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THE PEOPLE PARADOX

Nicole Stelle Garnett*

U.S. land-use regulators are increasingly embracing mixed-land-use "urban" neighborhoods, rather than single-land-use "suburban" ones, as a planning ideal. This shift away from traditional regulatory practice reflects a growing endorsement of Jane Jacobs's influential argument that mixed-land-use urban neighborhoods are safer and more socially cohesive than single-land-use suburban ones. Proponents of regulatory reforms encouraging greater mixing of residential and commercial land uses, however, completely disregard a sizable empirical literature suggesting that commercial land use generates, rather than suppress, crime and disorder, and that suburban communities have higher levels of social capital than urban communities. This Article constructs a case for mixed-land-use planning that tackles the uncomfortable reality that these studies present. That case is built upon an apparent paradox: in urban communities, people do not, apparently, make us safer. But they do make us feel safer. This "People Paradox" suggests that, despite an apparent tension between city busyness and safety, land-use regulations that enable mixed-land-use neighborhoods may advance several important urban development goals. It also suggests an often-overlooked connection between land-use and policing policies.

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I. INTRODUCTION

Over the past two decades, U.S. land-use regulations increasingly have come to embrace mixed-land-use urban neighborhoods—rather than single-land-use suburban ones—as a planning ideal. The magnitude of the shift away from traditional land-use planning practices is dramatic. For well over a century, elite thinking in the United States has favored single-land-use communities, especially exclusively single-family residential neighborhoods. And, for nearly as long, regulators have relied upon zoning laws segregating "incompatible" commercial and residential land uses from one another to impose order on our cities. Although it remains the case that "suburban" (that is, single-land-use) development continues to be the norm in the United States, the growing preference for land-use diversity is reflected both in the increasingly widespread adoption of new regulatory mechanisms enabling (or even requiring) the development of mixed-land-use neighborhoods and in hundreds of urban

development projects, including "infill" efforts in center cities and the dramatic reinvention of the U.S. public housing stock.[1]

The endorsement of urbanism as a planning ideal flows in part from local governments' recognition of, and efforts to capitalize upon, cultural shifts that favor urbanism. Over the past two decades, many cities—including some long written off as lost causes—began to regain population and vitality.[2] A plausible case can be made that a growing preference for city life, especially for the informal social interactions enabled by dense, mixed-land-use environments, fueled this apparent urban rebound.[3] Local government officials therefore reasonably seek to offer more of the dense, mixed-land-use neighborhoods that would-be urbanites desire. Since U.S. land-use laws tend to encourage sprawling suburban development and disfavor dense urban development, responding to the demand for urban neighborhoods frequently requires regulatory reform.[4]

The shift away from single-land-use planning practices also reflects the influence of the self-styled "new urbanists." The new urbanists are a loosely affiliated group of architects and urban-planning professionals who promote the development of—and the adoption of legal rules that enable and promote the development of—mixed-land-use neighborhoods.[5] Over the last few decades, the new urbanists have mounted a remarkably successful public relations campaign against traditional zoning practices and the suburban land-use patterns resulting from them. They also have developed an alternative to zoning laws—a system of aes-

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1. *See generally* NICOLE STELLE GARNETT, ORDERING THE CITY: LAND USE, POLICING, AND THE RESTORATION OF URBAN AMERICA 150–88 (2010) (discussing three cities' reordering redevelopment efforts).

2. *See* Patrick A. Simmons & Robert E. Lang, *The Urban Turnaround, in* 1 REDEFINING URBAN AND SUBURBAN AMERICA: EVIDENCE FROM CENSUS 2000, at 51, 51 (Bruce Katz & Robert E. Lang eds., 2003) ("Many older industrial cities have rebounded considerably from the traumatic population losses of the 1970s."); Rebecca R. Sohmer & Robert E. Lang, *Downtown Rebound, in* 1 REDEFINING URBAN AND SUBURBAN AMERICA: EVIDENCE FROM CENSUS 2000, *supra*, at 63, 65–72 (demonstrating that downtown areas of center cities experienced the greatest population growth in the 1990s, with some downtowns gaining population even where overall city populations declined).

3. *See, e.g.*, Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 URB. STUD. 1275, 1286–93 (2006) (arguing that urban resurgence is attributable in part to increasing demand for the consumption amenities and informal social interactions provided by cities).

4. *See* Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1, 43–47 (2004). Environmental concerns—including concerns about global warming and the impending depletion of petroleum reserves—also led some to argue that sprawling, single-land-use suburban development practices are unsustainable and to condemn the prevailing system of land-use regulation that encourages them. *See* Christopher B. Leinberger, *The Next Slum?*, ATLANTIC, Mar. 2008, at 70.

5. *See Charter of the New Urbanism*, CONGRESS FOR THE NEW URBANISM (2001), http://www.cnu.org/sites/files/charter_english.pdf [hereinafter: *Charter of the New Urbanism*] (stating the principles of the new urbanism); *What Is CNU?*, CONGRESS FOR THE NEW URBANISM, http://www.cnu.org/who_we_are (last visited Oct. 24, 2011) (stating the principles of the new urbanism); *see also* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 149–54 (1999) (describing the principles of the new urbanism).

thetic regulation that they call "form-based" or "transect" zoning[6]—that growing numbers of cities have begun to adopt.[7]

The new urbanists' case against single-land-use development patterns is part antisuburban polemic and part prourban philosophy. At heart, the new urbanists claim that cities are good for us, and suburbs are bad. Or, to put the claim into social science terminology, the new urbanists claim that cities generate social capital, while suburbs inhibit it.[8] This claim builds, in important ways, upon Jane Jacobs's enormously influential book, *The Death and Life of Great American Cities*, which was first published in 1961.[9] Jacobs wrote at the apex of the urban renewal period—a time when urban planning ideology and practices strongly favored the imposition of single-land-use patterns on our cities, even to the point of demolishing mixed-land-use communities in order to replace them with single-land-use ones. She vehemently rejected the accepted wisdom that dense, mixed-use urban neighborhoods were hopelessly antiquated and unhealthy.[10] On the contrary, she argued that mixed-land-use neighborhoods are critical to city life because commercial land uses both generate social capital and guarantee a steady supply of "eyes upon the street" to monitor and keep disorder and crime in check.[11]

A significant difficulty with these claims is that they appear to be wrong. The available empirical evidence, which is almost entirely ignored, tends to rebut them. Researchers testing Jacobs's claims about mixed-land-use urban neighborhoods have concluded that commercial land uses generate, rather than suppress, crime and disorder.[12] Other re-

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6. New urbanists argue that cities should regulate property based upon *building form*, not *building use*. For example, architect Andrés Duany's "SmartCode" proceeds upon the assumption that development naturally progresses from urban (most intense) to rural (least intense). ANDRÉS DUANY ET AL., SMARTCODE & MANUAL (2006), http://www.dpz.com/pdf/3000-SmartCode_v8.0%20 combined.pdf (including the complete SmartCode version 8.0). Duany calls this progression the "transect" and urges cities to replace use zoning with the regulation of building form appropriate to the various "transect zones" along the progression. *Id.* at C2; Andrés Duany & Emily Talen, *Transect Planning*, 68 J. AM. PLAN. ASS'N, 245, 245–49 (2002). Theoretically, the concept is relatively simple: buildings appropriate for the city center should go in the city center (regardless of what they are used for), and suburban buildings should look suburban (regardless of what they are used for). *See, e.g.*, Chad D. Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, 71 MO. L. REV. 637, 638–45 (2006); Peter Katz, *Form First*, PLANNING, NOV. 2004, http://www.formbasedcodes. org/files/FormFirst.pdf (describing the merits of form-based coding).

7. *See infra* note 35.

8. For a thoughtful discussion of the new urbanism and social capital, see Sheila R. Foster, *The City As an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527, 559–61 (2006). Social capital is the subject of a voluminous, and somewhat contentious, literature. *See, e.g.*, DAVID HALPERN, SOCIAL CAPITAL 1–45 (2005) (reviewing literature). For present purposes, Robert Putnam's "lean and mean" formulation—"social networks and the norms of reciprocity and trustworthiness that arise from them"—suffices. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 19 (2000).

9. *See generally* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961).

10. *Id.* at 3–25.

11. *Id.* at 34–38.

12. *See infra* Part II.B.

searchers have studied, and rejected, the new urbanists' claim that cities have higher levels of social capital than suburbs—finding, in contrast, that suburban communities are more socially cohesive and their residents more socially involved than urban communities and urbanites.[13] In other words, the available empirical evidence suggests that Jacobs's case for mixed-land-use neighborhoods, echoed by the new urbanists, is theoretically appealing but empirically unsustainable.[14]

Proponents of mixed-land-use planning practices (including, admittedly, myself) have failed to come to terms with this literature.[15] This Article represents an effort to fill that significant gap in the legal literature on land-use planning—that is, to build a case for mixed-land-use planning that tackles the uncomfortable reality that these empirical studies present. That case is built upon an apparent paradox. In urban communities, people do not appear to make us safer, but they do apparently make us *feel safer*. In other words, busier neighborhoods, *contra* Jacobs, are not necessarily safer neighborhoods. The empirical evidence suggests that commercial land uses generate crime and disorder precisely because they increase the number of people in public spaces.[16] Despite this, other evidence suggests that people *feel safer* in busy places.[17] At least in urban neighborhoods, that is, we are afraid of being alone.[18] We believe that there is safety in numbers. In other words, we associate "aloneness" with vulnerability to crime. This dichotomy is particularly paradoxical because commercial land uses generate *both* the busyness and vitality that people intuitively associate with personal security *and*

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13. *See infra* notes 44–67 and accompanying text.

14. There is substantial evidence that crime increases along with population densities, though some scholars argue the relationship is more complicated than conventional wisdom would suggest. I leave this literature to the side here, however, as I am primarily concerned with the claim that commercial land uses will suppress crime. The two issues are related, however, since population densities tend to be higher in communities characterized by a mix of commercial and residential land uses. *See, e.g.,* Robert J. Sampson, *Structural Density and Criminal Victimization,* 21 CRIMINOLOGY 276, 290 (1983) ("[T]he effect of density on crime is highly contingent on type of density, type of crime, areal unit of analysis, and the extent of urbanization."); Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods,* 105 AM. J. SOC. 603, 637–38 (1999) (questioning the relationship between disorder and serious crime).

15. A related difficulty with this claim is a separate literature linking population densities and crime. I leave this literature to one side for present purposes. *See, e.g.,* Ronald W. Beasley & George Antunes, *The Etiology of Urban Crime: An Ecological Analysis,* 11 CRIMINOLOGY 439, 458–59 (1974) (finding that lower median income and high population density were strongly correlated with high crime rates); Edward L. Glaeser & Bruce Sacerdote, *Why Is There More Crime in Cities?,* 107 J. POL. ECON. S225, S225–26 (1999) (finding a strong positive correlation between city size and crime rates per capita); Keith Harries, *Property Crimes and Violence in United States: An Analysis of the Influence of Population Density,* 1 INT'L J. CRIM. JUST. SCI. 24, 24, 31 (2006) (using crime data from Baltimore County, Maryland, and finding "that both property and violent crimes were moderately correlated with population density"); Sampson, *supra* note 14, at 288–91 (finding a positive relation between structural density and robbery and assault rates, even after controlling for age, race, and sex).

16. *Cf.* Glaeser & Sacerdote, *supra* note 15, at S225–26.

17. *See, e.g.,* JACOBS, *supra* note 9, at 34–37.

18. *See infra* text accompanying note 162.

the crime and disorder that makes us fearful. In previous work, I have argued that reducing the fear of crime—even when crime itself does not decrease—is an important and frequently disregarded urban development goal.[19] The "People Paradox" suggests that, despite an apparent tension between city busyness and safety, land-use regulations that enable mixed-land-use neighborhoods may advance this goal, thereby increasing the competitiveness of cities vis-à-vis their suburban neighbors.

This Article proceeds in four parts. Part II sets forth Jane Jacobs's "order-maintenance" justification for mixed-land-use urban neighborhoods, as well as outlines the more recent "new urbanist" attack on traditional zoning practices. Part III explores the empirical literature testing and rejecting Jacobs's (and the new urbanists') assertion that mixed-land-use neighborhoods are safer and more socially cohesive than single-land-use ones. Part IV explicates the important distinction between *crime* and the *fear of crime*, and it explores a number of factors that cause people to be fearful—including being alone in public places. Finally, Part V builds a case for mixed-land-use planning practices that takes into account the People Paradox. Given the shifting preferences among some Americans in favor of an "urban" lifestyle and the apparent instinctive association between busyness and safety, I argue that the evidence connecting mixed-land-use neighborhoods with elevated levels of crime and disorder complicates, but does not rebut, the case for land-use diversity in our cities. It does, however, suggest a critical connection between urban planning policies and urban policing practices—a connection that debates about both land-use planning and law enforcement frequently overlook.

II. LAND-USE PATTERNS, DISORDER, AND CRIME

Over the past three decades, urban policy in the United States has come to focus intensely on curbing disorder and cracking down on minor "quality of life" offenses in public spaces. These policies trace their intellectual roots to the 1982 publication of James Q. Wilson and George Kelling's enormously influential essay, *Broken Windows: The Police and Neighborhood Safety*.[20] In their essay, Wilson and Kelling first articulated the influential "broken windows hypothesis," which posits a causal connection between disorder and crime.[21] Wilson and Kelling reasoned that unaddressed manifestations of disorder, even minor ones like broken windows, signal a breakdown in the social order that accelerates

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    19. *See* GARNETT, *supra* note 1, at 128–32.
    20. James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29.
    21. *Id.* at 31.

neighborhood decline and eventually generates serious crime.[22]   The broken windows hypothesis has revolutionized policing practices in the United States, prompting the implementation of myriad "order-maintenance" and "community policing" policies that aim to suppress disorder and restore the quality of life in our public urban spaces. These policies have found champions in the legal academy among social norms scholars who argue that disorder is a precursor to more serious deviancy and crime, and, therefore, that order-maintenance policing strategies are needed to keep disorder in check.[23]   As Dan Kahan has observed, "Cracking down on aggressive panhandling, prostitution, open gang activity and other visible signs of disorder may be justifiable on this ground, since disorderly behavior and the law's response to it are cues about the community's attitude toward more serious forms of criminal wrongdoing."[24] Efforts to test this claim have generated a voluminous empirical literature, and scholars are sharply divided over whether the available evidence in fact supports the asserted crime-disorder nexus.[25]

Despite the scholarly disagreement, the "order-maintenance revolution" is, at least at the retail-policy level, motivated by a desire to make our cities safer. From their inception, order-maintenance reforms have flowed from a conviction that the dominant post-war "law enforcement" model of policing—which disregarded minor crime and disorder and focused on solving crimes rather than preventing them—was ineffective, if not counterproductive.[26] Moreover, a plausible case can be made that

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22. *See id.* ("[A]t the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence." (alteration omitted)).

23. For comprehensive treatments of the "social influence" justification for order-maintenance policing, see, for example, Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 367–73 (1997) [hereinafter Kahan, *Social Influence*]; Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1527–38 (2002).

