GIVING RIGHTS TO DISTRESSED NEIGHBORHOODS

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ABSTRACT

American cities are quilts of contrasting colors. Driving along a city street, you will encounter patchworks of affluence and distress, health and malaise, demarcated by the borders of changing neighborhoods. In the urban fabric of American cities, each neighborhood assumes a character of its own.

Despite their immense impacts on urban life, neighborhoods as social, physical, and architectural spaces are passive in the law. From freeways to data centers—and the slow humming of architectural and social decay in the background—distressed neighborhoods face constant threats of external disruptions and internal needs for regeneration. But, as several recent suits brought by the National Fair Housing Alliance over mismanaged bank-owned properties show, distressed neighborhoods possess few legal recourses against powerful institutional actors arriving at their doorsteps.

This paper argues that neighborhoods should be understood as legal subjects with interests and rights. Drawing on theories from property law, comparative law, international law, environmental law, architectural theory, and urban political ecology, it develops a framework for understanding neighborhoods as vessels of certain rights. To define the contours of such rights, this paper studies practical experiences from Japan and China in managing neighborhood changes. These rights, this paper argues, are both retrospective—rights for stability and integrity—and prospective rights for development and self-reinvention. Together, these

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rights could help lawmakers better guide and evaluate future neighborhood changes.

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INTRODUCTION

> An uninhabited house of two storeys stood at the blind end, detached from its neighbors in a square ground. The other houses of the street, conscious of decent lives within them, gazed at one another with brown imperturbable faces.[1]

Recently, the National Fair Housing Alliance ("NFHA"), a national nonprofit dedicated to fighting housing discrimination, filed a series of lawsuits across the United States to turn the national focus on distressed urban neighborhoods.[2] In the latest of these suits, NFHA named Deutsche Bank as the defendant over the bank's maintenance practices of its real estate owned ("REO") properties, which are foreclosed properties under the bank's

1. *See* James Joyce, *Araby*, *in* DUBLINERS 33, 33 (1914).

2. *See, e.g.*, Nat'l Fair Hous. All. v. Deutsche Bank Nat'l Tr., No. 18 CV 839, 2025 WL 975967, at *1 (N.D. Ill. Mar. 31, 2025); Nat'l Fair Hous. All. v. Bank of Am., N.A., 401 F. Supp. 3d 619, 623 (D. Md. 2019); Nat'l Fair Hous. All. v. Fannie Mae, 294 F. Supp. 3d 940, 943–44 (N.D. Cal. 2018).

ownership.[3] NFHA claimed that the bank manages its REO properties to different standards across neighborhood lines.[4] Prior to the suits, NFHA and other regional fair housing organizations conducted decade-long surveys of REO properties in different neighborhoods across more than thirty metropolitan areas in the United States.[5] They compiled inventories of thousands of vacant residential units, each in different maintenance conditions.[6] Aggregating their data, they discovered that REO properties in minority neighborhoods with lower property values are more likely to receive deficient maintenance than those in predominantly White neighborhoods with higher property values.[7] Furthermore, the fair housing organizations assert that this pattern is downstream of the bank lenders' (and their affiliated mortgage loan servicers') discernible internal policies that distinguish between high- and low-value properties in their approach to maintenance and marketing.[8] They argue that this practice of "value redlining" prolongs vacancy of foreclosed properties in poorer neighborhoods, hurts the value of adjacent units, deters future investments into those neighborhoods, and exacerbates the inequality between neighborhoods across American cities.[9] NFHA sought to force the hands of the REO property owners through litigation, pushing banks to restructure their maintenance and marketing policies.[10] Ultimately, NFHA hoped to

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3. *See* Nat'l Fair Hous. All., *2015 Update: Discrimination by Banks in the Maintenance of Homes in Communities of Color Remains a Barrier to Recovery* (Aug. 28, 2015), https://nationalfairhousing.org/wp-content/uploads/2021/10/2015-REO-Update-9-14-2015-final.pdf [https://perma.cc/7FKS-6UNV]; *see, e.g.*, *Deutsche Bank Nat'l Tr.*, 2025 WL 975967, at *1.

4. *See Deutsche Bank Nat'l Tr.*, 2025 WL 975967, at *14 (arguing "statistically significant . . . evidence of defendants' policies of value redlining").

