Urban Institute 5-6, 11-12 (Nov. 20, 2015), [http://obamawhitehouse.archives.gov/sites/default/files/page/files/20151120\\_barriers\\_shared\\_growth\\_land\\_use\\_regulation\\_and\\_economic\\_rents.pdf](http://obamawhitehouse.archives.gov/sites/default/files/page/files/20151120_barriers_shared_growth_land_use_regulation_and_economic_rents.pdf) [<http://perma.cc/KC3V-S7PE>].

25. I have a few small problems with this response too, but I'll focus on one. Foster writes:

Using federal housing and civil rights policy to open up suburbs made exclusionary by overly restrictive zoning laws, or to root out racial bias in housing markets, is one thing. It is quite another issue, given the complex dynamics of mobility and residential choice, to try to calibrate the "location market" through policy reforms. To be persuaded by Schleicher's policy prescriptions, one has to believe that federal action can overcome the individual preferences that shape where people locate and the market forces that enable their choices. History suggests otherwise.

Foster, *supra* note 2, at 492-93.

The quotation refers to the title of an article I wrote with Daniel Rodriguez. Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637, 638 (2012). Yet, that article argued that governmental efforts to regulate location decisions are costly, creating deadweight loss: "A policy that, say, limits the height of buildings in a commercial downtown will not costlessly reassign development that would have occurred downtown to locate elsewhere in the city. Instead, it will impose deadweight losses by stopping firms and individuals from locating in their preferred location within a city." *Id.* at 639-40.

This article does not reverse my position. Rather, it argues that the federal government should create incentives for state and local governments to remove limits on locational choice, not to "calibrate" the location market. Contrary to Foster, I do not believe that the location market needs calibration; I argue that it needs unleashing from excessive state and local regulation.

26. Foster, *supra* note 2.

would be even more attractive if the policy changes suggested in my article were adopted.

That said, many of the steps I suggest for reducing external limits on inter-regional mobility would also reduce such intraregional limits. If tax incentives were enacted that encouraged rich suburbs to allow developers to construct apartment buildings, this would both drive entry into the metropolitan area and reduce intralocal inequality. If governments at all levels provided fewer incentives for home ownership and stasis (like California's Proposition 13's property tax benefits for long-term owners), we would see greater inter- and intraregional mobility and likely less segregation. Many of the policies I criticize in *Stuck!* lead to both reduced intraregional mobility and greater segregation and stasis inside regions.

But Foster is essentially correct. Her argument suggests that federal responses to interregional mobility should be paired with policies designed to make our regions fairer and more internally efficient. The article, she notes, is "incomplete."<sup>27</sup> So are all papers. There is much work left to do, and Foster points us in a productive direction.<sup>28</sup>

## II. REAL DISAGREEMENTS: RESPONDING TO MICHELLE WILDE ANDERSON AND NAOMI SCHOENBAUM

The extent of Michelle Wilde Anderson's disagreement with *Stuck!* is not fully clear. She states that she favors reducing density controls in rich regions because doing so would "allow[] newcomers to capture and create economic growth."<sup>29</sup> Presumably, other limits on entry to these markets, like occupational licensing rules, are harmful for the same reasons. Further, Anderson does not suggest that she favors limits on exit of the sort criticized in *Stuck!*—homeownership subsidies, limits on the transferability of public benefits and pensions, etc.<sup>30</sup> The central claims of my article are (a) declining mobility and exclusion

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27. Pratt, *supra* note 2, at 498.

28. She not only points in this direction, but has importantly already gotten started on this project. See Nestor M. Davidson & Sheila Foster, *The Mobility Case for Regionalism*, 47 U.C DAVIS. L. REV. 63 (2013) (arguing that regional governments would promote and are justified by interregional mobility).

29. Anderson, *supra* note 5, at 524.

30. Schleicher, *supra* note 1, at 122-32. Anderson does question whether a lack of mobility is caused by legal limits, or instead by changing economies, noting large forces like declining manufacturing and the foreclosure crisis. Anderson, *supra* note 5, at 526-28. However, the very forces she discusses should *drive* mobility—the worse off places are, the more reason residents have to leave them. She also argues that people don't have enough money to move. Whether this is true or not, the easiest solution to this problem is what I suggest in the conclusion of my

from hot job markets have substantial macroeconomic effects; and (b) state and local government policies create limits on entry into hot job markets and limits on exit from declining ones that should be reformed or eliminated. In other words, there is much on which we agree.