24. Kahan, *Social Influence, supra* note 23, at 351.

25. *Compare* WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 65–84 (1990) (finding a causal connection between disorder and robbery rates), Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 J.L. & ECON. 235, 262 (2005) (finding a causal connection between the decline in rates of motor vehicle theft, robberies, and grand larcenies in New York City and aggressive misdemeanor arrest policy), *and* GEORGE L. KELLING & WILLIAM H. SOUSA, JR., DO POLICE MATTER?: AN ANALYSIS OF THE IMPACT OF NEW YORK CITY'S POLICE REFORMS 16–18 (Dec. 2001) (attributing the dramatic decline in crime in New York City to an aggressive misdemeanor arrest policy), *with* BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 123 (2001) (challenging Skogan's findings), Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271, 275–76 (2006) (challenging the finding that aggressive misdemeanor policies in New York City were causally connected to the decline in certain crime rates) *and* Sampson & Raudenbush, *supra* note 14, at 637–38 (finding disorder was correlated with robbery but questioning whether a causal connection between disorder and serious crime exists).

26. *See, e.g.*, GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 85–89 (1996) (describing the collapse of reform-era policing strategies by the 1970s); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 565–68 (1997) (reviewing the history of U.S. policing practices).

the intense focus on curbing disorder and restoring norms of decorum in urban communities were necessary prerequisites to the success of any urban development effort. Prior to the publication of *Broken Windows* and the adoption of the numerous "order-maintenance" policing policies flowing from it, disorder, crime, and fear of crime often represented an almost insurmountable impediment to urban development efforts.[27] As Edward Glaeser and Joshua Gottlieb have argued, the dramatic reduction in center-city crime rates as well as the restoration of order in urban public spaces has helped to fuel a shift in elite lifestyle preferences favoring urban life.[28] In addition to making life generally unpleasant, crime, fear, and disorder prevent city dwellers from enjoying urban amenities and decrease opportunities for the informal social interactions that cities foster. Over the past three decades, Glaeser and Gottlieb argue, as crime plummeted and urban officials began to focus on improving the quality of life in public spaces, it became easier to enjoy urban life.[29]

A. The Order-Maintenance Justification for Mixing Land Uses

During roughly the same time period, urban land-use policies also have increasingly embraced a greater diversity of land uses than permitted by traditional zoning laws. Urban officials' gradual endorsement of mixed-land-use urban neighborhoods as a planning ideal clearly is a response in part to the phenomenon identified by Glaeser and Gottlieb—more Americans are embracing urban lifestyles.[30] But it also reflects the growing influence of the self-styled "new urbanists." The new urbanists champion "traditional neighborhood design" principles featuring "walkable" mixed-land-use neighborhoods—that is, neighborhoods where homes are situated within walking distance of businesses, restaurants, parks, and civic buildings.[31] The new urbanists are best known for their attempts to recreate traditional urban communities from scratch; as a result, new urbanists face accusations that they are nothing more than developers of wealthy suburban developments.[32] The foundational planning principle of new urbanism, however, is an *urban* one—namely, that relatively dense, mixed-land-use neighborhoods are both superior to

27. *See, e.g.*, PAUL S. GROGAN & TONY PROSCIO, COMEBACK CITIES: A BLUEPRINT FOR URBAN NEIGHBORHOOD REVIVAL 152 (2000) ("Out-of-control crime was the nearly universal expectation for the inner city. Any other positive trend there . . . was sharply hemmed in by the prospect of continued crime and, just as important, an all-but-unshakable fear of crime."). *See also* JOEL KOTKIN, THE CITY: A GLOBAL HISTORY 154–55 (2005) ("One critical element in the late-twentieth-century revival in some American cities, most notably in New York, can be traced to a significant drop in crime. This was accomplished by the adoption of new policing methods and a widespread determination to make public safety the number one priority of government.").
28. *See* Glaeser & Gottlieb, *supra* note 3, at 1288–93.
29. *Id.*
30. *See id.* at 1297.
31. *See generally* FRUG, *supra* note 5, at 149–54 (describing new urbanism).
32. ROBERT BRUEGMANN, SPRAWL: A COMPACT HISTORY 151–53 (2005).

sprawling, single-land-use ones and more conducive to community life.[33] Their arguments are increasingly influencing not just the design of suburban developments but also the direction of urban development strategies.[34] The extent of the new urbanists' influence is reflected perhaps most dramatically in the gradual adoption of their regulatory alternative to traditional use-based zoning laws—a system of aesthetic controls that new urbanists style "form-based" or "transect" zoning.[35]

Although new urbanists do not share her more libertarian preference for an organic urban order (rather than a planned one), the group traces its intellectual roots to Jane Jacobs's influential and spirited defense of urban life. In her classic book, *The Death and Life of Great American Cities*,[36] Jacobs offered two related reasons for favoring mixed-land-use urban neighborhoods. First, she argued that mixed-land-use neighborhoods are *safer* than single-land-use ones.[37] She intuited that by drawing people into city streets, businesses generate "eyes up on the street" that keep disorder and crime in check.[38] Thus, Jacobs predicted that "[a] well-used city street is apt to be a safe street. A deserted city street is apt to be unsafe."[39] Indeed, she went so far as to argue that neighborhood bars could contribute to neighborhood security, reasoning that their patrons would serve a private surveillance function well into the night hours.[40] In making this argument, she drew upon her own neighborhood's anecdotal experience with a bar called the White Horse Tavern, which, because it was once frequented by the poet Dylan Thomas, served as the locus of a nightly "college bull session with beer, combined with a literary cocktail party."[41] Jacobs observed that, "We are fortunate enough, on the street, to be gifted ... with a famous bar that

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33. *See, e.g.*, FRUG, *supra* note 5, at 151–52 (summarizing the principles of new urbanism); *Charter of the New Urbanism*, *supra* note 5 ("[N]eighborhoods should be diverse in use and population . . . .").

34. *See* GARNETT, *supra* note 1, at 65, 150–88.

35. *See, e.g.*, MONTGOMERY, ALA., SMARTCODE art. 2, § 2, tbl.1 (2007), *available at* http://www.montgomeryal.gov/index.aspx?page=717 (follow SmartCode Manual hyperlink); MIAMI, FLA., 21 CODE art. 5, § 3, illus. 5.3 (2011), http://www.miami21.org/PDFs/May2011/Article5-SpecifictoZones-May2011.pdf; PASS CHRISTIAN, MISS., SMARTCODE § art. 3, § 2, tbl.1 (2009), http://www.ci.pass-christian.ms.us/Smartcode.pdf; ONONDAGA COUNTY, N.Y., 9921 ONONDAGA CODE § 1.5 (2001), http://www.ongov.net/planning/documents/plan_settlement_TND_code.pdf; Petaluma, Cal., Ordinance 2152 N.C.S., app. A (June 16, 2003), http://cityofpetaluma.net/cdd/pdf/cpsp/CentralPetaluma SpecificPlan.pdf.

36. In contrast to the new urbanists, Jacobs took care to limit her arguments to cities, warning:

But I hope no reader will try to transfer my observations into guides as to what goes on in towns, or little cities, or in suburbs which still are suburban. . . . We are in enough trouble already from trying to understand big cities in terms of the behavior, and the imagined behavior, of towns. To try to understand towns in terms of big cities will only compound confusion.

JACOBS, *supra* note 9, at 16.

37. *Id.* at 36–37.

38. *Id.* at 35.

39. *Id.* at 34.

40. *Id.* at 40–41.

41. *Id.* at 40.

draws continuous troops of strangers . . . . The comings and goings from
this bar do much to keep our street reasonably safe and populated until
three in the morning, and it is a street always safe to come home to."[42]

Second, Jacobs argued that commercial land uses, especially small
businesses like restaurants, bars, and stores, help build community by
drawing together people who would not otherwise meet. Jacobs rea-
soned, "The trust of a city street is formed over time from many, many,
little public sidewalk contacts. It grows out of people stopping by at the
bar for a beer, getting advice from the grocer and giving advice to the
newsstand man . . . ."[43] The new urbanists emphasize this aspect of Ja-
cobs's work in particular, arguing that the single-land-use design of sub-
urbia contributes to the privatization and atomization of our society and
deprives many Americans of the opportunity to interact with, and come
to understand, individuals from different races and classes.[44] New
urbanist Philip Langdon, for example, echoes Jacobs when he argues,
"[T]he tavern, the cafe, the coffee shop, the neighborhood store . . . have
been zoned out of residential areas. . . . As informal gathering places
have been banished, many opportunities for making friendships and pur-
suing common interests have disappeared."[45] The new urbanists also join
political scientist Robert Putnam in claiming that postwar suburbaniza-
tion itself (and not just the design of suburban communities) contributed
to a decline in social capital in the United States because long commutes
now consume time that Americans might otherwise use to socialize or
participate in community-building activities.[46]

As a practical matter, the social-capital and order-maintenance jus-
tifications for mixed-land-use planning are closely linked. Both common
sense and social-science data suggest that social capital suppresses crime
and disorder. For example, numerous studies link collective efficacy,
which sociologists and social psychologists define as the "ability of
neighborhoods to realize the common goals of residents and maintain ef-
fective social controls,"[47] with neighborhood health. Collective efficacy is

42. *Id.* at 40–41.
43. *Id.* at 56. *See also* ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND
THE DECLINE OF THE AMERICAN DREAM 59–64 (2000) ("Americans are splintering into insular fac-
tions, each pursuing an increasingly narrow agenda, with nary a thought for the greater good. Fur-
ther, more and more citizens seem to be withdrawing from public life into the shelter of their private
homes. . . . [I]t is near-impossible to imagine *community* independent of the town square or the local
pub. . . . [P]edestrian life cannot exist in the absence of worthwhile destinations that are easily accessi-
ble on foot. This is a condition that modern suburbia fails to satisfy, since it strives to keep all com-
mercial activity well separated from housing.").
44. *See, e.g.*, DUANY ET AL., *supra* note 43, at 59–64; FRUG, *supra* note 5, at 149–51.
45. PHILIP LANGDON, A BETTER PLACE TO LIVE: RESHAPING THE AMERICAN SUBURB 15–16
(1994).
46. *See* PUTNAM, *supra* note 8, at 205–15.
47. Tracey L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1604 (2002). For
a fuller discussion on collective efficacy and neighborhood health, see Robert J. Sampson et al.,
Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy, 277 SCIENCE 918 (1997).

perhaps best understood as a form of applied social capital—it is a means by which communities harness the energy generated by "social networks and the norms of reciprocity and trustworthiness that arise from them"[48] for the purpose of addressing neighborhood problems. Not surprisingly, neighborhoods with high levels of collective efficacy are healthier than those with lower levels. Neighborhoods with low levels of collective efficacy exhibit more signs of social distress—for example, they are more dangerous and disorderly and residents are more fearful of victimization—than those with higher levels.[49]

B.   The Empirical (Counter) Evidence

The popular and academic commentary on Jacobs's arguments almost entirely neglect to take into account the empirical literature testing her hypothesis that commercial land uses foster social capital and suppress crime. The relative neglect of this work in the land-use literature is unfortunate. Most of the researchers conducting these studies reject Jacobs's hypothesis as intuitively appealing but empirically unsustainable. They find instead that commercial land uses increase crime and disorder and suppress social capital.[50]

1.   Land Uses and Crime

In a number of studies, criminologists, sociologists, and environmental psychologists have examined the connection between land-use patterns and disorder, crime, and social capital. These studies test Jacobs's claims that, by comparing the levels of crime, disorder, and social cohesion in exclusively residential and mixed-land-use neighborhoods. Some of these studies focus on so-called land-use "hot spots"—that is, particular land uses associated with high levels of crime and disorder and low levels of collective efficacy.[51] The link between commercial land us-

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48. PUTNAM, *supra* note 8, at 19.

49. *See, e.g.*, Chris L. Gibson et al., *Social Integration, Individual Perceptions of Collective Efficacy, and Fear of Crime in Three Cities*, 19 JUST. Q. 537, 540–43 (2002) (collecting literature); Matthew R. Lee & Terri L. Earnest, *Perceived Community Cohesion and Perceived Risk of Victimization: A Cross-National Analysis*, 20 JUST. Q. 131, 138–39 (2003); Pamela Wilcox et al., *Busy Places and Broken Windows?: Toward Defining the Role of Physical Structure and Process in Community Crime Models*, 45 SOC. Q. 185, 186–88 (2004).

50. *See, e.g.*, Sampson & Raudenbush, *supra* note 14, at 624 ("Neighborhoods with mixed residential and commercial development exhibit higher levels of both physical and social disorder, regardless of sociodemographic characteristics.").

51. It is fair to say that the empirical literature on land-use hot spots does not bear out Jacobs's hunch about taverns, as there is ample evidence that bars increase crime and disorder and suppress informal social controls within a neighborhood. *See, e.g.*, Dennis W. Roncek & Pamela A. Maier, *Bars, Blocks and Crimes Revisited: Linking the Theory of Routine Activities to the Empiricism of "Hot Spots,"* 29 CRIMINOLOGY 725 (1991); Dennis W. Roncek & Mitchell A. Pravatiner, *Additional Evidence That Taverns Enhance Nearby Crime*, 73 SOC. & SOC. RES. 185 (1989). Other "hot spots" studies have found similar effects for a variety of nonresidential land uses, including public schools. *See, e.g.*,

es, crime, and disorder is not, however, explained solely by hot spots. A common method for testing the effects of commercial land uses on neighborhood stability is the comparison of neighborhood pairs.[52] Researchers compare the crime rates (and, in some studies, levels of disorder) in two neighborhoods with similar demographic profiles but different land-use patterns. These studies generally find that exclusively residential neighborhoods have lower crime rates, less disorder, and more collective efficacy than mixed residential and commercial neighborhoods.[53] For example, a study of one hundred neighborhoods in Seattle, Washington found that the introduction of a single commercial enterprise was correlated with a thirty-one percent increase in crime.[54]

Researchers conducting these studies link their findings to the "routine-activities" theory of crime. Routine-activities theory builds on the insight that most predatory crime is opportunistic. As Robert Sampson and Stephen Raudenbush summarize, "[P]redatory crime involves the intersection in time and space of motivated offenders, suitable targets, and the absence of capable guardians."[55] Land-use patterns are relevant to this thesis for two reasons. First, nonresidential land uses (for example, schools, stores, parks, etc.) may serve to invite would-be offenders into a neighborhood. By providing places for neighbors to congregate, commercial land uses generate a larger pool of potential victims than residential ones. In other words, while Jacobs may have been right that commercial land uses increase the number of individuals present in an urban neighborhood, the routine-activities theory suggests that higher numbers of "eyes upon the street" may increase the number of potential

Dennis W. Roncek & Donald Faggiani, *High Schools and Crime: A Replication*, 26 SOC. Q. 491 (1985); Dennis W. Roncek & Antoinette LoBosco, *The Effect of High Schools on Crime in Their Neighborhoods*, 64 SOC. SCI. Q. 598 (1983); Caterina Gouvis Roman, Schools As Generators of Crime: Routine Activities and the Sociology of Place (Dec. 6, 2002) (unpublished PhD final report, American University; unpublished grant final report, U.S. Department of Justice), http//www.ncjrs.gov/pdffiles1/nij/grants/201946.pdf.

    52.   *See, e.g.*, Stephanie W. Greenberg et al., *Safety in Urban Neighborhoods: A Comparison of Physical Characteristics and Informal Territorial Control in High and Low Crime Neighborhoods*, 5 POPULATION & ENV'T 141 (1982).

