

BLACKS AND HISTORIC PRESERVATION

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Why should black people be so concerned about historic preservation? Consider, by way of example, Georgetown, a predominantly white enclave populated by the white aristocracy. Its reputation as a chic, expensive place to live is well known. The trouble is that we used to live there too—until the historical preservationists, in league with the real estate developers, decided that Georgetown's historic value was ripe for takeover.

Georgetown is a very old place, and blacks had been living there since before the Civil War.¹ By 1930 over forty per cent of the residents of Georgetown were black.² The housing they lived in was not grand, perhaps, but it was housing and it was theirs. Real estate brokers, however, recognized that the historically significant origins of Georgetown could, upon rehabilitation of the area, attract new white residents willing to pay handsomely for an association with history. Black homeowners could not resist the prices offered them, nor could they afford the significantly higher rents that the restored houses could command, and by 1950 most blacks had moved from Georgetown. The Georgetown syndrome has been aptly described by the Taubers, who point out that other examples exist in other cities including Charleston and Philadelphia.³

A close examination of the Georgetown syndrome reveals its galling effects. It contains most of the elements of an all-too-common pattern that has devastating effects on blacks. The first difficulty with this form of Negro displacement is that it is another example of whites deciding what is best for blacks. When Georgetown was taken over, blacks probably did not offer much resistance. The "white liberal" was thought of as a friend of the blacks. He would lead them to the promised land, but only as long as they did what was expected of them. The fact that he wanted to move into Georgetown was not supposed to be a matter of concern to blacks. Today that kind of approach does not commend respect in the black community. The need for and the imperative of black power with its tenet of self determination is here to stay.

The second difficulty with the Georgetown syndrome is that blacks have no place to move once they leave. What happens is that the white middle and upper classes, which already have the greatest number of housing choices, are given one

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¹ C. GREEN, *THE SECRET CITY: A HISTORY OF RACE RELATIONS IN THE NATION'S CAPITAL* 53-54 (1967).

² *Id.* at 235-36.

³ K. TAEUBER & A. TAEUBER, *NEGROES IN CITIES: RESIDENTIAL SEGREGATION AND NEIGHBORHOOD CHANGE* (1965).

more option, the old black neighborhood, and blacks, who have the smallest number of housing choices, are deprived of an option. The situation might be less obnoxious if preservationists showed some concern for relocation of the blacks, and put as much effort into that endeavor as they put into restoration. But of course this concern and effort have been conspicuously absent.⁴

There is, however, another more philosophical objection to the Georgetown syndrome. It is not clear that it properly qualifies as "historic preservation" at all. The true history of Georgetown—until the preservationists' interest in it—was an integrated history. The black elements in that history have now been destroyed, resulting in a perversion and distortion of history. An equally dramatic example of this distortion is found in the treatment of the role of the black man in the development of the South. It was he who labored to build the houses that preservationists are so eager to restore. There were no white building construction unions in those days. Slaves and free men of color built the houses.⁵ Of even more interest, some of those houses were built as homes for black people.⁶

What the preservationists have done to black history is not unique. Black men have been reduced to smiling, shuffling, banjo-playing indolents by many historians who should have known better.⁷ Blacks have attempted to correct the distortions in the teaching of history, and they are attempting to do the same thing with history as seen and as acted upon by the preservationists.

Much historic preservation in the Georgetown style more accurately reflects desires to profit and to provide a new area for white residents near the city core than a concern for history. A genuine concern for history would not countenance a course of action designed to distort that very history. A concern for social implications of a restoration project would compel the participation and involvement of blacks presently residing in historic neighborhoods in any preservation activities affecting that neighborhood.

The point of this discussion is that some historic preservation projects have been accompanied by wrongs perpetrated against blacks. It is the contention of the author that elimination of the wrongs may require the elimination or at least the drastic redesign of some historic preservation projects. Alternatives and compromises may exist. Some of them will be suggested here, but the focus is on the methods that might be available to end the Georgetown syndrome. The point is serious. Historic preservation work will confront black people who are tired of the things white people have done to them, and preservation activities will therefore have to change.

⁴ See Rohrbach, *The Poignant Dilemma of Spontaneous Restoration*, HISTORIC PRESERVATION, Oct.-Dec. 1970, at 4.