But we also disagree. Anderson offers a critique based on one section of the article in which I argue that policies that encourage too-large housing stocks and governmental sectors (and debt) in declining areas limit and, more importantly, bias mobility in ways that are economically counterproductive.<sup>31</sup> Policies, particularly a more aggressive use of municipal bankruptcy, should be used to help cities and regions adapt to new economic realities. Anderson argues that rather than focusing on facilitating mobility by shrinking cities, we should focus on reviving declining areas, noting that her forthcoming book will provide suggestions for achieving this goal.<sup>32</sup> Further, we need to provide funds for the rapidly deteriorating infrastructure in declining places because plenty of people still live there, and current residents cannot pay for it themselves.<sup>33</sup>

I very much look forward to reading Anderson's book, but I fear it will be only the next in a never-ending series suggesting new ways to revive declining areas. These efforts do not offer viable solutions because there is no reliable way to fix declining places, if by "fixing" we mean restoring them to their former glory. Just as we have different firms in the S&P 500 than we did a hundred years ago, the variety and sizes of regions and cities required by a dynamic economy and society change over time. We cannot stop some cities from declining and

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article—simply giving people money to move, through a refundable tax credit or a direct grant. Schleicher, *supra* note 1, at 152-53.

31. Schleicher, *supra* note 1, at 132-49.

32. Anderson, *supra* note 5, at 524 n.9 (citing MICHELLE WILDE ANDERSON, *LEFT FOR DEAD: CITY GOVERNMENTS AFTER THE FALL OF INDUSTRY* (forthcoming 2018)).

33. She also argues we should maintain infrastructure in the rust belt because climate change may force us away from the coasts. Anderson, *supra* note 5, at 540-41. Here we can see real differences in our approaches to urban development. If coastal places become uninhabitable, I am not sure that the cities that were optimal in the nineteenth century would make sense for residence in the twenty-first or twenty-second century. Preserving their infrastructure may have a similar effect as the preservation of cities in France after the Fall of Rome. Ferdinand Rauch and Guy Michaels show that the preservation of inland French cities after the fall of Rome led to France losing out on the gains from shipbuilding technologies, while the demise of Roman English cities led to the English moving in ways that fit the economic technologies of its time. Guy Michaels & Ferdinand Rauch, *Resetting the Urban Network: 117-2012*, *ECON. J.* 1 (July 6, 2016), <http://onlinelibrary.wiley.com/doi/10.1111/eoj.12424/epdf> [<http://perma.cc/UU8X-QQ6X>]; see also Schleicher, *supra* note 1, at 134-35 (discussing this work). The exact horrors climate change will generate in future years remain unknown, but preserving infrastructure in Wheeling, West Virginia, or Decatur, Illinois, does not necessarily increase our options for adaptation—it may reduce them, by shuttling development into these places rather than others that may fit our new needs, whatever they are, better.



other cities from growing without stopping the economy or society from changing and improving.<sup>34</sup> Particular combinations of people in cities and regions are a technology on which the economy grows and relies; different technologies are needed at different levels by the economy and society at different times.

Around the turn of the last century, it was extremely costly to transport goods by road, and thus manufacturing firms needed to situate producers near ports or railroad hubs.<sup>35</sup> Cities and regions built around these transportation hubs became strong and prosperous. But with the development of technologies like the combustion engine and the shipping container, transportation costs fell and the economy no longer favored those regions. Some of these cities had other amenities that allowed them to prosper in today's economy.<sup>36</sup> Some did not, and therefore, they declined. Similarly, rural areas once required huge populations to work on farms. Changing technologies have made farming more efficient and thus fewer people are needed in those places.<sup>37</sup> The economy and society marches on, and our location decisions follow.<sup>38</sup>