    53.   *See, e.g., id.*; Ralph B. Taylor et al., *Street Blocks with More Nonresidential Land Uses Have More Physical Deterioration: Evidence from Baltimore and Philadelphia*, 31 URB. AFF. REV. 120 (1995).

    54.   *See* Wilcox et al., *supra* note 49, at 191, 198. A more recent study of Columbus, Ohio found that increasing densities of commercial and residential densities (measured by multifamily housing) were consistently correlated with increased robbery rates, and that robbery rates continue to increase along with densities. The researchers, however, suggested that densities of these land uses may have a curvilinear effect on rates of homicide and aggravated assault—that is, the homicide and assault rates increase with the introduction of additional commercial land uses and multifamily housing, but only to a point, after which densities were linked to declining rates of homicide and aggravated assault. The researchers, however, did not attempt to disaggregate the effects of these two types of land uses. Christopher R. Browning et al., *Commercial Density, Residential Concentration, and Crime: Land Use Patterns and Violence in Neighborhood Context*, 47 J. RES. CRIME & DELINQ. 329, 345–50 (2010).

    55.   Sampson & Raudenbush, *supra* note 14, at 610.

THE PEOPLE PARADOX

offenders, as well as the number of law-abiding crime monitors.[56] Second, contrary to Jacobs's intuition, commercial land uses may decrease incentives for private surveillance efforts. Jacobs argued that outsiders as well as insiders to a community provide "eyes upon the street" needed to suppress disorder and crime.[57] In Jacobs's view, both strangers and neighbors can serve this critical informal-surveillance function.[58] Unfortunately, the empirical evidence suggests that the opposite is true. Strangers "invited" to a community by commercial land uses apparently act to decrease, rather than increase, the level of informal surveillance in a neighborhood.[59] They also appear to reduce neighborhood social cohesion.[60]

Oscar Newman's important work on "defensible space" suggests one possible explanation. According to Newman, architectural and urban design can decrease crime by increasing opportunities for residents to exercise "ownership" over public spaces.[61] We naturally have the greatest desire to control our home environment.[62] Resident surveys conducted for the land-use studies discussed above suggest that commercial land uses reduce informal monitoring because they reduce the sense in which residents consider it their "own,"[63] perhaps because commercial land uses generate foot traffic that makes it difficult for residents to discern between insiders and outsiders in a community.[64] In one study, for example, "[r]esidents on blocks with more nonresidential land use ... recognized other on-block residents less well, felt that they had less control over events in the neighborhood, and were less likely to count on a neighbor to watch out for suspicious activity" than residents of exclusively residential blocks.[65] The researchers conducting the studies

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56. *See* Greenberg et al., *supra* note 52, at 162; Sampson & Raudenbush, *supra* note 14, at 610; Taylor et al., *supra* note 53, at 121; Wilcox et al., *supra* note 49, at 188–90, 200–02; *see also* Robert D. Putnam, E Pluribus Unum: *Diversity and Community in the Twenty-First Century*, 30 SCANDINAVIAN POL. STUD. 137, 144–50 (2007).

57. JACOBS, *supra* note 9, at 35.

58. *Id.* at 40.

59. *See supra* note 56.

60. *See supra* note 56.

61. *See* GARNETT, *supra* note 1, at 67; *see also* OSCAR NEWMAN, DEFENSIBLE SPACE: CRIME PREVENTION THROUGH URBAN DESIGN 2–3 (1972); Neal Kumar Katyal, *Architecture As Crime Control*, 111 YALE L.J. 1039 (2002) (applying Newman's theory that architecture, urban design, and ownership can decrease crime).

62. *See* Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75, 79–80 (1998) (explaining the distinction between urban blocks and neighborhoods).

63. *See supra* notes 55–61.

64. That said, some nonresidential land uses may promote communal ownership of public space by drawing neighbors together for a common endeavor. For example, Sheila Foster has argued that community gardens can serve this function. *See* Foster, *supra* note 8, at 572–74.

65. *See* Ellen M. Kurtz et al., *Land Use, Physical Deterioration, Resident-Based Control, and Calls for Service on Urban Streetblocks*, 15 JUST. Q. 121, 135 (1998) ("As nonresidential land use increases, residents' perception of control decreases ...."); *see also* GARNETT, *supra* note 1, at 67.

thus concluded that commercial land uses create "holes in the fabric of resident-based territorial control."[66]

All of these studies cast serious doubt on Jacobs's (and the new urbanists') core claims about the benefits of mixed-land-use neighborhoods. Commercial land uses appear to generate, rather than suppress, crime and disorder. And, at least insofar as neighborhood-level social capital is reflected in resident surveys about neighborhood social cohesion and trust,[67] they also appear to suppress, rather than generate, social capital.

2. Suburbs, Cities, and Social Capital

Abstracting from the neighborhood context, the available data also tends to rebut the new urbanists' broader claim that suburbanization is causally linked to reduced levels of social capital in the United States. In fact, there is evidence suggesting that social capital is lower in cities than in suburbs. For example, as discussed above, Edward Glaeser and Joshua Gottleib have suggested that the apparent resurgence in some denser U.S. cities is partially attributable to a growing demand for city life.[68] This demand, Glaeser and Gottlieb argued, has been fueled by the fact that cities have certain social advantages over suburbs—particularly "the reduced cost of face-to-face contact with other human beings" and higher densities of "forms of consumption such as museums, restaurants, bars, movie theatres and concert halls."[69] Glaeser and Gottlieb further observed that "The social advantages of big cities . . . might lead some people to think that cities have a real advantage in the formation of social capital—i.e., social groups and networks."[70] Glaeser and Gottlieb, in fact, found that urban residents' consumption patterns suggest a greater level of informal social interaction with strangers—that is, urbanites are more likely to go out to eat, to the movies, or to an art gallery.[71] Center-city residents are less likely to engage in activities that are indicative of civic engagement—for example, attending a church or club meeting, working on a community project, writing a letter to a magazine or newspaper, contacting a public official, or being a registered voter.[72] While suburban

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66. RALPH B. TAYLOR, HUMAN TERRITORIAL FUNCTIONING: AN EMPIRICAL, EVOLUTIONARY PERSPECTIVE ON INDIVIDUAL AND SMALL GROUP TERRITORIAL COGNITIONS, BEHAVIORS, AND CONSEQUENCES 185 (1988).

67. Social scientists are divided about how to measure social capital. Common measures include the various measures of the level of trust and/or the strength of social networks (roughly captured in social cohesion surveys) and the level of voluntary participation (which might correlate with levels of social cohesion but would not be captured by it). See, e.g., HALPERN, supra note 8, at 31–37.

68. See supra Part II.A.

69. Glaeser & Gottlieb, supra note 3, at 1290.

70. Id. at 1293–94.

71. Id. at 1290–93.

72. Id. at 1294–95.

residence also has negative effects, these effects are smaller than the effects of urban residence.[73] Levels of participation in social activities—such as volunteering, working on a community project, or attending a club meeting—decline as urban densities rise.[74] Glaeser and Gottlieb concluded, "[D]enser places appear to have less, rather than more, social capital."[75]

It is possible that the social capital generated by the informal social interactions fueled by city life simply is not reflected in resident surveys about community cohesion or civic involvement. For example, Putnam distinguishes between two kinds of social capital—"bridging" and "bonding."[76] According to Putnam's formulation, "bonding" social capital is "inward looking and tend[s] to reinforce exclusive identities and homogenous groups," such as ethnic fraternal organizations and church-based reading groups.[77] "Bridging" social capital is "outward looking and encompass[es] people across diverse social cleavages."[78] Here, Putnam offers the example of the civil rights movement.[79] To be fair to their arguments, it is clear that neither Jacobs nor the new urbanists claim that commercial land uses generate "bonding" social capital. The interactions that Jacobs and the new urbanists associate with land-use diversity are primarily informal and inclusive, not deep and exclusive. In fact, Jacobs argues that commercial land uses are important precisely because "[t]hey bring together people who do not know each other in an intimate, private social fashion *and in most cases do not care to know each other in that fashion.*"[80]

In other words, the fact that we do not get to know our barista well does not mean that our encounters with her at Starbucks lack social value. Shallow interactions undoubtedly are important to the smooth functioning of a diverse urban culture—as important or perhaps moreso than deep ones. Consider, for example, the commonplace view that interacting with strangers, especially individuals from different races and classes, fosters understanding and respect for diversity (a view that social scientists refer to as the "contact hypothesis").[81] Some scholars see urban

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73. *See id.*

74. *Id.* at 1295. Glaeser and Gottlieb hypothesized that residents of less-dense places may have more time to devote to community building activities because, contrary to the conventional wisdom, commuting times increase with urban densities—hence, city dwellers have fewer hours for social and civic engagement. *Id.* at 1296.

75. *Id.* at 1295.

76. PUTNAM, *supra* note 8, at 22.

77. *Id.*

78. *Id.*

79. *Id.*

80. JACOBS, *supra* note 9, at 55–56 (emphasis added); *see also* DUANY ET AL., *supra* note 43, at 59–64.

81. The "contact hypothesis" is often attributed to Gordon W. Allport, whose 1954 work examined a variety of studies on racial attitudes during World War II and concluded that "evidence favors the conclusion that knowledge about and acquaintance with members of minority groups make for

neighborhoods as a mechanism for promoting these needed contacts. For example, Jerry Frug has argued that urban life should increase race- and class-tolerance by exposing residents to people who they would not encounter in low-density, single-land-use suburbs.[82]   And sociologist Thomas Wilson has asserted that "urbanism *per se* increases tolerance."[83] The problem with suburbia, according to contact theorists, is a lack of so- cial inclusion, not necessarily a lack of social cohesion.[84] If the contact hypothesis is correct, land-use policy can play a role in promoting inclu- sion—and therefore understanding—by helping to draw people from dif- ferent races and classes together. For example, by enacting a mixed- land-use zoning designation for an urban neighborhood, regulators would clear the legal way for shops, restaurants, and bars that might serve this social-mixing function. Similarly, regulators could help ensure greater class and race mixing by permitting apartments above stores or authorizing—or, in some cases requiring—the construction of new multi- family or moderate-priced housing.[85]

Unfortunately, at least with respect to racial diversity, there is evi- dence that living in proximity to "others" neither fosters tolerance for di- versity nor builds social capital. For example, if residential integration fostered racial understanding, it would be reasonable to expect that, all things being equal, integrated neighborhoods would be relatively stable ones—that is, characterized by low levels of residential turnover. But, for reasons best explored in Thomas Schelling's seminal work on the ra- cial "tipping point," racially integrated neighborhoods tend to be less stable than single-race neighborhoods.[86] And, while Schelling first articu- lated his "tipping point" theory in the early 1970s—a time of dramatic racial transition in urban neighborhoods—more recent data suggests that his conclusions have staying power. Racially diverse neighborhoods are both more common and more stable today than they were in the past. That is, more neighborhoods are integrated, and remain integrated (rath- er than transitioning to single-race neighborhoods), than in the past. Un-

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tolerant and friendly attitudes." GORDON W. ALLPORT, THE NATURE OF PREJUDICE 267 (25th anni- versary ed. 1979).
    82. *See* FRUG, *supra* note 5, at 162–64.
    83. Thomas C. Wilson, *Urbanism and Tolerance: A Test of Some Hypotheses Drawn from Wirth and Stouffer*, 50 AM. SOC. REV. 117, 121 (1985).
    84. *See* FRUG, *supra* note 5, at 143–45; *see also* Susan S. Fainstein, *Cities and Diversity: Should We Want It? Can We Plan for It?*, 41 URB. AFF. REV. 3 (2005).
    85. *See* FRUG, *supra* note 5 at 151–53; *see also* Louis Wirth, *Urbanism As a Way of Life*, 44 AM. J. SOC. 1, 15 (1938) ("The juxtaposition of divergent personalities and modes of life tends to produce a relativistic perspective and a sense of toleration of differences . . . .").
    86. Schelling famously demonstrated that even a modest preference of white residents to live next to other white residents could result in nearly complete residential segregation. *See* Thomas C. Schelling, *Dynamic Models of Segregation*, 1 J. MATHEMATICAL SOC. 143 (1971); *see also* THOMAS C. SCHELLING, MICROMOTIVES AND MACROBEHAVIOR (1978).

fortunately, however, racially diverse neighborhoods remain less stable on average than racially segregated ones.[87]

More recently, Putnam himself has suggested that increasing levels of ethnic diversity in a community tends—at least in the short run—to reduce social capital. Drawing upon the nationwide 2000 Social Capital Community Benchmark Survey, which included approximately 30,000 Americans from dramatically different (in terms of racial diversity) U.S. communities, Putnam concludes that social capital decreases as racial and ethnic diversity increases.[88] Putnam's findings are particularly relevant to debates about land-use planning because they apply at both the metropolitan level and the neighborhood level. Since the data from the survey was geo-coded, Putnam knew the precise racial makeup of a respondents' neighborhood and could therefore measure the effects of neighborhood-level diversity on neighborhood-level social capital.[89] Putnam found that levels of trust between neighbors were inversely correlated with diversity levels.[90] That is, trust of neighbors decreases as neighborhood diversity increases. He further found that results held true for both *inter*-racial trust (that is, levels of trust in neighbors of a *different* race) and *intra*-racial trust (that is, levels of trust in neighbors of the *same* race).[91] According to Putnam, racial diversity also appears to suppress levels of confidence in local officials, of voter registration, of expectations of cooperation from other community members, of community involvement, of charitable donations, and of volunteering.[92] Residents of more diverse communities even reported having fewer close friends and feeling less happy than those living in homogenous ones.[93]

Putnam stressed that his findings tend to rebut not just the "contact hypothesis," which posits that ethnic diversity fosters interracial understanding, but also the "conflict hypothesis," which posits the opposite— that ethnic diversity fosters interracial conflict.[94] Instead, Putnam con-

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87. INGRID GOULD ELLEN, SHARING AMERICA'S NEIGHBORHOODS: THE PROSPECTS FOR STABLE RACIAL INTEGRATION 24–25 (2000).
88. Putnam, *supra* note 56, at 138, 144, 149.
89. *Id.* at 144–45.
90. *Id.* at 147–48.
91. *Id.* at 146–48.
92. *Id.* at 149–50.
93. *Id.*
94. *Id.* at 141–42, 150–53. The conflict hypothesis usually is attributed to Herbert Blumer, who argued "that race prejudice exists basically in a sense of group position rather than in a set of feelings which members of one racial group have toward the members of another racial group." Herbert Blumer, *Race Prejudice As a Sense of Group Position*, 1 PAC. SOC. REV. 3, 3–6 (1958). Blumer hypothesized that increased diversity challenges the dominant group's "sense of social position" and thus creates conflict. *Id.* at 4 ("The dominant group is not concerned with the subordinate group as such but it is deeply concerned with its position *vis-à-vis* the subordinate group. This is epitomized in the key and universal expression that a given race is all right in 'its place.'"). *See also* LAWRENCE D. BOBO & MIA TUAN, PREJUDICE IN POLITICS: GROUP POSITION, PUBLIC OPINION, AND THE WISCONSIN TREATY RIGHTS DISPUTE 13–14, 17 (2006) (arguing for a more developed version of Blumer's "group position" thesis, using a conflict over Native American treaty rights); Marylee C.

cluded, "Diversity seems to trigger *not* in-group/out-group division, but anomie or social isolation. In colloquial language, people living in ethnically diverse settings appear to 'hunker down'—that is, to pull in like a turtle."[95] Putnam took care to qualify these effects as "short to medium run" and emphasized that the "medium to long run" benefits of racial diversity—including higher levels of creativity, innovation, and economic growth—are substantial.[96] Moreover, Putnam's findings address only the effects of racial diversity and immigration, not class diversity, which Frug and others argue ought to be fostered and promoted by urban life.[97] Still, it is fair to say that Putnam's sobering conclusions, as well as Glaeser and Gottlieb's, pose a particular challenge for those who promote mixed-land-use planning and urbanism as antidotes to social isolation and pathways to racial and class understanding.