5. *See id.* at *2; *see also Fannie Mae Fails to Maintain Foreclosures in African American and Latino Neighborhoods in Metropolitan Chicago, IL*, S. SUBURBAN HOUS. CTR. (Dec. 5, 2016), https://southsuburbanhousingcenter.org/wp-content/uploads/2016/08/Chicago-Fannie-Mae-12.05.16.pdf (on file with the *Fordham Urban Law Journal*).

6. *See* Nat'l Fair Hous. All., *supra* note 3, at 1; *see also* S. Suburban Hous. Ctr., *supra* note 5, at 13 (documenting and comparing the numbers of code violations visible from the outside of the studied units in the Chicago area).

7. *See* Nat'l Fair Hous. All., *supra* note 3, at 1–2.

8. *See Deutsche Bank Nat'l Tr.*, 2025 WL 975967, at *24.

9. *See id.* at *38.

10. *See* Press Release, Nat'l Fair Hous. All., *Deutsche Bank, Ocwen Financial, and Altisource Accused of Racial Discrimination in 30 U.S. Metro Areas* (Feb. 1, 2018), https://nationalfairhousing.org/deutsche-bank-ocwen-financial-and-altisource-accused-of-racial-discrimination-in-30-u-s-metro-areas/ [https://perma.cc/FZ8N-RV5U] (announcing NFHA's goal to see the bank "implement changes to secure, maintain, and market its bank-owned homes in communities of color to the same standard it did in white neighborhoods").

pave a path towards the recovery for distressed neighborhoods by enforcing equitable standards of maintenance and marketing on a unit-by-unit basis.[11]

The physical neighborhood is central to NFHA's REO properties litigation campaign. For Deutsche Bank and other institutional property owners, their perceptions of neighborhood distress informed their allocations of resources. For NFHA and local residents, the neighborhood bore and contained all of the downstream consequences of property mismanagement: delayed maintenance, household flight, and vacancy contribute to the neighborhood's physical decay and undermine community health.[12]

Despite the neighborhood's decisive roles in forging the character of urban environments and determining the well-being of its residents, it receives little recognition in the law today. In American cities, neighborhoods generally lack independent legal personalities; they have no standing to sue nor a right to manage their physical presence.[13] For example, unlike the larger municipalities, most neighborhoods lack the authority to lay out zoning maps, pass building codes, or enforce violations.[14] And unlike individual property owners at the more granular scale, neighborhoods lack the powers inherent in property ownership to rearrange physical features and establish property boundaries. This is the reason why NFHA advanced its cases through an assemblage of thousands of individual property transgressions, but did not—and could not—assert any rights and interests

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11. *See* Nat'l Fair Hous. All., *supra* note 3, at 4.

12. *See* Ana V. Diez Roux & Christina Mair, *Neighborhoods and Health*, 1186 ANN. N.Y. ACAD. SCI. 125, 125, 129 (2010) (arguing that "[f]eatures of neighborhoods or residential environments may affect health and contribute to social and race/ethnic inequalities in health." These features include "land use patterns, density . . . access to destinations[,] street connectivity and transportation systems[,] features of urban design[, and] urban decay"); *see also* Karen Villanueva et al., Can the Neighborhood Built Environment Make a Difference to Children's Development? Building the Research Agenda to Create Evidence for Place-Based Children's Policy 2 (Nov. 20, 2014) (unpublished manuscript) (on file with the *Fordham Urban Law* Journal) ("Substantial evidence suggests that disadvantage appears to be geographically concentrated; disadvantaged people tend to live with other disadvantaged people, and that neighborhood disadvantage is associated with a number of factors (e.g., socioeconomic resources) that differentiate people who live in more or less affluent neighborhoods.").

13. The neighborhood is a geographical, social, and academic concept. It is not a juridical person. Although the Federal Rules of Civil Procedure Rule 23.2 allows for actions relating to unincorporated associations, distressed neighborhoods that lack social organizations are unlikely to meet this threshold because a neighborhood has no legal "members." *See* FED. R. CIV. P. 23.2.