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34. Anderson notes that allowing places to decline is fiscally wasteful, as there is infrastructure and housing in, say, Buffalo that could be rebuilt more cheaply than construction of entirely new edifices in Colorado. The same could be said for firms that go bankrupt or decline; they have huge physical plants and lots of cultural capital that are specific to their processes that are lost when a firm is liquidated. A firm going under creates a substantial amount of loss, but we let firms rise and fall because we understand that this type of loss is a type of creative destruction that is, in the end, worth it. The same is true for cities. There is loss when cities or rural places decline. But the cost of stopping them from declining – in lost economic growth and in frustrated desires to live elsewhere – is too high.
35. See Edward L. Glaeser & Giacomo A. M. Ponzetto, *Did the Death of Distance Hurt Detroit and Help New York?*, in *AGGLOMERATION ECONOMICS* 303, 303-05 (Edward L. Glaeser ed., 2010); Edward L. Glaeser & Janet E. Kohlhase, *Cities, Regions and the Decline of Transport Costs*, 83 *PAPERS REGIONAL SCI.* 197, 197-99 (2004) (documenting the growth of American cities in transportation hubs).
36. See Glaeser & Ponzetto, *supra* note 35, at 303-05; Glaeser & Kohlhase, *supra* note 35, at 197-99.
37. Kristofor Husted, *How Rural Farming Communities Are Fighting Economic Decline*, NPR (Aug. 11, 2016, 1:25 PM), <http://www.npr.org/sections/thesalt/2016/08/11/488837960/how-rural-farming-communities-are-fighting-economic-decline> [<http://perma.cc/7R6F-B3JT>] (“[B]ecause of advances like herbicide-resistant seeds and more efficient tractors, farms need fewer employees. The number of farm jobs in the U.S. plummeted by 14 percent between 2001 and 2013, according to the Department of Agriculture.”).
38. Anderson seems to imply that I presented her position on subsidies for rural Oregon in a misleading manner. Anderson, *supra* note 5, at nn.35-37 and accompanying text. *Stuck!* included a very lengthy block quotation from her work. See Schleicher, *supra* note 1, at 144. In her response, she misunderstands my critique of her position. I did not mention her discomfort with the use of local elections to decide tax levels in rural Oregon. See Anderson, *supra* note 5, at 529 & nn.35-37 and accompanying text. Instead, I challenged her claim that we should provide subsidies to rural areas *because* “there is existence value to rural living, just as there is existence value to the forest ecosystems themselves – humankind made spiritually and morally more whole through the existence of households and environments beyond the hustle

Rather than seeking to keep our cities the same, I argue in *Stuck!* that a doctrine of “graceful decline” would provide better outcomes for both current residents and everyone else. Shrinking declining cities does not mean destroying them – it means improving them.

If these declining cities were to have lower taxes – perhaps because they shed debt in municipal bankruptcy proceedings, or because they offloaded responsibilities on other levels of government – they would drive away fewer employers and enjoy healthier local economies. Likewise, a smaller housing stock means a city can provide better local services at a lower price and suffer fewer of the costs of local blight. Rather than trying to return Atlantic City or Akron to their former glory, we should attempt to make their housing stocks and their governments fit the smaller local and regional economies they have now.

Regarding infrastructure, Anderson argues that these declining cities need an “urgent round of reinvestment.”<sup>39</sup> She seems to think that *Stuck!* argues that we should punish declining cities by removing their infrastructure funds, shifting these subsidies to the growing cities. That is not the argument I advance. I argue instead that governments should remain *neutral* regarding locational choices whenever possible, allowing people, residents, and firms to choose for themselves where to live and work as freely as possible.

Of course, infrastructure has to be built somewhere, so *my* preference for location-neutral policies cannot apply across the board. But while there is no real discussion of infrastructure spending in *Stuck!*, the article’s basic story could guide how we think about allocating infrastructure spending. When deciding what projects to fund, the federal government and states should choose projects that fit the current reality of metropolitan areas. In many cases, this will require spending more money in declining areas in order to right-size them.<sup>40</sup> In other cases, it will require transforming local infrastructure – replacing highways with streets, for instance, or consolidating local schools. In still others, it will require avoiding the temptation to build fancy new infrastructure in an effort to attract

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bustle of urban materialism.” See Schleicher, *supra* note 1, at 144 (quoting Michelle W. Anderson, *The Western Rural Rustbelt: Learning from Local Fiscal Crisis in Oregon*, 50 WILLAMETTE L. REV. 465, 500 (2014)). The justification she offered for subsidies was not that they would alleviate poverty or improve outcomes for rural people, but rather that people staying in economically-declining rural areas would gratify the desires of urbanites that others remain in the places that these urbanites imagine exemplify the purity of rural life.