⁵ An excellent discussion of the artistic activities of black men in the antebellum South can be found in J. PORTER, *MODERN NEGRO ART* (1942).

⁶ See W. OVERDYKE, *LOUISIANA PLANTATION HOMES* (1965). See also *THE NEGRO ALMANAC* (Ploski and Brown eds. 1967).

⁷ See, e.g., S. MORISON & H. COMMAGER, *THE GROWTH OF THE AMERICAN REPUBLIC* (3rd ed. 1937).

I

BLACK INFLUENCE IN PRESERVATION PROJECTS

The Georgetown type of restoration project is one that results from the efforts of private enterprise. Preservation work could, however, be publicly financed.⁸ The methods that might be helpful in stopping the latter type of project might differ from the first. The focus of this paper, however, is on the private enterprise project.

The central elements of this type of project can be briefly summarized. A real estate developer or speculator decides that there is a profit in restoring a particular old neighborhood. The speculator may have been inspired by the local preservationists who have concluded that the neighborhood in question has fundamentally attractive qualities. The developer, appropriately fortified, proceeds to purchase a large portion of the land. He will probably obtain the aid of the building department or other appropriate governmental agency as a means of "stimulating" the present owners to sell.⁹ After acquiring title, the developer will proceed to obtain financing for the actual restoration and, upon completion of the restoration, will sell the restored unit at a high price to a white family. The developer would steadfastly maintain, of course, that he would sell to anybody, but there do not happen to be many blacks who can meet his price.

The black response to this scenario will depend in large part on their political power. The specific tactics available fall into two major categories: those that require relatively little political power and those that require a great deal. When blacks will gain a great deal of political power is a matter of some debate. Realistically, it has to be conceded that they may never get as much power as they want. But the potential for acquiring some degree of political power is great.

A. Refusal to Cooperate

An obvious answer to this threatened displacement would be for the black owner to say "no" to the developer. There have been instances of this behavior, as on East Capitol Hill. Unfortunately, whites are seldom disposed to accept a negative answer from blacks. The building inspector might decide that the neighborhood in question requires strict enforcement of the building code. The black owner usually cannot meet the standards because he is poor or because, even if he could afford it,

⁸ 16 U.S.C. § 470a (1970), authorizes the Secretary of the Interior to make grants to the states for the preparation of statewide historic surveys and plans for the preservation—for the public benefit—of districts, sites, buildings, and structures of historic significance.

⁴² U.S.C. § 1500d-1 (1970) provides for grants by HUD to state or local public bodies of up to 50 per cent of the cost of acquiring, restoring, or improving urban sites, structures, or areas of historic or architectural significance. This program will be merged, effective July 1, 1971, with HUD's Open Space Land Program. Housing Act of 1970, P.L. 91-609, § 401 (1970).

None of these programs are particularly suitable, however, for projects like Georgetown or East Capitol Hill. Others that might be applicable will be considered herein. See notes 15-29 and accompanying text *infra*.

⁹ Rohrbach, *supra* note 4, at 7.

financing is not available to bring the property up to code. He may sell rather than go through the rigors of housing court and its threats of fines and possible imprisonment. Furthermore, not all of the property owners will necessarily be black. The slum landlord would probably be more than willing to sell at the price offered by the developer. Indeed, it would appear that he is the first to sell.¹⁰ On balance, then, a refusal to cooperate may not work where blacks possess little political power, or where other tactics are not available.

B. Financing for Blacks

There are various federal programs providing assistance for rehabilitation or home improvement. The programs fall into two major categories, mortgage insurance and direct federal loans.¹¹ To the extent that they permit adequate restoration work, and to the extent blacks can actually use them, these programs could provide some basis for blacks to hold on to property they own.