14. Exceptions include neighborhoods with some forms of community organizations, such as homeowners' associations, or HOAs, which this paper will discuss in more depth *infra* Part III.A.

tied to the neighborhoods themselves.[15] By and large, distressed neighborhoods are mere passive presences in American cities.

Scholars have long advanced various proposals to empower the neighborhood.[16] However, most studies that elevate the needs of the neighborhood focus on emerging, growing, and successful neighborhoods. For example, Seattle's lauded neighborhood planning scheme, which emerged from Washington State's 1990 Growth Management Act,[17] developed during a distinctly growing phase of Seattle before the turn of the century.[18] As Seattle's neighborhoods matured, the neighborhood's planning autonomy gradually eroded.[19]

In distressed neighborhoods, proposed grassroots solutions are focused on building social infrastructure through community organizing. These proposals strain to extend the discourse towards necessary physical neighborhood interventions. For example, Ronald Oakerson and Jeremy Clifton conceived of the neighborhood as a commons and advocated that community members should organize to better manage its public resources.[20] Oakerson and Clifton compared neighborhood commons to renewable

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15. *See* Nat'l Fair Hous. All., *supra* note 3, at 3–4 (documenting transgressions such as "[t]all weeds," "neglected backyard," and "[t]rash and boarded window"); *see also* Nat'l Fair Hous. All. v. Deutsche Bank Nat'l Tr., No. 18 CV 839, 2025 WL 975967, at *2 (N.D. Ill. Mar. 31, 2025) (collecting photographic evidence of transgressions on individual properties).

16. *See, e.g.*, Robert H. Nelson, *Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods*, 7 GEO. MASON L. REV. 827, 829 (1999) [hereinafter Nelson, *Privatizing the Neighborhood*] (arguing for "[p]rivate neighborhood associations [to] administer the collective controls over neighborhood," overriding "governmental exercise of zoning powers").

17. *See* Growth Management Act, ch. 17, 1990 Wash. Sess. Laws 1979; WASH. RSCH. COUNCIL, WASHINGTON'S GROWTH MANAGEMENT ACT: GOALS AND PROMISES 2 (Policy Brief PB 01-29, Dec. 5, 2001) (listing as Goal 11 of the Growth Management Act to drive "[c]itizen participation and coordination . . . in the planning process").

18. *See* Carmen Sirianni, *Neighborhood Planning as Collaborative Democratic Design: The Case of Seattle*, 73 J. AM. PLAN. ASS'N 373, 374–75 (2007) (describing the roles of Seattle's "Department of Neighborhoods" in "convening representatives from independent neighborhood councils and other neighborhood groups" and ensuring "greater [neighborhood] participation"); Gregory Lewis McNamee, *Growth in the 20th Century*, ENCYCLOPEDIA BRITANNICA (May 17, 2024), https://www.britannica.com/place/Seattle-Washington/Growth-in-the-20th-century (on file with the *Fordham Urban Law Journal*) ("The rapid growth of the knowledge and high-technology sectors in the 1980s and 1990s encouraged immigration into the area from all parts of the world, and by the late 1990s about two million people lived in the city and its nearby suburbs.").

19. *See* Sirianni, *supra* note 18, at 384 (noting that, as the city's growth matured, neighborhood development managers, who were "critical to maintaining collaborative momentum, were partially cut back due to budgetary pressures under Mayor Schell and then fully eliminated in 2003 as the new mayor, Greg Nickels, moved to centralize control and concentrate planning resources on a few selected neighborhoods").

20. *See* Ronald J. Oakerson & Jeremy D.W. Clifton, *The Neighborhood as Commons: Reframing Neighborhood Decline*, 44 FORDHAM URB. L.J. 411, 418, 434 (2017).

natural resources, underscoring the passivity of the neighborhood as a physical space in their vision.[21] Oakerson and Clifton's study references a case study from Buffalo, New York in which collective interventions focused on supporting property owners, reducing crimes, changing individual behaviors, and attracting newcomers.[22] The solutions they endorse are centered on social organizing in the abstract, but not in a conversation with the neighborhoods' physical, immovable, place-based conditions.[23]

So, relatively little ink has been spilled to explore the rights of distressed neighborhoods as a physical, geographic, and architectural matter in relation to the socio-political dimension. More studies are needed to explore the physical neighborhood as a regulator, driver, and remedy to urban distress. Elsewhere in the world, many distressed neighborhoods play a more prominent role through law and policy in the reconfiguration and renewal of the physical urban fabric to better meet ever-changing urban needs.