39. See Anderson, *supra* note 5, at 540.

40. Declining cities frequently seek federal funds to knock down blighted buildings for example. See, e.g., Schleicher, *supra* note 1, at 138-39 (describing how Detroit, Buffalo, and Cleveland have demolished thousands of vacant houses); *id.* at 139 n.273 (noting restrictions on the use of federal funding to demolish housing).

people to declining places. The next “round of reinvestment”<sup>41</sup> should be designed to help cities fit their current situations, not to try to bring cities back to old population levels.<sup>42</sup>

Anderson importantly and usefully points to the infrastructure needs of declining places, and on this point, her argument is very powerful.<sup>43</sup> But she does not make clear whether this needed infrastructure should target the new, lower levels of population or, instead, should be used to encourage population growth in declining areas.

Whatever Anderson’s stance, this is a substantial debate among people concerned about urban affairs. Many think the federal government should be in the business of trying to revive declining areas; I do not, and I do not think it could reliably do so even if it were. Further, infrastructure in places with large populations is also declining and needs replacing – as anyone who has tried to take a train recently from New Jersey to New York knows intimately.<sup>44</sup> Federal infrastructure spending should not be used push development from one place to another. Instead, we should allow people to move to opportunity and provide services, including infrastructure, that fits today’s economy and population distribution.

Naomi Schoenbaum’s response largely restates arguments she made in an earlier, very interesting article, *Mobility Measures*.<sup>45</sup> I responded to many of these points in several places in *Stuck!*, and there is no need to rehash those arguments.<sup>46</sup>

There are two further points to make here, though. First, Schoenbaum’s reading of *Stuck!* seems to ignore both the article’s discussion of the incentives of state and local governments and its focus on allowing individuals and firms to weigh locational decisions without excessive interference. Second, the approach defended by Schoenbaum’s response is not just wrong but would also have deleterious political and social consequences.

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41. Anderson, *supra* note 5, at 540.

42. See Schleicher, *supra* note 1, at 145 (“In many cases, the need for bailouts to economically declining places is both intense and compelling. Permanent subsidies, however, without any effort to encourage mobility away from dying places – or to credibly generate sustainable economic growth in the targeted area – are counterproductive.”).

43. See Anderson, *supra* note 5, at 534-35 & nn.51-60 and accompanying text.

44. See, e.g., Matthew Hamilton, *Old New York Sees New Infrastructure on Horizon*, U.S. NEWS (Apr. 20, 2017, 12:05 AM), <http://www.usnews.com/news/best-states/articles/2017-04-20/old-new-york-sees-new-infrastructure-on-horizon> [<http://perma.cc/CG7Z-VRCU>] (noting New York’s infrastructure challenges).

45. See Naomi Schoenbaum, *Mobility Measures*, 2012 B.Y.U. L. REV. 1169 (2012).

46. See, e.g., Schleicher, *supra* note 1, at 87 n.24, 110-11.

Schoenbaum's response misunderstands or misreads some of the arguments in *Stuck!*, and thus fails to respond to many of the arguments on their own terms. For example, she states that I do “not think that the people who are stuck (or anyone else) would have any interest in their staying put;”<sup>47</sup> that I argue that “relationships matter only for the economic gains they bring rather than for the other benefits they might confer or the value they may have even in their own right;”<sup>48</sup> and that I ignore that some people are unhappy living in big cities,<sup>49</sup> that rich areas often have higher rents,<sup>50</sup> and that “strong ties” to other individuals improve productivity.<sup>51</sup>

But I don't say or do any of this. *Stuck!* does not defend some kind of forced relocation program that transplants plucky families from Akron, Ohio, to one-bedroom apartments in Atlanta or Houston.<sup>52</sup> Instead, it argues for *removing* barriers to locational choice – allowing people and families to leave whatever ties

47. Schoenbaum, *supra* note 5, at 462. The portion of *Stuck!* she cites does not support this claim. She quotes this statement from *Stuck!*: “It is not clear why the country as a whole or a state in particular should want residents to remain in, say, Atlantic City rather than move to the New York City suburbs, which would give them access to a better labor market.” *Id.* at 462 n.22. As one can tell from the quotation, I did not argue that *individuals* have no interest in staying put, but that the *government* lacks a clear interest in subsidizing them or encouraging them to stay put.