Section 220(h) of the National Housing Act authorized HUD to insure home improvement loans on property located in an urban renewal area or in a concentrated code enforcement area.¹² Such loans are defined to include loans "for the purpose of financing the improvement of an existing structure (or in connection with an existing structure) which was constructed not less than ten years prior to the making of such loan, advance of credit, or purchase, and which is used or will be used primarily for residential purposes"¹³ Some restoration work could be accomplished under this section. The locational conditions must, of course, be met. In addition, there are dollar limitations on the size of an eligible loan. The maximum loan is \$12,000 per dwelling unit although the amount may be increased forty-five per cent in high cost areas. The amount of the loan, when added to any existing indebtedness related to the property, cannot exceed the limitations in section 221(d)(3) with respect to the maximum insurable dollar amount per unit.¹⁴

Sections 235 and 236 of the National Housing Act authorize HUD to insure loans and to make assistance payments¹⁵ or periodic interest reduction payments¹⁶ with respect to either new construction or rehabilitation.¹⁷ "Rehabilitation" is not defined in either act, although bringing a structure up to building code standard most likely involves some elements of restoration work. There are no locational limits in sections 235 and 236 and, therefore, the availability of these programs is not dependent on action taken by the municipality to establish urban renewal or code enforcement programs as is the case with section 220(h). There are, however, dollar limitations

¹⁰ *Id.*

¹¹ 12 U.S.C. §§ 1715k(h), 1715z, 1715z-1 (1970); 42 U.S.C. § 1452b (1970).

¹² 12 U.S.C. § 1715k(h)(1) (1970).

¹³ *Id.* § 1715k(h)(1)(A)(i).

¹⁴ *Id.* § 1715k(h)(2).

¹⁵ *Id.* § 1715z(c).

¹⁶ *Id.* § 1715z-1(c).

¹⁷ *Id.* §§ 1715z(8), 1715z-1(j).

for both the income of eligible homeowners¹⁸ or tenants¹⁹ and the insurable amount per unit. Under section 235 the maximum amount cannot exceed the section 221(d)(2) limits, and under section 236, the section 221(d)(3) limits.²⁰

Section 312 of the National Housing Act authorizes HUD to make direct loans to owners and tenants of property to finance rehabilitation.²¹ While the property need not necessarily be located in an urban renewal or concentrated code enforcement area, it must be located in an area "which the governing body of the locality has determined . . . contains a substantial number of structures in need of rehabilitation . . . [and] the property [must be] in need of rehabilitation and . . . in violation of the local minimum housing or similar code" ²² Thus, the availability of section 312 funds depends on municipal action, as is the case with section 220(h). Section 312 also incorporates the loan amount limitations contained in section 220(h).²³

One question common to all four programs is whether the section 221(d)(2) and section 221(d)(3) limitations with respect to the maximum insurable amount per unit are reasonable. From one point of view they may be, although no neighborhood restored under these programs would remotely resemble a Georgetown. The red-tape associated with HUD programs is considerable, but at the present time few alternatives are available. Few local lenders are willing to act beyond the umbrella of mortgage insurance. But the local lenders are nevertheless a matter of some interest to blacks. There are currently pending in the United States District Court for the Northern District of Illinois two cases²⁴ charging several banks and other lending institutions with conspiring to deprive the black plaintiffs of conventional mortgage financing. It is alleged that as a result of this conspiracy, blacks were forced to purchase real property on contract, a form of real estate financing which, in Illinois, does not afford the contract purchaser the critical protection of the right of redemption. If the plaintiffs win their suit, the possibilities for freeing up conventional mortgage money for blacks are considerable. Some of those funds could, of course, be used for rehabilitation work.

The development of black-owned lending institutions is a possible source of relief, although the willingness to date of black insurance companies to finance black real estate transactions has not been significant. The newer community-oriented banks hopefully can be counted on to take a more generous view of the efforts of blacks to fix up their own neighborhoods and to stay in them.

In short, then, there is likely to be more money available to blacks in the not too

¹⁸ *Id.* § 1715k(h).

¹⁹ *Id.* § 1715z-1(n).

²⁰ *Id.* §§ 1715z(i)(a), 1715-1(j)(3).

²¹ 42 U.S.C. § 1452b (1970).

²² *Id.* § 1452b(a)(1)(B).

²³ *Id.* § 1452b(c)(4)(A).

²⁴ *Baker v. F&F Investment*, 69 ER5 (N.D. Ill. 1969); *Clark v. Universal Builders Inc.*, 69 C-115 (N.D. Ill. 1969).

distant future. A black homeowner threatened by a code enforcement suit may, then, be in a better position to resist the preservationist, and the building inspector.