III. THE FEAR FACTOR

Although these studies suggested that the case for urbanism should not continue to rest on the well-rehearsed claims that commercial land uses suppress crime and promote social capital, they do not, in my view, defeat the case for mixing land uses. Mixing land uses may generate other benefits—benefits sufficient to overcome the negative externalities of commercial land uses. One of these benefits is suggested by the People Paradox: busy places *feel* safer, even if they are not. And, for the reasons set forth below, reducing the fear of crime is an important urban-development goal—and one that is distinct from the reduction of crime itself.[98]

A. Crime Versus Fear of Crime

Both the literature testing Jane Jacobs's assertion that mixed-land-use neighborhoods are safer than single-land-use ones and the literature testing the broken windows hypothesis's focus on the connections, if any, between different policing and land-use policies and levels of serious crime.[99] The focus—by both researchers and urban policy makers—on

Taylor, *How White Attitudes Vary with the Racial Composition of Local Populations: Numbers Count*, 63 AM. SOC. REV. 512, 512 (1998) ("[W]hite negativity swells as the local black population share expands.").
    95. Putnam, *supra* note 56, at 149.
    96. *See id.* at 138–41.
    97. *See, e.g.*, FRUG, *supra* note 5, at 3–13.
    98. *See infra* Part IV.A.
    99. In the broken windows context, a second, equally intense, debate focuses on the question of whether order-maintenance policies threaten to undermine civil liberties by reintroducing excessive police discretion into policing practices. *See, e.g.*, Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457 (2000); Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L.

serious crime is an entirely reasonable one. After all, there is no question that serious crime is a serious matter, and a desire to decrease it motivates the widespread adoption of order-maintenance policing tactics. That said, the literature measuring the connections between policing and land-use policies and crime almost completely neglects a distinct measure of safety—the *fear of crime*. There are, of course, practical reasons why this is so. To begin, in the *Broken Windows* essay, Wilson and Kelling asserted a very concrete, testable claim: *Disorder causes crime*.[100] Scholars have reasonably sought to test this claim in order to make judgments about the wisdom and efficacy of the policing policies that flow from it.[101] Moreover, and importantly, fear of crime is far more difficult to measure than crime itself. Criminal statistics are hardly infallible. Indeed, since they depend on a combination of police effort and citizen diligence in reporting crime, both of which vary by circumstance and are vulnerable to error and manipulation, there is reason to think that crime statistics do not accurately reflect levels of crime.[102]

Still, crime statistics *exist*. There are no official "fear" statistics. Any effort to gauge the level of fear necessarily depends upon self-reporting, usually in surveys, and social scientists remain divided about how to construct survey instruments that capture "fear." Traditionally, researchers have divided over whether to gauge fear levels by asking people how concerned they are about crime, about the perceived risk of victimization, or about precautions taken to avoid crime. Not surprisingly, survey results vary dramatically depending on the questions used to measure fear.[103]

REV. 291 (1998); Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775 (1999).

    100.   Wilson & Kelling, *supra* note 20, at 31–32.
    101.   *See, e.g.*, Fagan & Davies, *supra* note 99; Harcourt, *supra* note 99.
    102.   To begin, not all crime is reported, so crime statistics systematically underestimate the extent of the actual crime problem. Surveys can partially remedy this problem by asking residents to report whether they were themselves victims of crime or know of friends and neighbors who have been victimized. Survey data may be particularly helpful in gauging the extent of underpoliced criminal activity, including classic "social disorder" crimes such as gangs, drug dealing, and prostitution. While official crime statistics generally measure the number of arrests, for these crimes, arrests reflect the level of police effort rather than the extent of the actual problem. Unfortunately, however, surveys likely overcompensate for the underreporting problem. Respondents may tend to overstate the prevalence of crime, especially because informal and media reports of crime tend to have an amplification effect. BARRY GLASSNER, THE CULTURE OF FEAR: WHY AMERICANS ARE AFRAID OF THE WRONG THINGS 44–45 (1999); Barrett A. Lee, *The Urban Unease Revisited: Perceptions of Local Safety and Neighborhood Satisfaction Among Metropolitan Residents*, 62 SOC. SCI. Q. 611, 611–12 (1981); Terance D. Miethe, *Fear and Withdrawal from Urban Life*, 539 ANNALS AM. ACAD. POL. & SOC. SCI. 14, 17 (1995). And there is always a risk that police officers will manipulate crime statistics to inflate evidence of their success. *See, e.g.*, William K. Rashbaum, *Retired Officers Raise Questions on Crime Data*, N.Y. TIMES, Feb. 7, 2010, at 1 (describing a survey of officers suggesting that pressure to produce annual crime reductions caused some precinct commanders to manipulate crime statistics).
    103.   WESLEY G. SKOGAN, NAT'L INST. OF JUSTICE, *Measuring What Matters: Crime, Disorder, and Fear, in* MEASURING WHAT MATTERS: PROCEEDINGS FROM THE POLICING RESEARCH INSTITUTE MEETINGS 37, 47–48 (Robert H. Langworthy ed., 1999).

That said, the neglect of the fear of crime in both the order-maintenance and land-use literatures is both unfortunate and curious. It is unfortunate because fear of crime is a significant urban problem. Throughout the last decade, for example, public opinion polls have reflected a sharp divergence between perceived crime rates and actual ones, with respondents reporting a belief that crime was increasing even when it was trending sharply downward.[104] It is curious because Wilson and Kelling admitted—on the first page of the *Broken Windows* essay— that order-maintenance policing tactics do not necessarily reduce crime.[105] The essay was prompted by the Newark Foot Patrol Experiment, which increased the presence of police officers "walking the beats" instead of driving patrol cars.[106] Kelling participated as the principal researcher evaluating the program, which found, in Wilson and Kelling's words, that "to the surprise of hardly anyone . . . foot patrol[s] had not reduced crime rates."[107] Despite this, however, "residents of the foot-patrolled neighborhoods seemed to feel more secure . . . , tended to believe that crime had been reduced, and seemed to take fewer steps to protect themselves from crime (staying at home with the doors locked, for example)."[108] Wilson and Kelling based their conclusion that foot patrols made neighborhoods safer on this *perception* of security, not the reality of reduced crime rates.[109]

Wilson and Kelling's admission that foot patrols had not reduced crime rates reflects their understanding, from its inception, that the order-maintenance enterprise is not just about reducing serious crime. It is also, importantly and perhaps primarily, about improving residents' sense of security. This is a worthy and important goal because people tend to systematically *overestimate* the threat of crime. Consider, for example, the most recent evaluation of Chicago's Alternative Policing Strategy (CAPS) program, a comprehensive community policing effort that focuses on addressing crime and disorder at the neighborhood level.[110] During the 1991–2002 period, in keeping with national trends, crime declined dramatically in Chicago.[111] Promisingly, crime declined most dramatically in the African American neighborhoods where violent

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104. Joseph Carroll, *Gallup Reviews Americans' Attitudes About Crime*, GALLUP (June 16, 2006), http://www.gallup.com/poll/23365/Gallup-Reviews-Americans-Attitudes-About-Crime.aspx.

105. Wilson & Kellig, *supra* note 20, at 29.

106. *See* POLICE FOUND., THE NEWARK FOOT PATROL EXPERIMENT (1981).

107. Wilson & Kellig, *supra* note 20, at 29.

108. *Id.*

109. *See generally id.* (arguing that residents were not "fooled" and reasoning that the fact that residents felt safer reflected a real level of security in the community).

110. *See generally* THE CHICAGO COMMUNITY POLICING EVALUATION CONSORTIUM, CAPS AT TEN: COMMUNITY POLICING IN CHICAGO; AN EVOLUTION OF CHICAGO'S ALTERNATIVE POLICING STRATEGY (2004) [hereinafter COMMUNITY POLICING IN CHICAGO].

111. *Id.* at iv.

crime was disproportionately concentrated during the early 1990s.[112] La-
tino neighborhoods also experienced sharper declines than white neigh-
borhoods.[113] The survey data also suggested that *fear of crime*—which is
distinct from public perceptions of crime rates because it incorporates a
subjective assessment of personal vulnerability—also trended down-
ward.[114] Between 1994 and 2003, fear of crime fell across cell demograph-
ic groups in Chicago—falling by ten percent among men and younger
people, two traditionally low-fear groups, and falling twenty percent
among women, African Americans, and older residents, groups that tra-
ditionally expressed the greatest level of fear.[115]

In other words, Chicago residents understood that their city was
getting safer, but they remained more pessimistic than they needed to be.
That is, crime trended downward far more sharply than either public
perceptions of crime or the fear of crime. The divergence between sur-
vey data and recorded crime was most dramatic in predominantly Span-
ish-speaking Latino neighborhoods; Spanish-speaking Latinos reported a
significant *increase* in crime despite the fact that official statistics sug-
gested a dramatic decline.[116]

B.   The Costs of Fear

The fear of crime imposes significant societal costs, many of which
are related to the fact that the fear of crime causes individuals to take
steps to prevent victimization. The costs of precautionary measures in-
clude:

1.   The Economic Costs

Precaution taking is expensive. Americans spend more on private
crime-prevention measures than on the total U.S. law enforcement
budget. That is, Americans spend more to avoid being victimized than
U.S. governments at all levels (federal, state, and local) spend on police,
prosecutors, judges, and prisons. Estimates of the monetary cost of pri-
vate precautions range from 160 billion to 300 billion dollars per year—
figures that do not include the opportunity costs of remaining inside be-
hind locked doors to avoid victimization.[117]

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112. *Id.* at v–vi.
113. *Id.* at v.
114. *Id.* Robbery declined by fifty-eight percent, rape by forty-five percent, murder by thirty per-
cent, aggravated assault by forty-one percent, burglary by fifty-one percent, and motor vehicle theft by
forty-seven percent. *Id.* at iv.
115. *Id.* at 70.
116. *Id.* at iv–vi.
117. *See* Robert A. Mikos, *"Eggshell" Victims, Private Precautions, and the Societal Benefits of
Shifting Crime,* 105 MICH. L. REV. 307, 308 (2006). Arguably, these law enforcement measures also
might be categorized as "costs" of fearfulness.

2. *The Social-Capital Costs*

Monetary estimates of prevention-related expenditures also fail to capture the social-capital costs of fear. Fear impedes a community's ability to generate and capitalize upon social capital in a number of ways. The first is related to the social-influence effects of private precautions. Social-influence theory predicts that people are more likely to obey the law when they perceive that their neighbors are doing the same. But private actions taken to avoid victimization cannot, by definition, support such a perception. Logically, would-be victims should take steps to protect themselves from victimization only if they believe crime to be prevalent in their community. That is, the private deterrence measures that fearful individuals are most likely to take—including neighborhood watch groups, alarm systems, extra locks, bars on windows, etc.—tend to signal that crime is prevalent in a community. Ironically, in other words, steps taken to avoid crime may have the perverse effect of increasing its prevalence by signaling—à la *Broken Windows*—that a community is vulnerable to victimization.

Moreover, private precautions do not just send signals to criminals. When a resident takes visible steps to prevent being victimized, he also may signal to his *neighbors* that he does not trust them. And, even if neighbors do not interpret precautionary measures as evincing a lack of trust—perhaps because the community is plagued by criminals from other neighborhoods—the fear of crime likely reduces social capital because the simplest and most common crime-avoidance strategy is to remain indoors. This "prisoner in my own home" phenomenon not only has the effect of turning public spaces over to social deviants, but it also dramatically curtails the informal, interneighbor socialization needed to build social capital.[118] And, because collective efficacy and the fear of crime have feedback effects on one another, crime avoidance can trigger a vicious cycle—neighbors who are afraid of victimization do not get to know one another, and the resulting social isolation in turn makes them more frightened. Not surprisingly, numerous empirical studies have demonstrated both that neighborhoods with low levels of collective efficacy are more dangerous than those with higher levels and that residents of such neighborhoods are also more fearful.[119] Levels of perceived social

118. Wesley Skogan, *Fear of Crime and Neighborhood Change*, *in* 8 COMMUNITIES AND CRIME 203, 215–19 (Albert J. Reiss, Jr. & Michael Tonry eds., 1986).

119. *See* DAN A. LEWIS & GRETA SALEM, FEAR OF CRIME: INCIVILITY AND THE PRODUCTION OF A SOCIAL PROBLEM 15 (1986); Gibson et al., *supra* note 49, at 541–42 (collecting literature); Albert Hunter & Terry L. Baumer, *Street Traffic, Social Integration, and Fear of Crime*, 52 SOC. INQUIRY 122, 127 (1982); Pamela Wilcox Roundtree & Kenneth C. Land, *Burglary Victimization, Perceptions of Crime Risk, and Routine Activities: A Multilevel Analysis Across Seattle Neighborhoods and Census Tracts*, 33 J. RES. CRIME & DELINQ. 147, 150 (1996).

control have a greater effect on fear of crime than actual crime rates and previous victimization.[120]

3. Fear and Residential Sorting

Finally, and importantly, safety—reflected both in actual crime rates and the perceived risk of victimization—strongly influences residential location decisions. In his 1956 essay, *A Pure Theory of Local Expenditures*, Charles Tiebout influentially hypothesized that municipalities use public goods to compete for residents, or "consumer voters."[121] According to the Tiebout model, residents "sort" themselves within a metropolitan area according to their preferences for public goods and municipal services, which municipalities package and offer as an inducement to relocate.[122] As Tiebout observed, "Every resident who moves to the suburbs to find better schools, more parks, and so forth, is reacting, in part, against the pattern the city has to offer."[123] Although Tiebout did not mention it specifically, safety undoubtedly is one of the public goods influencing residential sorting.

The Tieboutian case for safe city neighborhoods is not merely a theoretical one. In one nationwide study, Julie Berry Cullen and Steven Levitt found a strong correlation between crime and urban flight: each reported city crime correlated with a one-person decline in city population; "[a ten percent] increase in crime correspond[ed] to a [one percent] decline in city population."[124] Cullen and Levitt also found that residents motivated to move by fear of crime were more likely to remain in the same metropolitan area than those moving for other reasons, which suggests that the fear of crime encourages residents to move to the suburbs.[125] And, importantly, even studies that question the connection between fear and migration to the suburbs suggest that crime exerts a relatively strong, and negative, influence on in-migration—that is, on residents' decisions to move from the suburbs to the city.[126] Moreover, Cullen and Levitt's study focused on the connection between actual crime and migration between cities and their suburbs.[127] It is reasonable to assume that the fear of crime also influences residents' decisions about

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120. *See, e.g.*, Gibson et al., *supra* note 49, at 552, 558–59; Lee & Earnest, *supra* note 49, at 138.
121. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418–19 (1956).
122. *Id.*
123. *Id.* at 420.
124. Julie Berry Cullen & Steven D. Levitt, *Crime, Urban Flight, and the Consequences for Cities*, 81 REV. ECON. & STAT. 159, 159 (1999).
125. *See id.* at 166.
126. *See, e.g.*, Martin T. Katzman, *The Contribution of Crime to Urban Decline*, 17 URB. STUD. 277 (1980). *But see* Cullen & Levitt, *supra* note 124, at 159 ("[T]he link between changes in crime and in-migration appears weak.").
127. *See generally* Cullen & Levitt, *supra* note 124 (examining the connection between fear of crime and out-migration to suburbs).

whether to move from one city neighborhood to another. As a result, safer neighborhoods enjoy greater residential stability—that is, relatively low levels of resident turnover and high levels of homeownership—than more dangerous ones.