48. *Id.* at 463.

49. *See id.* at 475-76. Schoenbaum strikes at an imaginary target. *Stuck!* discusses the benefits of moving to hot job markets or metropolitan regions. To be fair, it frequently uses the name of the central city around which the region is organized – New York, San Francisco – to stand in for the region. But the paper just does not say much about whether people should live in cities, suburbs, or exurbs in these metropolitan regions. Just as I think that people should choose freely among metropolitan areas, I think they should freely choose among different types of communities inside regions to the extent possible. (I do, however, think some externalities commonly produced in suburbia should be taxed or priced, like congestion, water use, and auto emissions, which would encourage more dense living.)

50. *See id.* at 475.

51. *Id.* at 465. Staying in place furthers “strong ties,” Schoenbaum argues, and these relationships improve productivity (along with a host of other benefits). Fair enough. But Schoenbaum argues that it follows that “mobility harms productivity.” *Id.* at 464. If this were true on net, places with high mobility or lots of migrants should have low productivity. New York and Chicago at the turn of the last century, or London today, teem with migrants, from both home and abroad, with people shorn of many strong ties. Schoenbaum seems to think these places would have slow economic growth or labor productivity, while places like isolated parts of Appalachia or Dark Ages Europe should have had high growth due to the preservation of strong ties. Further, the period of declining mobility in America should be associated with faster growth, as opposed to declining mobility occurring during the period of far slower growth. *See* ROBERT GORDON, *THE RISE AND DECLINE OF AMERICAN GROWTH* (2014) (describing how U.S. growth has been lower since the 1970s).

52. At one point, Schoenbaum refers to “[l]arge-scale relocation policies,” Schoenbaum, *supra* note 5, at 477 & n.116, which is not at all the solution I propose in *Stuck!*.

them to their current locations if, but only if, they decide to seek greater economic opportunity elsewhere.<sup>53</sup> As I said in the article, people have legitimate economic and social reasons not to move to the metropolitan regions where they will receive the highest wages.<sup>54</sup> The same is true of firms, which, as Schoenbaum notes, form useful local networks.<sup>55</sup> But people and firms should make these decisions without excessive, government-imposed entry and exit limits.<sup>56</sup> *Stuck!* does not criticize anyone's reason for staying put; it argues that governments should not make it too challenging to leave or enter, and it discusses the benefits the nation could see from removing these barriers to mobility.<sup>57</sup>

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53. See Schleicher, *supra* note 1, at 107 (“Nothing in this Article suggests we should force people to leave places, or even provide net incentives for them to move.”). The only suggestion in the paper that the federal government put a foot on the scale towards mobility is its support for relocation tax credits as a second-best measure if removing policy barriers proves too difficult. *Id.* at 107 n.124 (“The conclusion does suggest providing subsidies for mobility, but only as a second-best solution to overcome barriers created by other policies.”).
54. See, e.g., Schleicher, *supra* note 1, at 108-10.
55. See Schoenbaum, *supra* note 5, at 465-68.
56. See Schleicher, *supra* note 1, at 111-17 (discussing entry limits); *id.* at 122-32 (discussing limits on exit).
57. Some of Schoenbaum's comments are about movers. Others, though, are about the people left behind when others move. See, e.g., Schoenbaum, *supra* note 5, at 473. She effectively argues that mobility creates negative social externalities. But people who move bear the majority of the social costs of moving; they leave all of their current local contacts, while each current friend and family member only loses the ones who moved. The social harms of mobility, then, should be mostly borne by the same party who will see gains on the other side.