C. Other Methods for Influencing Restoration Projects

1. *Controlling Restoration Costs.* While restoration work can be expensive, it need not be, because not all restoration projects require elaborate, difficult work. If costs were reduced, blacks could undertake more restoration projects on their own. Present black workmen can certainly emulate the black craftsmen who constructed many of the homes now deemed worthy of preservation and do the restoration work themselves. If blacks do the work, the cost would be less because black workers do not belong to the construction trades unions and do not demand the high hourly rates that the unions demand.

In this same regard, it can be noted that the present preservation movement has devoted little attention to the need for development of inexpensive restoration techniques. The present costs of reproducing a Georgetown are so great as to constitute one of the major limitations on wide-spread restoration. Greater utilization of pre-fabricated components and simulated textures and materials would help to place restoration costs in a range which more property owners could afford.

2. *Nonviolent Protest.* While traditionally it has not been viewed as a legal remedy, moral suasion can have an eminently practical effect. If nothing else works, it may be possible to block an historic preservation project by the use of picketing and other related techniques. While more picketing alone perhaps cannot stop restoration work, bad publicity is likely to affect the enthusiasm of politically sensitive participants and donors. Adequate planning for black input at the initial stages of a project could, of course, remove the necessity for disruption.

II

THE IMPLICATIONS OF BLACK POLITICS

In addition to the above suggestions for increasing the black influence on preservation work, other developments in our society portend significant changes in the manner in which restoration projects are planned and executed. These developments relate to institutional, particularly governmental, adjustments which will ensure greater political power to black people. Decentralization of governmental functions, on the one hand, and increased black voter influence, on the other, suggest that in the future preservationist may not be able to rely on traditional mechanisms for realization of his restoration goals.

A. A Decentralization of Municipal Functions

There have in recent years been numerous and varied proponents of the view that cities would work better if municipal powers and functions were reallocated. As applied to central cities, this would entail, in short, "the transfer of some power

downward to the individual neighborhood."²⁵ In the opinion of Babcock and Bosselman,

The enforcement and administration of housing, zoning, and building codes and related ordinances may be a fair area in which to test out the feasibility of such a delegation of power, for in these spheres of government all would have to agree that those regional neighborhoods, the suburbs, should retain considerable administrative authority. No more is here proposed to be given to the city's neighborhoods than would be left to the suburbs by even the most intransigent regionalist.²⁶

Even this limited transfer of code enforcement power has significant implications for the preservation movement. A neighborhood building inspector would be less likely to assist the preservationists than one controlled by city hall,²⁷ especially when the likely result of the restoration project was a complete change in the residential composition of the neighborhood.

The input of the neighborhood may be even more direct. Decentralized planning functions may devolve to a neighborhood agency so that the propriety of a particular restoration project would be determined by it.²⁸ In exercising its approval power, the agency could exact promises and impose conditions which insured that the project satisfied community needs for housing, office space, and so on.

An important question is whether the neighborhood board could deny the preservationists a building permit on the grounds that it might deplete the supply of low-income housing in the area. The denial would attempt to break the recurring pattern of older, inexpensive housing being transformed into high-income housing upon restoration. The central issue is whether the police power may be validly used to conserve available low-income units. Applicable precedent may be found in the growing body of case law concerning the right of majority groups to thwart neighborhood housing projects intended for the poor and nonwhite.

Two recent cases are particularly relevant. In *SASSO v. Union City*, the Ninth Circuit identified an affirmative obligation on the part of the city to respond to the demand for low-cost housing:

Given the recognized importance of equal opportunities in housing, it may well be, as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops, accommodates the needs of its low-income families, who usually—if not always—are members of minority groups.²⁹

²⁵ See Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220, 222 (1967).

²⁶ *Id.*

²⁷ See text accompanying note 9 *supra*.

²⁸ In the scheme envisaged by Babcock and Bosselman, "the actual decisions as to where and how many new housing units would be permitted, and whether remodeling and conversions of old housing units would be allowed, could be delegated to the neighborhood Board, while the city retains control over the overall number of housing units that would be permitted in the neighborhood as a whole." Babcock & Bosselman, *supra* note 25, at 224.