This connection between fear of crime and residential stability is important because residential stability is strongly correlated with collective efficacy.[128] In a major study of 343 Chicago neighborhoods, Robert Sampson, Stephen Raudenbush, and Felton Earls found that residential stability, measured by average residential tenure and levels of homeownership, was one of three major factors explaining neighborhood variation in collective efficacy, and that collective efficacy, in turn, mediated the negative effects of the other two factors—economic disadvantage and immigration—enough to reduce violent crime in a neighborhood.[129] These findings are consistent with other social-science research linking residential tenure and homeownership, especially of single-family homes, with high levels of collective efficacy.[130] Moreover, although homeowners move far less often than renters,[131] highly educated, wealthier households with children also are most likely to relocate when they become fearful.[132] These likely-to-relocate homeowners are also the very residents most needed to promote collective efficacy. In other words, there is strong empirical evidence suggesting that cities that succeed in convincing residents and would-be residents that they are, relatively speaking, safe—by actually reducing crime rates, by increasing collective efficacy, or by undertaking policing practices which bolster residents' sense of security—are more likely to prosper than those that fail to do so. Finally, it is important to remember that the individuals *most* affected by crime are those who cannot afford residential choices. There is little

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128.   Sampson et al., *supra* note 47, at 921.

129.   *See id.* at 920–23.

130.   *See, e.g.*, Sampson & Raudenbush, *supra* note 14, at 610 ("Systematic theories of urban communities have long pointed to the importance of residential stability as a major feature of urban social organization." (citation omitted)). The connection between homeownership, residential tenure, and collective efficacy is easily explained. A resident's social integration into a neighborhood naturally increases over time, increasing the likelihood that he or she will build the kind of trust relationships with neighbors that forms the foundation of collective efficacy. *See* Gibson et al., *supra* note 49, at 552. Homeowners also have obvious financial incentives to organize with one another to address neighborhood problems that more-temporary residents lack.

131.   The Census Bureau reports that in 2009, renters were more than five times more likely to move than homeowners. Press Release, U.S. Census Bureau, U.S. Census Bureau Reports Residents Move at Higher Rate in 2009 After Record Low in 2008 (May 10, 2010), http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb10-67.html. *See also* Press Release, U.S. Census Bureau, Census Bureau Reports Housing Is Top Reason People Moved Between 2009 and 2010 (May 23, 2011), http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb11-91.html; Ilyce Glink, *Underwater with Your Mortgage? So Are a Growing Number of Homeowners*, CBS MONEY WATCH.COM (Feb. 23, 2010), http://moneywatch.bnet.com/spending/blog/home-equity/underwater-with-your-mortgage-so-are-a-growing-number-of-homeowners/1699/ (reporting that twenty-four percent of U.S. residential properties with mortgages were in a negative equity situation at the end of 2009).

132.   *See* Cullen & Levitt, *supra* note 124, at 160.

question that many of the poorest urban residents are constantly vulnerable to serious crime precisely because they cannot afford to move away from crime-plagued urban neighborhoods.

C. Fear Fuelers

Although the fear of crime is not well understood, levels of fearfulness are likely influenced by a number of factors, including the following:

1. Risk of Victimization

For many years, conventional wisdom held that crime was the primary driver of the fear of crime. It is now clear, however, that the association between fear and the actual risk of victimization is more complicated than traditionally assumed. For example, somewhat paradoxically, the groups with the highest levels of fear—women and the elderly—have the lowest rates of victimization; and the group with the lowest rate of fear—young men—has the highest rate of victimization.[133] Moreover, while most research suggests that prior direct experience with crime is weakly correlated with increased fear, the evidence is mixed, with some studies suggesting—paradoxically—that victims report lower levels of fear for certain crimes.[134]

As the above discussion of the CAPS report suggests, moreover, we are more afraid of victimization than we need to be. That is, levels of fear exceed levels of crime.[135] This reality is usually explained by the theory of "indirect victimization," which posits that hearing about other people's experiences with crime frightens us.[136] Especially because media accounts frequently focus on the least common, most gruesome, and bizarre crimes, we tend to distort the extent and distribution of violent crime.[137] This distortion may result from a cognitive bias known as the

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133. Jeanette Covington & Ralph B. Taylor, *Fear of Crime in Urban Residential Neighborhoods: Implications of Between- and Within-Neighborhood Sources for Current Models*, 32 Soc. Q. 231, 231–32 (1991); Gibson et al., *supra* note 49, at 540; Edmund F. McGarrell et al., *Neighborhood Disorder, Integration, and the Fear of Crime*, 14 JUST. Q. 479, 484 (1997); Miethe, *supra* note 102, at 19; *see also* James Garofalo & John Laub, *The Fear of Crime: Broadening Our Perspective*, 3 VICTIMOLOGY 242 (1978).

134. *See* Wesley G. Skogan, *The Impact of Victimization on Fear*, 33 CRIME & DELINQ. 135, 137 (1987) (discussing research).

135. On the connection between crime and fear, see Gibson et al., *supra* note 49, at 540, which discusses literature, and Skogan, *supra* note 134. *See also* Lauren B. Gates & William M. Rohe, *Fear and Reactions to Crime: A Revised Model*, 22 URB. AFF. Q. 425, 427 (1987). On the possibility that victimization may sometimes reduce fear, see RICHARD F. SPARKS ET AL., SURVEYING VICTIMS: A STUDY OF THE MEASUERMENT OF CRIMINAL VICTIMIZATION, PERCEPTIONS OF CRIME, AND ATTITUDES TO CRIMINAL JUSTICE (1977).

136. Covington & Taylor, *supra* note 133, at 232; *see also* 124 WESLEY G. SKOGAN & MICHAEL G. MAXFIELD, COPING WITH CRIME: INDIVIDUAL AND NEIGHBORHOOD REACTIONS 163–82 (1981).

137. *See* Avishalom Tor, *The Methodology of the Behavioral Analysis of Law*, 4 HAIFA L. REV. 237, 248–49 (2008).

"availability heuristic." Cognitive psychologists have demonstrated that, when making a decision, people tend to rely on information that is readily available to them rather than considering other alternatives.[138] Thus, because sensationalist reporting makes more-violent crimes more "available" to us, we fear the worst when, in fact, the risk of less-serious crimes (for example, property crimes) is far higher.[139]

2. Disorder

While the causal connection between disorder and *crime* is hotly contested, the connection between disorder and the *fear of crime* is not. The available research universally suggests a strong positive correlation between disorder and fear. Apparently, the average observer intuitively agrees with the broken windows hypothesis: when the observer experiences disorder or experiences social incivilities in a neighborhood, he or she assumes that serious crime is prevalent there as well. Indeed, some evidence suggests that disorder generates more fear of crime than actual personal experience with crime itself.[140]

Disorder generates fear at both the neighborhood and individual levels. At the neighborhood level, higher levels of neighborhood disorder correspond to higher levels of fear of crime among residents.[141] At the individual level, residents within the same neighborhood experience different levels of fear depending upon their individual perceptions of the amount of disorder in their communities. That is, the more disorder a person sees, the more fearful the person is. For example, Jeanette Covington and Ralph Taylor interviewed over 1500 residents about the levels of disorder in sixty-six Baltimore neighborhoods and then compared these responses to physical assessments of neighborhood conditions conducted by trained observers.[142] They found that fear was most strongly influenced by the disorder levels within a respondent's neighborhood.[143] Residents of neighborhoods with higher levels of observed physical and social disorder were more fearful.[144] They also found that individual perceptions of disorder were strongly linked to individualized, within-neighborhood differences in fear.[145] Residents who saw more disorder

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138. *See* Covington & Taylor, *supra* note 133, at 232; Gates & Rohe, *supra* note 135, at 439.
139. *See* Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124, 1127–28 (1974).
140. *See* Randy L. LaGrange et al., *Perceived Risk and Fear of Crime: Role of Social and Physical Incivilities*, 29 J. RES. CRIME & DELINQ. 311, 312–13, 327–28 (1992).
141. Gibson et al., *supra* note 49, at 541; McGarrell et al., *supra* note 133, at 493–94.
142. Covington & Taylor, *supra* note 133, at 234–35.
143. *Id.* at 241.
144. *Id.*
145. *Id.*

than their neighbors or expressed greater concern about disorder experienced more fear.[146]

Disorder also suppresses collective efficacy, which is an important predictor of both fear of crime and residential stability.[147] Logically, we have less reason to fear victimization if we trust our neighbors to intervene and enforce informal norms of conduct. It also is reasonable to expect that communities with high levels of collective efficacy will be less disorderly; after all, members of cohesive communities with high levels of social capital are most likely to organize informally to keep disorder in check. For example, in their important study of the effects of disorder in Chicago neighborhoods, Sampson and Raudenbush found no significant correlation between disorder and serious crimes other than robbery.[148] They also found that collective efficacy was significantly and negatively correlated with disorder.[149] While these findings led Sampson and Raudenbush to question the causal link between disorder and serious crime, they did not dismiss disorder as irrelevant. Disorder, they suggested, might "turn out to be important for understanding migration patterns, investment by businesses, and overall neighborhood viability," especially if it "operates in a cascading fashion—encouraging people to move (increasing residential instability) or discouraging efforts at building collective responses."[150]

3. Strangers

The fear of crime also has been linked to the fear of strangers. This asserted link between strangers and fear has been explained in various ways. Some scholars have argued that the fear of crime is, at heart, a fear of the unpredictable, including unknown and unpredictable people.[151] Others have linked strangers to a decline in trust, which in turn triggers fear. This claim about the fear of crime is supported by the research discussed above, which suggests that commercial land uses suppress neigh-

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146. *Id.*
147. *See* Gibson et al., *supra* note 49, at 552; *see also supra* note 130 and accompanying text.
148. Sampson & Raudenbush, *supra* note 14, at 630.
149. *Id.* at 624.
150. *Id.* at 637.
151. *See, e.g.,* James Brooks, *The Fear of Crime in the United States,* 20 CRIME & DELINQ. 241, 241 (1974) ("The fear of crimes of violence is not a simple fear of injury or death or even of all crimes of violence, but, at bottom, a fear of strangers."); Jennie McIntyre, *Public Attitudes Toward Crime and Law Enforcement,* 6 AM. CRIM. L.Q. 66, 72 (1967) ("The precautions which people take to protect themselves indicate that underlying the fear of crime is a profound fear of strangers. They are afraid that some unknown person will accost them on the street or break into their homes and take their property or attack them personally."); Marc Riedel, *Stranger Violence: Perspectives, Issues, and Problems,* 78 J. CRIM. L. & CRIMINOLOGY 223, 223 (1987) ("[T]he fear of crime is basically a fear of strangers. It is suggested that people fear the unknown person who commits an unpredictable and violent attack on a vulnerable and innocent citizen going about routine daily activities.").

borhood social cohesion by inviting strangers into a community.[152] If, as this research suggests, social cohesion suppresses fear, then it is reasonable to believe that strangers increase fear since strangers tend to suppress social cohesion by making it more difficult for residents to discern who "belongs" in their neighborhood.

A related but distinct claim is that the fear of strangers is, at heart, a fear of "strangeness"—that is, of "undesirable" strangers, including, unfortunately, racial minorities.[153] This final explanation is supported by evidence suggesting that the cognitive heuristics that we use to distinguish "safe" from "threatening" strangers track social categories. Young men, for example, are most likely to provoke fear.[154] Moreover, fear-inducing social incivilities tend to be associated with certain subcategories of individuals, including, for example, teenagers and individuals suffering from mental illness.[155] The claim that fear of crime is linked to fear of "strangeness" also is supported by evidence suggesting that perceptions of disorder and crime are not race blind but are instead higher in predominantly minority neighborhoods.[156] For example, when Sampson and Raudenbush compared levels of *actual* physical and social disorder in Chicago neighborhoods to surveys asking residents to report the level of disorder in their neighborhoods,[157] they found that factors other than ac-

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152. *See supra* text accompanying notes 53–66.

153. Hunter & Baumer, *supra* note 119, at 129 ("Fear of strangers might more accurately be defined as fear of strange types of people in strange settings at strange times of the day."); Deborah Lupton, *Dangerous Places and the Unpredictable Stranger: Constructions of Fear of Crime*, 32 AUSTL. & N.Z. J. CRIMINOLOGY 1, 6 (1999) ("Safety was frequently described as involving the area being 'quiet', often combined with other attributes, such as the other residents being affluent, or there being no undesirable types hanging around . . . ."); Rachel Pain, *Place, Social Relations and the Fear of Crime: A Review*, 24 PROGRESS HUM. GEOGRAPHY 365, 373 ("[T]here is a general tendency to fear stereotypical 'others' who are marked out by their colour, class or other impurity and whose presence threatens disorder to mainstream life and values.").

154. *See generally* 9 ROBERT F. MEIER ET AL., THE PROCESS AND STRUCTURE OF CRIME: CRIMINAL EVENTS AND CRIME ANALYSIS 222–23 (2001) (finding that fear was substantially increased by the presence of young males).

155. *See* Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows,"* 67 SOC. PSYCHOL. Q. 319, 321 (2004) (finding that residents perceived more disorder in African American neighborhoods). The link between fear of crime and the fear of strangers has long been widely accepted. *But see* Elizabeth H. McConnell, *Fear of Crime and Victimization, in* CONTROVERSIES IN VICTIMOLOGY 91, 97 (Laura J. Moriarty ed., 2d ed. 2008) (reviewing literature). Any assertions about the "fear of strangers" rest on intuition rather than rigorous efforts to test intuitive claim, leading some to question its empirical foundation. Dan A. Lewis, *Crime and Community: Continuities, Contradictions, and Complexities*, CITYSCAPE: J. POL'Y DEV. & RES., May 1996, at 95, 103 (asserting that the "fear of strangers" claim has not been empirically tested but rather is offered as a theoretical explanation for other empirical findings).

156. *See, e.g.*, Lincoln Quillian & Devah Pager, *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, 107 AM. J. SOC. 717, 726–28, 740–43 (2002) (finding, based upon resident surveys and police data from Seattle, Chicago, and Baltimore, a positive association between the percentage of young, black men and perceptions of neighborhood crime).