Further, it is not clear that the social externalities are weighted towards encouraging people to stay put. When people move, they likely take into consideration the effect on their current friends and family to some degree: knowing that people you care about will miss you is one of the hardest things about moving. Movers are unlikely, however, to consider the positive effect on the friends they will make in new places, simply because movers do not yet know them. But when people move into a new place, they do create external benefits—residents in their new community gain the possibility of a new friend who could diversify their existing social life. Migrants, both domestic and international, provide us with much. Consider the great E.B. White on types of New Yorkers:

There are roughly three New Yorks. There is, first, the New York of the man or woman who was born here, who takes the city for granted and accepts its size and its turbulence as natural and inevitable. Second, there is the New York of the commuter—the city that is devoured by locusts each day and spat out each night. Third, there is the New York of the person who was born somewhere else and came to New York in quest of something. Of these three trembling cities the greatest is the last—the city of final destination, the city that is a goal. It is this third city that accounts for New York's high-strung disposition, its poetical deportment, its dedication to the arts, and its incomparable achievements. Commuters give the city its tidal restlessness; natives give it solidity and continuity; but the settlers give it passion. And whether it is a farmer arriving from Italy to set up a small grocery store in a slum, or a young girl arriving from a small town in Mississippi to escape the

Schoenbaum also misstates or misunderstands a central move in *Stuck!*. I argue that state and local governments have strong political incentives to care about stability, but little reason to care about national problems like, say, the efficacy of monetary policy. This is an argument about *different incentives*—that is, the relative political concerns of local, state, and federal government. She responds: “[C]ommunities where people stay put—which are all across the country—are *part of the nation*.”<sup>58</sup> I agree, but it is not clear that this point matters. Local zoning decisions, occupational licensing rules, and so forth are set by state and local governments but harm people living in other places who get no say in them. In other words, the problem is that these decisions create externalities. In not responding to this point, Schoenbaum neglects the incentives of state or local governments.<sup>59</sup>

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indignity of being observed by her neighbors, or a boy arriving from the Corn Belt with a manuscript in his suitcase and a pain in his heart, it makes no difference: each embraces New York with the intense excitement of first love, each absorbs New York with the fresh eyes of an adventurer, each generates heat and life to dwarf the Consolidated Edison Company.

E.B. WHITE, *HERE IS NEW YORK* 25-26 (1949). Access to diversity and fresh thinking, to “heat and life” in White’s telling, provide important social externalities as well. Put together, the social externalities of migration are not obviously negative.

This is all pretty hard to work with when making policy. But Schoenbaum’s arguments show a clear preference for stasis, for being surrounded by the same people having the same conversation forever—like living in the last episode of *Seinfeld*. See Caryn James, *Television Review; ‘Seinfeld’ Goes Out in Self-Referential Style*, N.Y. TIMES (May 15, 1998), <http://www.nytimes.com/1998/05/15/arts/television-review-seinfeld-goes-out-in-self-referential-style.html> [<http://perma.cc/5YRR-39Q5>] (“But it’s the next-to-last image viewers will keep with them: Jerry, Elaine, George and Kramer sitting in a jail cell as if in some road company version of “No Exit.” . . . It’s easy to see these four nattering at each other into eternity.”). Doubtless, this is a vision of the good life, but it is not obvious that public policy should be slanted towards it.

58. Schoenbaum, *supra* note 5, at 469.

59. Near the end of her response, Schoenbaum argues that there is a tension between federalism and agglomerative efficiency. She writes, “Schleicher does not address the tension between his views and federalism,” *id.* at 478, and in particular the harm that comes from people moving to, or staying in, political communities that fit their preferences for public services. In *Stuck!*, I wrote:

Further, local government by its very nature limits individuals from moving to the best economic location. State and local governments provide a host of public services and legal regimes—from schools to police to gun laws—that are tied to geographic location. When people move from Detroit to Houston, they can keep their cell phone plans and Amazon Prime accounts. But they must take on a whole new set of public goods and legal regimes—changing schools, gun laws, and so forth. As I have argued elsewhere, this is a cost of having public goods provided locally, as opposed to federally or by private contract untethered from geography. Of course, local provision of services has many benefits, particularly (as Charles Tiebout famously argued) by improving fit between preferences and policies. But this

Schoenbaum also makes claims that run counter to important evidence. She suggests that people do not move to rich metropolitan areas because “gains do not exist to be had” and that they may be better off, both economically and socially, staying out of growing metropolitan areas.<sup>60</sup> People are less happy, she argues, in big cities, and so working people around the country should just stay home and leave the horrors of life in San Francisco and New York to their long-suffering existing homeowners and residents.<sup>61</sup>

This argument approaches the empirical debate on land use in an unorthodox fashion. There is a live debate, discussed substantially in *Stuck!*, about whether laws, like land use regulations, or other forces are driving the decline in mobility.<sup>62</sup> But it is very clear that local land use regulations in many rich metropolitan areas reduce housing supply and population growth, and drive up housing costs.<sup>63</sup> Now, some people do claim that physical limitations – and not building restrictions – are why prices are high in particular central city areas like

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fit comes at a cost: it undermines agglomerative efficiency because it forces people to choose their locations based on packages of government services, rather than solely based on an economic calculus.