²⁹ 424 F.2d 291, 295-96 (9th Cir. 1970).

In *DeSimone v. Greater Englewood Housing Corporation*³⁰ the question was whether a variance granted to build low-income housing in a white neighborhood could be sustained. A New Jersey statute required that variances be granted only for "special reasons." The local board of adjustment attempted to satisfy this requirement by reciting in considerable detail the housing needs created by overcrowding and blight in the black neighborhoods of the city. The New Jersey court held that:

[A]s matter of law in the light of public policy and the law of the land, that public or, as here, semi-public housing accommodations to provide safe, sanitary, and decent housing, to relieve and replace substandard living conditions or to furnish housing for minority or underprivileged segments of the population outside of ghetto areas is a special reason adequate to meet . . . [the statutory standard] and to ground a use variance.³¹

It has long been accepted that the development of low-income housing is a proper governmental concern. The implication of the recent decisions is that the pressing need for that housing may allow governmental units to give it a high priority even at the expense of more traditional values.

B. Black Control of the Central Government

In addition to demands for decentralization, direct political action by blacks in traditional governmental structures is becoming increasingly important. As black urban populations grow and as black voter registrations increase, black people assume political roles of increasing importance. In several cities, the result has been the election of a black as chief executive and the selection of a meaningful number of black councilmen.³²

If the leaders of these control movements are responsive to the community's needs, particularly housing, the manner in which preservation efforts have traditionally been carried out will be drastically modified. All of the techniques for influencing a preservation project discussed above would be available, but there would be others as well. If such projects were supervised by a city agency as in New York City,³³ it can be expected that the political conditions which resulted in control by blacks would insure a substantial influence on that agency as well. This opportunity for direct control of the preservation decision making process should insure that present priorities are readjusted away from satisfying only white middle-class demands.

All cities do not have these convenient mechanisms for monitoring the preservationists' efforts. Even in their absence, however, other less direct means of super-

³⁰ 267 A.2d 31, 56 N.J. 428 (1970).

³¹ 267 A.2d at 38-39, 56 N.J. at 442.

³² Cleveland, Ohio; Newark, New Jersey; Gary, Indiana; and several smaller cities mainly in the South, the Midwest, and California.

³³ New York City Landmark Preservation Act, N.Y.C. ADMIN. CODE ch. 8-A (Supp. 1970); Rankin, *Operation and Interpretation of the New York City Landmarks Preservation Act*, 36 LAW & CONTEMP. PROB. 366 (1971).

vision would be available to the blacks in power. While there are numerous avenues through which this control can be effected, a brief example illustrates the possibilities. Blacks may control the local redevelopment agency or the local housing authority. The power of eminent domain would typically be available to these bodies for the purposes of acquiring blighted areas.³⁴ The definition of a blighted area is typically broad enough to include deteriorating neighborhoods with historic significance.³⁵ Should a private developer undertake a preservation project which did provide for the appropriate black input, the eminent domain power could be exercised to stop the restoration. There would be considerable expense involved in utilizing this method of control. The land would have to be purchased and a renewal or housing project financed. While federal assistance is available, matching requirements would impose a burden. But the point is that the mere threat of the exercise of this power should ordinarily be sufficient to persuade the preservationist into a more conciliatory stance than he is now accustomed.

CONCLUSION

Historic preservation work has too often been a hobby of middle- and upper-class whites. The goals and methods of those interested in restoration need to be re-examined to accommodate black aspirations. Preservation is not inherently evil. Indeed, it can be employed to the substantial benefit of blacks. It may, for example, be utilized as a means of rehabilitating their present housing or restoring important elements of black history. But any compatibility between the black struggle and the traditional preservationist movement presumes major readjustments in present efforts. Even if preservationists do not recognize the need for this redirection, they can be assured that they will increasingly experience the pressures which are promoting it.

³⁴ See, e.g., ILL. REV. STAT. ch. 67½, §§ 8.15, 91.109, 91.112 (1967).

³⁵ See, e.g., ILL. REV. STAT. ch. 67½, § 91.103(i) (1967): "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals, or welfare."