157. Sampson & Raudenbush, *supra* note 155, at 323–27. Sampson and Raudenbush enlisted trained observers, driving SUVs, to videotape the physical and social conditions in 500 "block groups" in Chicago neighborhoods. *Id.* at 325–26. To measure perceptions of disorder, they relied on a 1995 survey of 3585 Chicago residents. *Id.* at 324.

tual disorder—including race—colored residents' perceptions of disorder in a neighborhood.[158] Black residents perceived less disorder than white residents living in the same neighborhood.[159] And, importantly, the racial composition of a neighborhood affected residents' perception of disorder levels, with residents perceiving higher levels of disorder as the percentage of minority residents (and especially African American residents) increased.[160] Interestingly, they found that the effects of neighborhood racial composition on resident perception of disorder held true across races. That is, "blacks were *not* significantly more or less likely than whites to view predominantly black neighborhoods as high in disorder."[161]

4. Being Alone

Less prevalent in the literature on the fear of crime is a discussion of another powerful fear fueler: we are afraid of being alone. Intuitively, at least in urban public spaces, social isolation—that is, aloneness—provokes fear. As Mark Warr, the author of one of the most systematic studies linking the fear of crime to the fear of being alone, has observed, "[B]eing alone in a truly dangerous environment is the stuff of nightmares."[162]

Warr's research drew upon a 1987 survey asking respondents to consider a series of situational vignettes and to indicate (on a zero-to-ten scale) how afraid they would be in the situation.[163] The vignettes were designed to test the effects of novelty (that is, being in a strange place), darkness, and the presence of others on the fear of victimization. For example, one of the vignettes stated: "You are waiting on (a crowded/an empty) street corner downtown (in the afternoon/at night) in an area you (know well/do not know well)."[164] Warr found that all three factors—that is, unfamiliarity with a situation (or novelty), darkness, and being alone—increased fear, but that the effects of each varied along with the respond-ent's age and sex.[165] Young men were least afraid in all of the situations, and older women were the most afraid.[166] Darkness had the greatest effect on fear levels in all of the gender/age combinations.[167] The "aloneness" factor had the greatest effect on young women: when they

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158. *Id.* at 329–31.
159. *Id.* at 329.
160. *Id.* at 332.
161. *Id.*
162. Mark Warr, *Dangerous Situations: Social Context and the Fear of Victimization*, 68 SOC. FORCES 891, 895 (1990).
163. *Id.* at 895–906.
164. *Id.* at 903.
165. *Id.* at 898.
166. *Id.* at 899.
167. *Id.* at 898, 902.

were alone, young women were almost as afraid as older women (the highest fear group).[168] Interestingly, Warr found that while the presence of others worked to alleviate fear in situations where crime is not imminent or in progress, the "safety in numbers" reaction disappeared when respondents were presented with a vignette suggesting they saw a man with a knife.[169] Warr concluded from this that being in the presence of known dangerous people does not increase our sense of security, although he hypothesized that being in the presence of "moderately dangerous persons" may be less frightening than being alone.[170]

Studies conducted with the goal of identifying and overcoming impediments to more intense use of public amenities, especially of public transportation, also suggest that the presence of other people in public spaces, especially at night, reduces the fear of crime. For example, a survey conducted of park and bus users in Los Angeles found that more than three-quarters of women stated that they would never visit a park after dark except to take part in a well-attended event, such as a concert.[171] Similarly, respondents listed being alone—along with encounters with social incivilities and past victimizations—as a primary reason they feared taking public transportation.[172] These results comport with a number of studies identifying the fear of being alone in unguarded areas as an impediment to the use of public transportation, especially by women.[173] In keeping with Newman's work on "defensible space," people also report that they avoid public transportation stops with physical barriers that heighten the sense of isolation and prevent monitoring by passersby.[174] And, again in keeping with the literature connecting fear to physical and social disorder, researchers have found the presence of disorderly people provokes greater fear reactions than physical incivilities.[175]

The fact that we experience a feeling of "safety in numbers"—that is, we believe that the presence of others increases our personal safety—

168. *Id.* at 898–99. Warr hypothesized that young women's fear reaction to being alone was triggered by their vulnerability to rape. *Id.* at 902.

169. *Id.* at 903–05.

170. *Id.* at 905. Warr also demonstrated that respondents' security/fear reactions mapped onto expected demographic characteristics. They felt more threatened by younger men and safer around older women. He did not test racial characteristics. Women—the group most likely to avoid public transportation unless other passengers are present—are apparently more fearful when they are in the presence of a single other passenger than when they are alone. *Id.* at 903–06.

171. Anastasia Loukaitou-Sideris, *Is It Safe to Walk Here? Design and Policy Responses to Women's Fear of Victimization in Publix Places*, 2 RES. ON WOMEN'S ISSUES TRANSP. 102, 105–06 (2005).

172. *See* ANASTASIA LOUKAITOU-SIDERIS ET AL., MINETA TRANSP. INST., Report No. 09-01, HOW TO EASE WOMEN'S FEAR OF TRANSPORTATION ENVIRONMENTS: CASE STUDIES AND BEST PRACTICES 7–8 (2009).

173. *Id.* at 16–17.

174. *Id.* at 7 (reviewing literature).

175. *See id.*; *see also* Thomas L. Austin & Eve S. Buzawa, *Citizen Perceptions on Mass Transit Crime and Its Deterrence: A Case Study*, 38 TRANSP. Q. 103 (1984); Gerald Ingalls et al., *Public Fear of Crime and Its Role in Bus Transit Use*, TRANSP. RES. REC. NO.1433 201 (1994); Gill Valentine, *Women's Fear and the Design of Public Space*, 16 BUILT ENV'T 288 (1990).

also is supported by evidence suggesting that individual vigilance de-
creases as crowd size increases. This phenomenon — that individuals take
less care to detect and avoid threats to personal safety when they are in
crowds rather than alone — is present across species,[176] including hu-
mans.[177] For example, several studies have demonstrated that the fre-
quency of individuals "scanning" — that is, looking around to evaluate a
situation — decreases as group size increases.[178] This effect of group size
on vigilance may also help explain the "bystander effect" — that is, the
fact that the probability of a given individual intervening to help in an
emergency situation (including criminal victimization) also decreases as
crowd size increases. Decades of research — which was initially triggered
by the notorious Kitty Genovese incident, during which a young woman
was murdered in broad daylight while dozens of witnesses watched pas-
sively — has confirmed the bystander effect in numerous settings.[179]

Psychologists have suggested that the bystander effect may be the
result of a diffusion of responsibility. That is, if each member of a group
believes that someone else is responsible for intervening to address the
problem, then no individual member will take the initiative to intervene.
An alternative, or supplemental, explanation flows from the possible so-
cial-influence effects of nonintervention, which signals a norm of inac-
tion. In one well-known experiment, for example, undergraduate stu-
dents at Columbia University were asked to participate in a discussion of

176. *See, e.g.,* Som B. Ale & Joel S. Brown, *The Contingencies of Group Size and Vigilance,* 9
EVOLUTIONARY ECOLOGY RES. 1263 (2007); Guy Beauchamp, *What Is the Magnitude of the Group-
Size Effect on Vigilance?,* 19 BEHAV. ECOLOGY 1361 (2008); Mark A. Elgar, *Predator Vigilance and
Group Size in Mammals and Birds: A Critical Review of the Empirical Evidence,* 64 BIOLOGICAL REV.
13 (1989).
177. *See, e.g.,* R.I.M. Dunbar et al., *Vigilance in Humans: A Test of Alternative Hypotheses,* 139
BEHAVIOR 695 (2002).
178. *See* David P. Barash, *Human Ethology: The Snack-Bar Security Syndrome,* 31 PSYCHOL.
REP. 577 (1972) (comparing the levels of scanning among individuals dining in groups as well as at-wall
versus center seating, and finding those individuals in center seating scanned more
frequently than individuals seated in groups and along walls); Monika Wawra, *Vigilance Patterns in
Humans,* 107 BEHAVIOR 61 (1988) (finding that the mean time between "scanning" increased along
with group size); Peter Wirtz & Monika Wawra, *Vigilance and Group Size in* Homo Sapiens, 71
ETHOLOGY 283 (1986) (observing scanning behavior in a college cafeteria and finding that students
looked up less frequently as group size increased — individuals dining alone spent 16.8 seconds per
minute looking up whereas individuals in groups only 2.9 seconds). *Cf.* Dunbar et al., *supra* note 177
(conducting a similar study and suggesting that decreased "scanning" in groups is related to mate-
seeking behavior rather than vigilance).
179. *See, e.g.,* Bibb Latané & Steve Nida, *Ten Years of Research on Group Size and Helping,* 89
PSYCHOL. BULL. 308 (1981) (summarizing a decade of research). The early research on the bystander
effect, which was conducted by John M. Darley and Bibb Latané, remains influential. *See* BIBB
LATANÉ & JOHN M. DARLEY, HELP IN A CRISIS: BYSTANDER RESPONSE TO AN EMERGENCY (1976);
BIBB LATANÉ & JOHN M. DARLEY, THE UNRESPONSIVE BYSTANDER: WHY DOESN'T HE HELP?
(1970) [hereinafter LATANÉ & DARLEY, THE UNRESPONSIVE BYSTANDER]; John M. Darley & Bibb
Latané, *Bystander Intervention in Emergencies: Diffusion of Responsibility,* 8 J. PERSONALITY & SOC.
PSYCHOL. 377 (1968); John M. Darley & Bibb Latané, *Group Inhibition of Bystander Intervention in
Emergencies,* 20 J. PERSONALITY & SOC. PSYCHOL. 215 (1968) [hereinafter Darley & Latané, *Group
Inhibition*].

urban college life.[180] When the students arrived, they were directed to a waiting room and asked to complete a survey.[181] After several minutes, the researchers begin to pump smoke into the room through an air conditioning vent.[182] Students sitting alone in the room responded fairly quickly to the smoke—with most reporting the smoke within two minutes and seventy-five percent reporting the problem before the experiment was terminated.[183] When seated in the room with two other students, only thirty-eight percent of the subjects reported the smoke, and, when seated with other students who were "in on" the experiment and ignored the smoke, only one out of ten subjects took any action at all during the experimental period.[184] The remainder sat passively, fanning the smoke away from their face in order to complete a questionnaire provided by the researchers.[185] As the researchers observed, inaction in this situation is unlikely to be the result of a diffusion of responsibility, since the smoke posed a threat to all of the subjects rather than a third party in an emergency situation.[186] Instead, it seemed likely that each subject's hesitation to intervene sent mutually reinforcing cues that stigmatized intervention.[187]

IV. THE PEOPLE PARADOX AND THE LAND-USE POLICING NEXUS

While there are plausible evolutionary explanations for the "safety in numbers" intuition,[188] the intuition sometimes works at cross-purposes with the goal of personal safety, at least in urban neighborhoods. To begin, a common reaction to crowd size—decreased vigilance—likely leaves us more vulnerable to victimization. If we "let our guard down" because we feel safe in crowds, we open ourselves up to threats that might be detected and prevented by greater vigilance. Moreover, the empirical literature on land-use patterns discussed above suggests that, as the number of people present in a community increases, so does the prevalence of other fear fuelers—strangers (including potential victimizers), disorder, and crime. These fear fuelers, in turn, serve to suppress neighborhood collective efficacy, which itself is a primary predictor of neighborhood crime levels. Herein lies the People Paradox: we feel safer in groups, perhaps because we are hardwired to believe that there is safe-

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180. LATANÉ & DARLEY, THE UNRESPONSIVE BYSTANDER, *supra* note 179, at 43–45.
181. *Id.* at 45–46.
182. *Id.* at 46.
183. *Id.* at 46–47.
184. *Id.* at 47–49.
185. *Id.* at 48.
186. *Id.* at 52.
187. *Id.* at 51–52.
188. *See, e.g.,* Warr, *supra* note 162, at 895 ("One of the most readily observable characteristics of many animal species in the wild is their tendency to avoid separation from conspecifics, one example being the common tendency to herd.").

ty in numbers. Therefore, we avoid deserted urban places—especially at night—because we associate social isolation with vulnerability to crime. But, paradoxically, as the number of people in urban spaces increases, so does the likelihood of victimization (and the prevalence of other factors that signal a vulnerability to victimization).

The People Paradox thus presents a dilemma to urban policy makers who wish simultaneously to promote urban vitality and to reduce crime.   The People Paradox suggests, *contra* Jacobs and the new urbanists, that mixed-land-use planning is not a magic bullet to cure all urban woes. Mixing land uses might generate the busyness and vitality needed to encourage more-intense use of public spaces. But, the sense of security engendered by the mixing of land uses does not necessarily comport with reality. Busy streets may *feel* safer; but quiet streets usually *are* safer. This section reflects upon several possible legal-policy reactions to this People Paradox. It ultimately concludes that the People Paradox is suggestive of a real and persistent tension between different urban policy goals—a tension that land-use policy, standing alone, is ill equipped to address.

A.   Nudging, Debiasing, and Zoning

One reaction to the evidence linking commercial land uses to increased crime and disorder and decreased collective efficacy would be to reject calls for a greater mixing of land uses than permitted by traditional zoning laws. Perhaps the strict enforcement—and even enhancement—of regulations restricting commercial activity in urban environments is in order. Ralph Taylor, an environmental psychologist and the author of a number of studies of the land use and disorder nexus, suggests just that. Taylor asserts that city officials "may wish to carefully monitor zoning variance requests, business license requests, and code enforcement in neighborhoods at risk of increasing crime . . . because of the implications such decisions may have for informal social control and crime."[189] Additionally, since organic methods of suppressing disorder and generating social capital and collective efficacy—such as longer residential tenures and homeownership—are likely more robust and effective than the publicly sponsored ones that take center stage in many order-maintenance toolkits,[190] policy makers reasonably might be attracted to land-use policies that encourage homeownership, including single-land-use zoning, which homeowners view as a form of property-value insurance.[191]

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189. Taylor et al., *supra* note 53, at 132.

190. *See generally* Livingston, *supra* note 26, at 578–84 (describing community policing techniques).

191. *See* LEE ANNE FENNELL, THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES 39–44 (2009) (arguing that land-use controls are "product stabilizers" for homeownership); WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL

If the "safety in numbers" intuition presents an impediment to this strategy, urban policy makers conceivably could undertake efforts to overcome it. This intuition apparently reflects an example of what behavioral economists refer to as "bounded rationality."[192] Bounded rationality is simply a way of stating that humans, for various reasons, sometimes employ inaccurate mental and emotional heuristics to make decisions. For example, the "safety in numbers" assumption is an apparently inaccurate heuristic used to gauge the risk of victimization in urban spaces: we are afraid to be alone, even though our risk of victimization increases along with crowd size. In other words, we are irrational. The "safety in numbers" intuition also might be fairly characterized, in psychological terms, as an instantiation of the "affect heuristic." The affect heuristic simplifies judgmental processes by focusing our decisions upon our subjective evaluations (positive or negative) of the consequences of possible outcomes rather than the probability that these outcomes will occur. The risk of a very bad outcome—for example, murder or rape— leads us to overweight small probabilities.[193] Cass Sunstein has referred to this phenomenon as "probability neglect," observing that "probability neglect is especially large when people focus on the worst possible case or otherwise are subject to strong emotions. When such emotions are at work, people do not give sufficient consideration to the likelihood that the worst case will actually occur."[194] And, the logical converse of this point is that people may underestimate events that are more likely but have devastating results. There is evidence that probability neglect can generate excessive demand for regulation of risks that have very low probabilities but generate a strong affect.[195] For example, in the criminal law context, fear of violent crime may generate excessive demand for police presence in public spaces or for lengthy prison terms for repeat violent offenders.

Economists and cognitive psychologists have begun to explore ways that the law might be used to "debias" or "nudge" individuals toward fully rational behavior by reducing or eliminating systematic errors of

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GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 50–56 (2001) (arguing that homeowners see zoning as property-value insurance).