Schleicher, *supra* note 1, at 123 & nn.195-98 (citations omitted) (citing David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1540-45). To be fair, this passage does not use the word “federalism,” but this text and the accompanying footnotes – which cite a paper I wrote that is entirely about this tension – clearly discusses the tradeoffs between the benefits of agglomerative efficiency and the benefits (and harms) of federalism and localism. To make the point again, there are unavoidable tradeoffs between local control and agglomerative efficiency, but where local decisions do more than attempt to attract residents, but also seek to exclude or tax leaving, the costs of local or state control increase substantially.

60. See Schoenbaum, *supra* note 5, at 475-76.

61. For what it is worth, the “Mississippi janitor” example is not mine – I borrowed it from Peter Ganong and Daniel Shoag. See Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?*, 102 J. URBAN. ECON. 76, 78 (2017).

62. See, e.g., Schleicher, *supra* note 1, at 116 n.157.

63. Schoenbaum cites Raven Malloy, who wrote an interesting paper on the effect of land use on labor fluidity (that is, on the number of job changes people make). See Schoenbaum, *supra* note 5, at 460 n.11 (citing Raven Molloy et al., *Understanding Declining Fluidity in the U.S. Labor Market*, 2016 BROOKINGS PAPER ON ECON. ACTIVITY 221-23, <http://www.brookings.edu/wp-content/uploads/2016/03/molloytextspring16bpea.pdf> [<http://perma.cc/B58Z-XQMX>]). But this is not the point for which Schoenbaum cites Malloy. See Schoenbaum, *supra* note 5, at 475 (“There may be some set of persons for whom restrictive housing and zoning laws make the marginal difference between rendering New York or Silicon Valley affordable or not. Schleicher does not suggest how large a group this is, and the research suggests it is small or nonexistent.”). In fact, Malloy (née Saks) was the author of two of the most important papers finding that land use laws substantially reduce construction and increase housing prices in some regions. Edward L. Glaeser, Joseph Gyourko & Raven E. Saks, *Urban Growth and Housing Supply*, 6 J. ECON. GEO. 71 (2006); Edward L. Glaeser, Joseph Gyourko & Raven E. Saks, *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J. L. & ECON. 331 (2005) [hereinafter Glaeser et al., *Why is Manhattan So Expensive?*].

Manhattan. (This has been debunked—land use policy really is the main driver of high housing prices, even in dense downtowns surrounded by water.<sup>64</sup>) But it is hard to see how physical limitations could have driven up prices to current levels at the *regional* level. No physical limitations stop people from building houses more densely on the huge lots that pervade suburban Washington D.C., Silicon Valley, New York, or San Francisco. On these lots, people could replace single-family homes with townhouses or triple-deckers, or taller buildings where there are currently shorter ones. Nonetheless, prices have increased at the regional level, too, and to levels far above construction costs—making clear that the most important factors are legal limits.<sup>65</sup>

Schoenbaum also misses *why* housing prices in these areas are important. Where supply is limited, high housing prices provide evidence of demand. Why else would prices be so high? The fact of such high prices in particular regions proves that people from all over want to move there. The fact that prices are so much higher than the marginal cost of building housing is evidence that land use laws are stopping people from moving in.<sup>66</sup>

Thus, the argument that “gains do not exist to be had” is belied by high housing prices in these areas. Schoenbaum might think that people are wrong to want to move to opportunity. But the behavior of people in housing markets suggests that most disagree with this view.