This paper explores the radical possibilities for distressed neighborhoods to play a bigger role in molding the physical, social, and legal fabrics of American cities. Moreover, aided by international experiences, it seeks to build a framework to direct and evaluate neighborhood-led changes. Part I defines the scope of the rights for distressed neighborhoods. It argues that the rights implicated should be both retrospective and prospective. The retrospective rights of the neighborhoods should focus on maintaining the neighborhood's longstanding stability and integrity against harmful external disruptions, often against organized institutional and governmental actors. The prospective rights, in contrast, should aim to amplify a neighborhood's functions, development, and ability for self-reinvention. Both categories give neighborhoods the framework to evaluate whether proposed changes are harmful or beneficial. Part II references case studies from Japan and China to give more context for evaluating neighborhood changes. This section illustrates different approaches to vindicate these rights of distressed neighborhoods in the international context. Part III returns the focus to the United States. It explains why existing instruments in American property

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21. *See id.* at 418.

22. *See id.* at 424 (describing the "five-year revitalization plan" of Buffalo's West Side Community Collaborative, which "pursued three related objectives: (1) to increase homeownership without excluding responsible tenants and landlords; (2) to turn qualified tenants into homeowners; and (3) to encourage a mixed-income population in order to help build its commercial district").

23. *Cf.* Hitesh Vaidya & Tathagata Chatterji, *SDG 11 and the New Urban Agenda: Global Sustainability Frameworks for Local Action*, in ACTIONING THE GLOBAL GOALS FOR LOCAL IMPACT: TOWARDS SUSTAINABILITY SCIENCE, POLICY, EDUCATION AND PRACTICE 173, 174 (Isabel B. Franco et al. eds., 2020) (arguing "urban forms" are often dictated by the "place-specific political-economic scenario").

law fall short of the task of vindicating these rights for distressed neighborhoods. The United States has an unusually strong and rigid regime of property rights. But in one corner of American property law, Progressive Property Theory offers the theoretical foundation for change. Additionally, American courts could look to contemporary international legal movements as impetus for reforms. The U.N. Sustainable Development Goal 11 ("SDG 11") and ongoing debates surrounding the rights of nature carry significant legal and policy relevance to this paper's proposal. Part IV concludes by recognizing the push and pull of retrospective and prospective rights. It argues that this seeming paradox is necessary to enable positive, grounded, and balanced changes in distressed neighborhoods.

I. THE RIGHTS OF DISTRESSED NEIGHBORHOODS

Neighborhoods are "places that urban residents know best and are most concerned with."[24] They are defined physically, geographically, and socially. Physically and geographically, they are larger than individual parcels, plots, or units, but usually smaller than cities, census tracts, "community areas," and other larger urban subdivisions.[25] Socially, neighborhoods are "places that provide essential contexts for daily life."[26] Residents in the same neighborhood share the same urban contexts, whether growth or distress, for "what happens in their neighborhood affects their quality of life and . . . economic fortunes."[27]

The rights of the neighborhood are distinct from the rights of the individuals and communities who populate it; they exist at the confluence of the social and the physical. This section seeks to define the rights of the neighborhood concretely. It attempts to do so in theory and through practical case studies. The field of urban political ecology ("UPE") offers a theoretical foundation for the rights of the neighborhood. Upon this foundation, this section references historical evidence and theorizes the rights of the neighborhood from two practical angles: retrospectively, the neighborhood has the right to maintain its integrity and stability; prospectively, it has the right to develop and transform. These rights of the

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24. William M. Rohe, *From Local to Global: One Hundred Years of Neighborhood Planning*, 75 J. AM. PLAN. ASS'N 209, 210 (2009).

25. *Cf.* EMILY TALEN, NEIGHBORHOOD 90 (2018) [hereinafter TALEN, NEIGHBORHOOD] (citing Gilbert Herbert, *The Neighbourhood Unit Principle and Organic Theory*, 11 SOCIO. REV. 165 (1963)) (showing Chicago's 77 "community areas" to be further divided into neighborhoods. There have been various attempts to geographically define neighborhoods in Chicago, all arriving at different results: a 1946 plan divided Chicago into 514 neighborhoods; a 1978 plan yielded 178 neighborhoods; a current unofficial map of the city contains 228 neighborhoods).