192. *See, e.g.*, Avishalom Tor, *The Fable of Entry: Bounded Rationality, Market Discipline, and Legal Policy*, 101 MICH. L. REV. 482, 484–85 (2002) (defining and describing bounded rationality). The concept of bounded rationality was originally developed by Herbert A. Simon. *See* Herbert A. Simon, *A Behavioral Model of Rational Choice*, 69 Q.J. ECON. 99 (1955); Herbert A. Simon, *Rational Choice and the Structure of the Environment*, 63 PSYCHOL. REV. 129 (1956).

193. *See* Melissa L. Finucane et al., *The Affect Heuristic in Judgments of Risks and Benefits*, 13 J. BEHAV. DECISION MAKING 1 (2000); Paul Slovic et al., *The Affect Heuristic, in* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 397 (Thomas Gilovich et al. eds., 2002).

194. Cass R. Sunstein, *Probability Neglect: Emotions, Worst Cases, and Law*, 112 YALE L.J. 61, 67 (2002).

195. *See id.* at 87–91; *see also* AARON WILDAVSKY, BUT IS IT TRUE? A CITIZEN'S GUIDE TO ENVIRONMENTAL HEALTH AND SAFTEY ISSUES 271–73 (1995) (discussing the phenomenon in a food-safety context).

judgment that lead to suboptimal behavior.[196] The "debiasing" scholarship suggests various techniques that the law might employ to overcome systematic cognitive errors and further suggests that some of them are more effective than others.[197] For example, providing accurate information about actual risk does not serve to overcome the affect bias. On the contrary, it usually makes people more fearful. As Sunstein observes, "Studies show that when people discuss a low-probability risk, their concern rises even if the discussion consists mostly of apparently trustworthy assurances that the likelihood of harm really is infinitesimal."[198] Irrational concerns about risk, it turns out, are particularly difficult to overcome.[199]

B.   The People Paradox As an Urban-Development Tool

Even assuming that legal tools could be effectively employed to debunk the assumption that there is safety in numbers, officials might reasonably hesitate before further codifying single-land-use patterns. Richard Posner has observed that behavioral law and economics should have "at least one clear normative implication: that efforts should be made ... to cure the cognitive quirks ... that prevent people from acting rationally with no offsetting gains."[200] But in the urban-policy context, there are at least three related reasons to conclude that the "safety in numbers" assumption does generate offsetting gains. Thus, it is not at all clear that convincing people to avoid crowds would maximize societal utility.

1.   The Costs of Crowd Avoidance

To begin, debiasing people of their "safety in numbers" intuition necessarily would entail convincing them to be *more afraid* of other people than they already are. There are reasons, unrelated to crime minimization, that this path might be worse than permitting people to persist in the belief that there is safety in numbers. As discussed previously, common crime-avoidance techniques, such as remaining inside behind closed doors, impose high costs on society. Therefore, to the extent that we feel safer in crowds (even when we are not), the People Paradox may reduce the opportunity costs of fear by causing people to engage in beneficial

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196. *See* Amitai Aviram, *Bias Arbitrage*, 64 WASH. & LEE L. REV. 789, 791 (2007); Christine Jolls & Cass R. Sunstein, *Debiasing Through Law*, 35 J. LEGAL STUD. 199, 199–200 (2006).

197. *See* Tor, *supra* note 137, 237, 298–300 (reviewing experimental literature).

198. Sunstein, *supra* note 194, at 69 n.38.

199. *See* Gary W. Cordner, *Fear of Crime and the Police: An Evaluation of a Fear-Reduction Strategy*, 14 J. POLICE SCI. & ADMIN. 223, 223 (1986); Brian C. Renauer, *Reducing Fear of Crime: Citizen, Police, or Government Responsibility?*, 10 POLICE Q. 41, 54–57 (2007); Jihong "Solomon" Zhao et al., *The Effect of Police Presence on Public Fear Reduction and Satisfaction: A Review of the Literature*, 15 JUST. PROF. 273, 281 (2002).

200. Richard A. Posner, *Rational Choice, Behavioral Economics, and the Law*, 50 STAN. L. REV. 1551, 1575 (1998).

activities—including activities that build much-needed social and economic capital in our cities. On a related note, the literature testing the contours of the "bystander effect," discussed above, suggests that even occasional and informal social interactions increase the likelihood that bystanders will intervene to prevent crimes.[201] While deep social connections between neighbors undoubtedly are superior to shallow ones in promoting vigilance,[202] experimental psychologists have demonstrated that even shallow interactions can encourage prosocial behavior. For example, when subjects have spoken to each other for as little as one minute, they are far more likely to intervene to help one another than if they have not interacted at all.[203] And, of course, it is also possible that debiasing residents of their "safety in numbers" intuition also might work at cross-purposes with efforts to overcome other, more pernicious biases—including those based upon class and race.

2.   The People Paradox and Urban-Suburban Competition

Another legal response to cognitive biases is to take steps to ensure that the law is not shaped by demands resulting from systematic errors in judgment.[204] In the land-use context, this might entail rejecting demands for regulatory reforms permitting a greater mixing of land uses—at least to the extent that such demands are fueled by the mistaken assumption that mixed-land-use communities will be safer and more socially cohesive than exclusively residential ones. But, in the urban-policy context, demands for more "urban" land-use environments clearly are not fueled primarily by the new urbanists' claim that mixed-land-use neighborhoods are safer than single-land-use ones. Rather, they are fueled primarily by city leaders' desire to compete with suburbs for residents and businesses by capitalizing on the growing taste for urban life. This reality directly highlights why the People Paradox is suggestive of what may be an inevitable tension in urban land-use policy. City competitiveness and urban neighborhood health requires attention to levels of crime and social capital in urban neighborhoods, and both concerns arguably weigh in favor of rejecting calls for more land-use diversity. But, as I have previously argued, if cities have one major competitive edge over their suburban

    201.   *See* R. Lance Shotland & Lynne I. Goodstein, *The Role of Bystanders in Crime Control*, 40 J. SOC. ISSUES 9, 12–13 (1984).

    202.   *See* Mark Levine & Simon Crowther, *The Responsive Bystander: How Social Group Membership and Group Size Can Encourage As Well As Inhibit Bystander Intervention*, 95 J. PERSONALITY & SOC. PSYCHOL. 1429, 1437 (2008) (finding that the bystander effect emerged only when bystanders were constructed as strangers).

    203.   *See* LATANÉ & DARLEY, THE UNRESPONSIVE BYSTANDER, *supra* note 179, at 107–09.

    204.   *See, e.g.,* Jeffrey J. Rachlinski, *The Uncertain Psychological Case for Paternalism*, 97 NW. U. L. REV. 1165 (2003); Jeffrey J. Rachlinski & Cynthia R. Farina, *Cognitive Psychology and Optimal Government Design*, 87 CORNELL L. REV. 549 (2002).

counterparts, it is urban vitality. And urban vitality is promoted by the mixed-land-use policies that are linked to increased crime.[205]

To understand the importance of urban vitality, and the land-use regulations that promote it, it is necessary to come to terms with the reasons for the apparent "urban rebound" of the late twentieth and early twenty-first centuries. Not only was the 1990s the best postwar decade for those U.S. cities that previously suffered the most devastating population losses, but the population growth of many downtowns—the most "urban" areas—outpaced overall population growth in many cities. Some cities experienced overall population losses but still saw their *downtown* population grow.[206] Even poor neighborhoods began to regenerate, sometimes enough to raise gentrification concerns.[207] And while the current economic downturn has dampened enthusiasm about the urban resurgence, urban leaders have reason to remain cautiously optimistic about the future.[208]

While the urban rebound is a complex phenomenon,[209] Glaeser and Gottlieb provide a plausible summary explanation. They argued, as discussed briefly above, that cities have rebounded because elites increasingly have an affinity for urban life, especially the social interactions and consumer amenities enabled by dense, mixed-land-use urban environments.[210] The reasons for the shift in lifestyle preferences, Glaeser and Gottlieb posit, include rising incomes and educational attainment and, importantly, a dramatic decline in central-city crime rates.[211] Over the past two to three decades, as crime rates fell and urban officials began to focus on the quality of life in public places, city dwellers found it easier to enjoy the advantages of urban life.[212] Similarly, historian Robert Bruegmann has argued that the decline in the urban industrial base has freed cities from congestion, pollution, and disease and made them more attractive to wealthy individuals who might previously have chosen to live in the suburbs.[213]

Perhaps not surprisingly, many cities now pin urban development hopes on promoting a "hip" image. Michigan, for example, has launched a "Cool Cities Initiative" with the explicit goal of encouraging Michigan

205. *See* Garnett, *supra* note 4, at 44–46.
206. Sohmer & Lang, *supra* note 2, at 65–67.
207. *See, e.g.,* J. Peter Byrne, *Two Cheers for Gentrification,* 46 HOW. L.J. 405 (2003); John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color,* 46 HOW. L.J. 433 (2003).
208. *See generally* Conor Dougherty, *Cities Grow at Suburbs' Expense During Recession,* WALL ST. J., July 1, 2009, at A5 (discussing census data suggesting that population growth in large cities has outpaced suburban growth during the recession).
209. *See* Richard C. Schragger, *Rethinking the Theory and Practice of Local Economic Development,* 77 U. CHI. L. REV. 311, 324–31 (2010).
210. *See* Glaeser & Gottlieb, *supra* note 3, at 1288–93.
211. *Id.*
212. *See id.* at 1297.
213. *See* BRUEGMANN, *supra* note 32, at 221.

cities to retain and attract more people including urban pioneers and young knowledge workers.[214] Strategies such as these trace their roots to Richard Florida's influential 2002 book, *The Rise of the Creative Class*.[215] Florida argued that, in order to thrive, modern cities must attract "the creative class."[216] He also posited that cities are benefiting from the energy provided by creative young professionals, who stay single longer than in previous generations and who prefer to live in diverse, urban neighborhoods.[217] Cities, according to Florida, "have become the prime location for the creative lifestyle and the new amenities that go with it."[218]

There are, without question, limits to what Joel Kotkin derisively refers to as the "cool city strategy."[219] To begin, the apparent importance of collective efficacy to neighborhood health itself suggests that cities need to prioritize policies encouraging residential stability and home-ownership (including public safety and education).[220] Moreover, and importantly, even cool people face the life-cycle pressures that favor suburban life. As Kotkin quips, "It turns out that many of the most prized members of the 'creative class' are not 25-year-old hip cools, but forty-something adults who, particularly if they have children, end up gravitating to the suburbs . . . ."[221] Perhaps as a result, the fastest growing cities tend to be sprawling and located in the fastest-growing regions—the West and Southwest. Many "[c]ities built for pedestrians and for mass transit" continue to lose residents,[222] although at a slower rate than in previous decades.[223] As Glaeser and Gottlieb observe, "[T]he [twenty] years since 1980 have been much better for America's biggest cities than the [twenty] years before 1980. While this is surely true, it should not blind us to the fact that the general trend to sun and sprawl has continued relatively unabated . . . ."[224] In other words, land-use policies attractive to the young and hip cannot, standing alone, renew our cities.

Still there is one overriding reason why urban leaders might choose to emphasize—and to enact land-use policies that enable—"cool" neigh-

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214. COOL CITIES INITIATIVE, MICH. DEP'T OF LABOR & ECON. GROWTH, MICHIGAN'S COOL CITIES INITIATIVE: A REINVESTMENT STRATEGY 3 (n.d.), http://www.aabds.com/Universityof Michigan/CoolCityWhitePaper.pdf.

215. RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS (2002).

216. *Id.* at 67–80.

217. *Id.* at 67–80, 280.

218. *Id.* at 287.

219. Joel Kotkin, *Uncool Cities*, PROSPECT (Oct. 22, 2005), http://www.prospectmagazine.co.uk/ 2005/10/uncoolcities/.

220. *See* Nicole Stelle Garnett, *Affordable Private Education and the Middle Class City*, 77 U. CHI. L. REV. 201, 208–14 (2010).

221. Kotkin, *supra* note 219.

222. Edward L. Glaeser & Jesse M. Shapiro, *City Growth: Which Places Grew and Why, in* 1 REDEFINING URBAN AND SUBURBAN AMERICA: EVIDENCE FROM CENSUS 200, *supra* note 2, at 13, 18–19.

223. *See* Simmons & Lang, *supra* note 2, at 54–55.

224. Glaeser & Gottlieb, *supra* note 3, at 1284.

borhoods with urban land-use patterns: cities are likely better at being urban than they are at being suburban. Thus, in the Tieboutian competition between cities and suburbs, city governments must play to their land-use strengths. While many commentators question central cities' ability to compete effectively,[225] city governments have long tried to compete with suburbs for development and investment, especially by using subsidized financing, tax abatements, infrastructure improvements, and other incentives to attract investment.[226] But these strategies are likely insufficient on their own.[227] If cities are to compete successfully, their leaders must recognize the role that local power over land-use policy—a local government's "most important local regulatory power"[228]—plays in city-suburb competition.[229] To the extent that city neighborhoods have *any* land-use advantage over suburban ones, it is that some Americans have a taste for diverse urban environments. That is not to say that cities find it easy to sell their urban life. But, to borrow from the economic theory of comparative advantage, cities ought to focus on doing the things they are *least bad* at doing. And, if Glaeser and Gottlieb are correct, such a focus provides a comparative—indeed, perhaps a competitive—edge for cities.

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225.   The standard account of city-suburb competition provides that local government power over land use leads inevitably to urban disinvestment. *See* Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1134–35 (1996); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 349 (1990).

226.   *See generally* Michael Allan Wolf, *Dangerous Crossing: State Brownfields Recycling and Federal Enterprise Zoning*, 9 FORDHAM ENVTL. L.J. 495 (1998); Melvin L. Burstein & Arthur J. Rolnick, *Congress Should End the Economic War Among the States*, REGION, Mar. 1995 (Special Issue), at 3, 15.

227.   Unfortunately, the available empirical evidence suggests that fierce intergovernmental competition renders these strategies—which seek to attract larger employers to a city—ineffective. *See, e.g.*, GOOD JOBS FIRST, INST. ON TAXATION & ECON. POLICY, MINDING THE CANDY STORE: STATE AUDITS OF ECONOMIC DEVELOPMENT 35–41 (2000) (summarizing fifteen state audits that show development incentives are generally ineffective); Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 HARV. L. REV. 377, 390–405 (1996) ("From the states' collective vantage point, the net effect of the incentive competition is, in fact, far worse than zero-sum. For, although the states can expect to achieve no overall gain in business activity or jobs, they do incur a very substantial loss of tax revenues."); Franklin J. James, *Urban Economic Development: A Zero-Sum Game?*, *in* 27 URBAN AFFAIRS ANNUAL REVIEWS: URBAN ECONOMIC DEVELOPMENT 157, 161 (Richard D. Bingham & John P. Blair eds., 1984) ("There is no convincing empirical evidence that urban economic development as currently practiced is more than a zero sum game."); Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 CHI.-KENT L. REV. 795, 810 (1991) ("Another reason for the limited usefulness of economic development incentives is their ubiquity. Since many jurisdictions offer these benefits they cease to generate an advantage for any particular locale."). *But cf.* Clayton P. Gillette, *Business Incentives, Interstate Competition, and the Commerce Clause*, 82 MINN. L. REV. 447, 452–78 (1997) (questioning the argument that incentives are usually a net loss for the offering jurisdiction).