Further, Schoenbaum’s argument has troubling political consequences. Her argument suggests that the people excluded from Silicon Valley, San Francisco, New York, or Boston’s labor markets by regulations are actually better off for having been excluded. If so, residents in rich and restrictive areas do no harm when they exclude new entrants with restrictive zoning laws and occupational licensing rules. These exclusionary practices, in Schoenbaum’s telling, do the excluded a favor. Those potential migrants not lured by high pay and opportunity will have healthier marriages, stronger ties, and happiness and so forth. The federal government, she argues, should help wall off access to opportunity in growing job markets for the sake of social stability.

In contrast, I argue in *Stuck!* that these laws are both unfair and inefficient. They keep poorer Americans away from richer areas that have higher wages,

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64. Glaeser, Gyourko, and Saks show that the difference between market prices in Manhattan and the marginal cost of building an additional floor—which they call the “regulatory tax”—is best understood as the effect of land use policy on local prices. They find Manhattan condominium prices are 50 percent higher than they would without regulations limiting construction. Glaeser et al., *Why Is Manhattan So Expensive?*, *supra* note 63, at 350-51.

65. *Id.* at 359-60 (finding that twenty percent of total house value in Boston metropolitan area, over thirty percent in Los Angeles metropolitan areas, and upwards of fifty percent in the San Francisco Bay metropolitan area is due to land use restrictions).

66. See sources cited *supra* note 63.



generate socioeconomic mobility, and have more generous welfare programs. Because these exclusionary laws do such harm, the federal and state governments should challenge them – using both carrots and sticks to break down barriers to entry and exit.

This is another significant disagreement that should be stated clearly. Schoenbaum’s arguments bolster the soothing ideology that homeowners and members of professional guilds that limit housing construction and competition serve the common good. People do not like to think of themselves as selfish members of an exclusive cartel, so theories of this sort allow insiders to rationalize political action that would otherwise be seen, by themselves and others, as aggressive assertions of self-interest. Schoenbaum provides intellectual cover for what Steven Teles and Brink Lindsey call “The Captured Economy” – the ability of insiders to use regulation to “enrich themselves, slow growth, and increase inequality.”<sup>67</sup> Arguments like those offered by Schoenbaum likely serve to protect and justify the upward redistribution and economic inequality that results from protectionism by local elites.<sup>68</sup>

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Around the world, “superstar” cities and regions are generating more wealth than ever before.<sup>69</sup> Real and significant economic and social developments – changes in information technology, the greater economic role of professional services and technology development, demand for amenities, and many other things – have made these places successful, even as other cities have declined.

Given the underlying technological and social structure of 2017, regional economic policy presents a fairly stark policy choice. As a polity, we can decide whether the gains from economic growth in superstar regions should flow to incumbents – those lucky enough to have bought property or earned licenses years ago – and to those rich enough to afford the high prices of access to these labor markets. Policies that allow exclusion and slow mobility are the status quo, and not changing things surely provides some benefits. If we accept exclusion from superstar regions, it forces people to avoid the costs of moving, leaves intact

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67. See BRINK LINDSEY & STEVEN TELES, *THE CAPTURED ECONOMY* (2017).

68. Remember how dramatic this all is. Wages would be as much as 8.9% higher if local governments in the San Francisco, Silicon Valley and New York metro areas did not restrict entry, and almost all of the inequality caused by capital accumulation in recent years – the problem at the heart of Tomas Piketty’s work – is caused by gains accruing to landowners. See Schleicher, *supra* note 1, at 115-16 (surveying literature).

69. See, e.g., Gyourko et al., *supra* note 12, at 167; RICHARD FLORIDA, *THE NEW URBAN CRISIS* (2017) (on “winner-take-all urbanism”); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (1991) (discussing “global cities” and their rising prominence).

the character and look of existing neighborhoods, and allows parts of the professional class to continue happily receiving rents.

Or, instead, we can increase and broaden the prosperity created by the rise of superstar regions – by changing laws and allowing people to move to them (and, by necessity, away from other areas). Doing so would not be easy. It would entail difficult choices about how to provide services to the remaining populations in declining places, hard conversations about how beloved neighborhoods must change to accommodate new people, and coping with the churn and tumult of competition.

As a reader, you can decide whether this is a fight worth having. I certainly do. At the very least, I thought the stakes were high enough that it was worth taking the risk of writing a surreply.

*David Schleicher is a Professor at Yale Law School. Thanks to Leslie Arffa and Garrett West for research assistance.*

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