26. TALEN, NEIGHBORHOOD, *supra* note 25, at 1.

27. Rohe, *supra* note 24, at 210.

neighborhood transcend individual property rights and should be recognized holistically in the law. They inform and contextualize neighborhood changes, distinguishing between the harmful and the beneficial. This is especially urgent for distressed neighborhoods experiencing declining population and diminished community voices.

A. Lessons from Urban Political Ecology

Why should the law give rights to the neighborhood, especially distressed neighborhoods? The first step in this inquiry is to consider what is captured by the rights of the neighborhood that is not captured by more granular individual property rights or the broader powers already wielded by municipalities. The field of UPE offers pertinent insights.

UPE studies how "nature is both produced and reproduced through social relations in urban contexts."[28] It focuses narrowly on the ecological features of cities, tracing how green spaces are created in urban areas through communal coordination, material conversion, and continued maintenance.[29]

UPE scholars conceptualize the incorporation of nature into the urban fabric through a systematic, collaborative process involving diverse actors.[30] Concretely, state, market, and community actors come together to direct urban greening schemes across public and private properties, thus "reshap[ing] the very physical fabric of the urban space."[31] Designers submit sustainable designs; suppliers bring technical know-how; property owners give their support and consent; municipal governments modify zoning regulations and issue variances; developers put the designs and technologies into practice.[32] Zooming out, this process at the granular level is further "embed[ed] within broader urban flows" of resources, technologies, capital, and politics in shaping where and how much greenery is distributed across the city.[33]

We could readily expand UPEs theories to other aspects of the build environment: not only ecological features, but also walls, buildings, roads, and other physical features. The concept of "urban metabolism" undergirds

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28. Chihsin Chiu et al., *Conversion, Coordination and Care: Unpacking Housing-featured Urban Renaturing in Taichung*, 9 ENV'T & PLAN. E: NATURE & SPACE 597, 598 (2026).

29. *See id.* at 600–02.

30. *See id.* at 599–600 (arguing that "[i]n UPE, intersectoral coordination is central to the social production of nature, as diverse actors align and reconfigure resources, technologies, and their values to shape urban environments").

31. *Id.* at 600–01.

32. *See id.* at 601.

33. *Id.* at 600.

UPE's conception of the city.[34] In this conception, the city absorbs "materials and commodities," including water, food, fuel, energy, and even construction materials; in turn, it manages the removal and disposal of waste and pollution.[35] The overall metabolic process is subdivided "into standardized urban metabolic systems" that direct and shape the production of not only nature, but much else.[36] For some urban productions, neighborhoods are such standardized systems that power the city.[37]

More generally, UPE attempts to connect "social practices and materiality" within the urban system.[38] In the neighborhood, "diverse actors align and reconfigure resources, technologies, and their values" to shape the physical neighborhood.[39] In return, the physical neighborhood enables and channels social movements, processes, and decision-making. This is why architectural theorist Keller Easterling described the urban environment as essentially composed of nothing but "information" behind the visible facades.[40] The information "resides in invisible, powerful activities that determine how objects and content are organized and circulated."[41]

In distressed neighborhoods, this symbiotic information process grinds to a halt. Where the neighborhood suffers from social disinvestment and flight, it likely also faces physical decay. Both social and physical systems break down side by side: "[t]here is an ironic parallel between the loss of neighborhood as a locale to be physically planned and the loss of neighborhood as an entity with political power."[42] To tackle the breaking down of the neighborhood's functional metabolic systems, the law must first recognize the neighborhood as a distinct, functional unit that warrants wholesale protection and management.

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34. *Id.* at 609.

35. Abel Wolman, *The Metabolism of Cities*, 213 SCI. AM. 178, 179 (1965).

36. Chiu et al., *supra* note 28, at 600–01.

37. Neighborhoods are often standardized urban forms, born out of the Progressive Era's "quest for social uniformity" and championed by Clarence Perry. *See* Christopher Silver, *Neighborhood Planning in Historical Perspective*, 51 J. AM. PLAN. ASS'N 161, 165 (1985). Even today, neighborhoods typically exhibit shared socio-economic outcomes, as discussed below, reflecting their roles as standardized system units within the larger urban fabric, under UPE's conceptualization of cities.