228.   Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 3 (1990).

229.   *See, e.g.*, Vicki Been, *"Exit" As a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473, 506–28 (1991) (arguing that local governments use land-use regulations to compete for residents).

All of this suggests that, at least when it comes to advancing the important goal of promoting cities' competitiveness vis-à-vis their suburban neighbors, the People Paradox works to the advantage of cities. Our sense of security amidst the vitality of urban life arguably makes city life more attractive to us than it would be if our intuitive assumptions about the risk of crowds mapped onto the actual risk of crime. But, unless land-use regulations enable the development of the mixed-land-use neighborhoods that generate the vitality that apparently is increasingly attractive to some Americans, many would-be city dwellers will have little reason to reject the relative safety and tranquility of the suburbs.

3. An Unparadoxical Case for Vitality Amidst Urban Poverty

A distinct case can be made for mixed-land-use planning in poor urban neighborhoods, including many neighborhoods which have not— and perhaps will never—fully enjoy the benefits of the "urban resurgence." Residents of these neighborhoods undoubtedly and intensely experience the "fear fuelers" describe above on a daily basis— unavoidable and unacceptable levels of disorder, constant risk of victimization, and suppressed levels of social capital. These realities lead some scholars to argue that more-vigilant enforcement of regulations segregating land uses in poor minority neighborhoods is a moral imperative. For example, Jon Dubin has asserted, "Residents deprived of zoning protection are vulnerable to assaults on the safety, quality, and integrity of their communities ranging from dangerous and environmentally toxic hazards to more commonplace hazards, such as vile odors, loud noises, blighting appearances, and traffic congestion."[230] The answer, according to Dubin, is to strengthen zoning enforcement in poor neighborhoods and to use these regulations to suppress the physical disorder that plagues these communities.[231] Similarly, the literature linking commercial land uses to

230. Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 742 (1993).

231. *See id.* at 741–44. Both Dubin and Yale Rabin have suggested that such zoning practices sometimes are racially motivated. *See generally id.*; Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of* Euclid, *in* ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP 101 (Charles M. Haar & Jerold S. Kayden eds., 1989); *see also* ROBERT D. BULLARD, INVISIBLE HOUSTON: THE BLACK EXPERIENCE IN BOOM AND BUST 63–70 (1987) (discussing the problems attributable to commercial enterprises in Houston's (unzoned) African American residential neighborhoods); Vicki Been, *Comment on Professor Jerry Frug's* The Geography of Community, 48 STAN. L. REV. 1109, 1113 (1996) [hereinafter Been, *Comment*] ("Not all land use is bad, and not all zoning is misguided or harmful to the poor and to minorities. Indeed, it is ironic that one of the major forms of expulsive zoning that poor African American and Hispanic neighborhoods complain about is the mixing of uses—the very 'improvement' that forms one of the cornerstones of the new urbanism."). There is a substantial "environmental justice" literature examining whether undesirable land uses are sited in minority neighborhoods or whether poor and minority families are attracted to those neighborhoods because of lower property values. On this related "chicken and egg" problem, see Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383 (1994); Vicki Been & Francis Gupta, *Coming to the Nuisance or Going to the Barrios? A*

crime and disorder also could be interpreted to suggest that economic activity should be minimized in the poorest urban neighborhoods.

The central difficulty with this claim is that the poorest urban neighborhoods suffer not from *too much* economic activity but from *too little* of it. Thus, before endorsing the necessity of land-use segregation in poor neighborhoods, urban policy makers must consider whether new commercial activity in poor neighborhoods will actually be helpful, rather than harmful. There is some limited empirical support for the latter view. In one of the neighborhood-pair studies discussed above, researchers found that commercial land uses were detrimental in relatively stable neighborhoods but *beneficial* in unstable ones.[232] That is, commercial land uses appeared to increase crime and disorder in relatively stable, middle-class communities and to decrease crime and disorder in relatively poor communities. The researchers had predicted the opposite effect—that "Jacobs's notion of public land use providing supervisory 'eyes on the street' (and thus leading to lower crime) might be more operative in advantaged, stable neighborhoods."[233] The fact that the data conflicted with their intuitions led the researchers to reject the assumption that "busy" places generate crime and disorder as "overly simple."[234]

In other words, there may be no People Paradox in poor neighborhoods. This conclusion is a tentative one, based precariously on intuition and one study of one hundred neighborhoods in Seattle, Washington.[235] Commercial land uses might work differently—for better or worse—in other communities. The study provides no hints, moreover, about *why* commercial land uses suppressed crime and disorder in poor Seattle neighborhoods. There are several plausible and overlapping explanations: perhaps in poorer neighborhoods, where social deviants exercise a greater degree of control of public spaces, shopkeepers and their customers do a better job of monitoring crime and disorder. Perhaps legitimate businesses increase the proportion of law-abiding citizens in public spaces. Perhaps in such communities, commercial land uses fill otherwise-vacant buildings that would serve as "magnets for crime."[236] It is also possible that commercial land uses in poor communities provide entrepreneurial and/or employment opportunities that promote the

Longitudinal Analysis of Environmental Justice Claims, 24 ECOLOGY L.Q. 1 (1997); Thomas Lambert & Christopher Boerner, *Environmental Inequity: Economic Causes, Economic Solutions*, 14 YALE J. ON REG. 195 (1997).

232. Wilcox et al., *supra* note 49, at 200–02.

233. *Id.* at 200.

234. *Id.* at 201.

235. *Id.* at 191.

236. Vacant buildings are indisputably linked to crime. *See, e.g.*, John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. URB. AFF. 301, 303 (2000) ("[C]rooks, killers, and losers tend to infest areas with dead buildings, like maggots on a carcass." (quotation omitted)).

"culture of work" that William Julius Wilson has influentially argued is critical for the reversal of fortunes of many inner-city communities.[237]

Whatever the explanation for the divergent effects of commercial land uses in low-income neighborhoods, the policy implications of data suggesting that commercial land uses benefit the neighborhoods that struggle to the greatest extent with crime and disorder are clear: if urban policy makers wish to reverse the spiral of urban decline in these communities, they must take seriously the call for regulatory reforms encouraging a greater mixing of land uses.[238]

C. The People Paradox and the Land-Use Policing Nexus

Finally, the tension suggested by the People Paradox between different urban policy goals—increasing vitality, decreasing crime and disorder, injecting economic life into the poorest urban neighborhoods—also suggests a connection between land-use and policing policies. I have explored this connection in greater detail elsewhere,[239] and, rather than repeating my arguments here, this section instead highlights two intersections between these two critical areas of urban policy that are implied by the People Paradox.

1. Unparadoxical People

The first connection flows from the reality of *unparadoxical people*—that is, categories of people who both make us feel safe and make us safe, as well as categories of people that frighten us and make us less safe. For example, given the undisputed connection between strong social ties, collective efficacy, and neighborhood stability, neighborhood friends fall into the former "good" category.

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237. Wilson and others have argued that, as a result of chronic joblessness, inner-city residents develop what psychologists would term negative self-efficacy. In other words, they wish to achieve success through work, but they become so discouraged by the reality of their community that they cease to believe that it is possible to do so. The economic effects of this phenomenon parallel the asserted social-influence effects of urban disorder. Just as visible disorder may discourage law abiders by signaling that a community tolerates lawlessness, widespread unemployment signals that economic prospects are dim and disheartens job seekers. *See* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 51–86 (1996); *see also* MIRIAM EREZ & P. CHRISTOPHER EARLEY, CULTURE, SELF-IDENTITY, AND WORK 99 (1993); Michael H. Schill, *Distressed Public Housing: Where Do We Go from Here?*, 60 U. CHI. L. REV. 497, 507–22 (1993) (discussing theories explaining why concentrated poverty may lead to a lack of perceived self-efficacy); Marta Tienda & Haya Stier, *Joblessness and Shiftlessness: Labor Force Activity in Chicago's Inner City, in* THE URBAN UNDERCLASS 135 (Christopher Jencks & Paul E. Peterson eds., 1991) (discussing self-efficacy theory).
238. For example, Stephen Clowney has proposed that cities deregulate abandoned buildings in their in rem portfolios and transfer them to inner-city entrepreneurs. Clowney reasons that, given a choice between abandoned buildings and commercial land uses in their neighborhoods, residents would opt for the latter. Stephen Clowney, *Invisible Businessman: Undermining Black Enterprise with Land Use Rules*, 2009 U. ILL. L. REV. 1061, 1095–1103.
239. *See generally* GARNETT, *supra* note 1.

Under certain circumstances, police officers apparently do as well. There is substantial evidence that certain kinds of policing techniques reduce both the fear of crime and crime itself. Importantly, a number of controlled policing experiments have linked foot patrols with reduced fear and, in many cases, reduced crime. For example, in 1979, Flint, Michigan established a neighborhood foot-patrol program, the goals of which included preventing crime, increasing police-citizen interaction and catalyzing neighborhood organization.[240] Over several years, researchers studying the effects of the foot patrols found that, in most of the beats with foot patrols, crime decreased.[241] Importantly, residents in these beats *believed* that foot patrols had decreased crime, regardless of whether they actually had.[242] Residents living in the foot-patrol areas also reported an increased level of communication with one another, a finding lending further support to the conclusion that order-maintenance policing efforts can increase neighborhood-level social capital.[243] Evidence from controlled experiments in other cities also suggests that certain elements of community policing can reduce the fear of crime and improve citizen perceptions of police performance.[244] In the Citizen Oriented Police Enforcement (COPE) project, for example, Baltimore, Maryland assigned forty-five officers to newly created units and then varied the intensity and organization of police presence over three years: in the first, intensive mobile patrol in targeted areas; in the second, officers increased their contacts with citizens, and some mobile patrols were shifted to foot patrol; in the third, officers engaged in intensive problem solving and community mobilization.[245] The COPE program's aim was specifically the reduction of the *fear* of crime. The evidence showed that fear was reduced most dramatically in the phase of the program featuring intensive contact and problem solving with community members.[246] It is reasonable to conclude from these studies that the police represent a partial response to the People Paradox. That is, the police may help address

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240. ROBERT TROJANOWICZ, AN EVALUATION OF THE NEIGHBORHOOD FOOT PATROL PROGRAM IN FLINT, MICHIGAN 9 (n.d.).

241. *Id.* at 27–31.

242. *Id.* at 31.

243. *Id.* at 57–63. As discussed above, the Newark Foot Patrol Experiment, which served as the catalyst for the *Broken Windows* essay, also found that foot patrols reduced the fear of crime, even when actual crime levels remained stable (or, in some cases, increased). George L. Kelling, *Conclusions* to POLICE FOUND., *supra* note 106, at 111, 114–19.

244. *See generally* David Weisburd & John E. Eck, *What Can Police Do to Reduce Crime, Disorder, and Fear?*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 42 (2004).

245. Cordner, *supra* note 199, at 223–25.

246. *Id.* Other experiments yield similar results: a comprehensive review of empirical and quasi-empirical studies of the relationship between policing strategies and fear reduction, conducted in 2002, found that order-maintenance policing strategies reduced fear in thirty-one of fifty studies; eighteen found no change and one reported an increase in fear. The authors noted that merely increasing police presence appears to do less to reduce fear than proactive, targeted policing efforts and community policing. *See* Zhao et al., *supra* note 199, at 280–95 (reviewing literature); *see also* Renauer, *supra* note 199, at 47.

the negative consequences of land-use reforms that promote greater land-use diversity in our urban neighborhoods.

The policy prescriptions that flow from this conclusion are, admittedly, not self-evidently clear. Consider the efforts to overcome residents fear and build collective efficacy that take center stage in many community-policing programs. For example, Chicago's CAPS program, discussed above, incorporates several forms of "assertive vigilance" that serve this function.[247] Police work with local community leaders — including pastors — organize marches in high-crime areas, prayer vigils at the site of gang- or drug-related shootings, "smoke-outs" (barbeque picnics) in drug-market areas, and "positive loitering" campaigns to harass prostitutes and their customers.[248] These efforts flow from the hope that public intervention can reinvigorate collective efficacy when neighborhood self-governance disappears. Yet it remains an open question how effective these strategies are at their appointed task. Somewhat ironically, Wilson — who is now seen as the godfather of such efforts — questioned their efficacy in his 1968 essay, *The Urban Unease*, when he argued that "there is relatively little government can do directly to maintain a neighborhood community. It can, of course, assign more police officers to it, but there are real limits to the value of this response."[249] Wilson's initial hesitation is at least partially confirmed by evidence suggesting that police-citizen collaborations that involve citizens directly in crime-prevention activities may actually increase fear of crime, at least among participants.[250]

Another complication flows from the evidence linking social incivilities to the fear of crime. This evidence clearly suggests that, as a means of fear reduction, order-maintenance proponents are correct to emphasize policing policies that focus on curbing social incivilities.[251] That said, recognizing this reality and responding to it appropriately are different things. Undoubtedly, just as there are categories of people who tend to both make us safer and make us feel safer, other categories of people likely both frighten us and increase our risk of victimization. U.S. law, however, strongly disfavors singling out categories of people (as opposed to categories of behaviors) for disfavored treatment. Yet the line between targeting the social incivilities that frighten us and the people associated with those incivilities is blurry,[252] leading order-maintenance crit-

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247. COMMUNITY POLICING IN CHICAGO, *supra* note 110, at 91–92; *see also infra* Part IV.A.

248. COMMUNITY POLICING IN CHICAGO, *supra* note 110, at 91–92; *see also* Tracey L. Meares & Kelsi Brown Corkran, *When 2 or 3 Come Together*, 48 WM. & MARY L. REV. 1315, 1333–35 (2007) (discussing prayer vigils).

249. James Q. Wilson, *The Urban Unease: Community vs. City*, 12 PUB. INT. 25, 34 (1968).

250. *See supra* note 199.

251. *See* Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165 (1996).

252. For example, several California cities have public nuisance laws to enjoin gang members from engaging in certain conduct — a practice condoned by the courts but condemned as profiling by

footprint, erase it. In other words, cities should *pick up the trash*. It is not just unsightly; it scares us. This simple reality strongly suggests that attention to basic city services, including sanitation and infrastructure, is an imperative. It also may recommend efforts of many cities, through "311" hotlines and otherwise, to collect information about, and respond more quickly and effectively to, quality-of-life problems. It also suggests the wisdom of coupling land-use reforms emphasizing urban vitality with sublocal government institutions, such as business-improvement districts, which tend to focus on providing supplemental sanitation and security services in urban communities.[259]

V. CONCLUSION

This Article has sought to build a case for land-use policies enabling and encouraging mixed-land-use urban neighborhoods that comes to terms with frequently unacknowledged evidence linking commercial land uses with crime and disorder. This case is built around an apparent paradox—city busyness may simultaneously make us feel safer while increasing our vulnerability to crime. This "People Paradox" suggests that two important (and related) urban policy goals—city-suburb competitiveness and crime reduction—are sometimes in tension with one another. It also suggests a greater understanding of the connection between land-use and policing policies may be necessary to advance these goals.

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259. Business improvement districts are territorial-defined sublocal districts in a city which finances, primarily through special assessments on real property, the supplemental provision of local services. *See* Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 512–14, 517–21 (1997). On business improvement district functions, see generally Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 394–408 (1999). On the functions of tax increment financing, see generally Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 67–74 (2010).