38. *See* Chiu et al., *supra* note 28, at 598.

39. *Id.* at 600.

40. *See* KELLER EASTERLING, EXTRASTATECRAFT 13 (2014).

41. *Id.*

42. Emily Talen, *Plan v. Process: The Case of Neighborhood Planning*, 45 BUILT ENV'T 173, 178, 183 (2019) [hereinafter Talen, *Plan v. Process*] (underscoring the importance of contextualized actions within the neighborhood, contending "that neighborhood activism and engagement has more impact if it is contextualized within a physical neighborhood framework").

Thus, to fight neighborhood distress, it is imperative to give rights to the neighborhood. The NFHA plaintiffs had to go the distance to document thousands of individual properties to advance protections for underserved neighborhoods—because the bigger-picture conditions of the neighborhoods lack legal recognition. The following sections derive a framework of rights of the neighborhood from practical case studies.

B. Retrospective Rights of the Neighborhood

Throughout the past century, American neighborhoods have encountered various external disruptions that threaten their integrity and functions.[43] Underserved neighborhoods are especially vulnerable to these shocks, which exacerbate existing distress, due to the lack of political power and exclusion from the decision-making process.[44] Neighborhood rights to maintain longstanding livability, stability, and integrity are retrospective rights. These retrospective rights help deter harmful neighborhood changes that powerful institutional and governmental actors promulgate top-down.

The preludes to the "freeway revolts" demonstrated the importance of these retrospective rights.[45] After the passage of the Federal-Aid Highway Act in 1956, "interstate highway construction began penetrating urban America and knocking down neighborhoods."[46]

At first, the federal program of interstate highway construction wielded eminent domain powers to its advantage.[47] The "highway builders moved quickly in the late 1950s to construct the urban interstates, the inner beltways, and radials."[48] The resulting highways were "concrete monsters"

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43. *See* the freeway and data center construction debates *infra* Section I.B.

44. *See, e.g.*, Jacob Carter, *The AI Data Center Boom Is an Environmental Justice Crisis*, NAT'L WILDLIFE FOUND. BLOG (May 7, 2026), https://blog.nwf.org/2026/05/the-ai-data-center-boom-is-an-environmental-justice-crisis/ [https://perma.cc/T46S-QMZS] (describing how, in the push to build data centers in different parts of the country, local "communities are not brought into the planning and design phases of [data center] projects that will directly affect the places they call home" while the "people making . . . decisions often do not live there." In the case study in Tennessee, "data center operation and development was already moving across [the state] without communities being informed").

45. *See generally* Raymond A. Mohl, *Stop the Road: Freeway Revolts in American Cities*, 30 J. URB. HIST. 674 (2004) (documenting the eruption of the "freeway revolts" in American cities in the 1960s and early 1970s).

46. *Id.* at 674, 676.

47. In the preceding decades, American courts had expanded the legal scope and frequency of use of eminent domain to enable "a variety of government programs" aimed at promoting "broad public benefit," which easily encompassed highway construction. *See* Errol E. Meidinger, *The "Public Uses" of Eminent Domain: History and Policy*, 11 ENV'T L. 33, 35 (1980).

48. Mohl, *supra* note 45, at 675.

that cut through neighborhoods.[49] They dissected the existing "social and physical fabric of American cities[, which] inevitably resulted in housing demolition on a large scale, the destruction of entire communities, severe relocation problems, and subsequent environmental damage."[50]

In the early years of the interstate program, few communities had fully grasped the impacts of these projects on their neighborhoods.[51] By the early 1960s, however, "neighborhood leaders, institutions, and businesses had time to organize against the highwaymen," thus beginning the freeway revolts.[52] Some had spectacular success. In many instances, the movement forced highway rerouting and even shut down some projects permanently.[53] The freeway rebels were aided by influential thinkers and urbanists such as Lewis Mumford and Jane Jacobs, who rallied against the highway construction and neighborhood destruction.[54]

Still, the freeway rebels' successes spread unevenly across American cities. Across different neighborhoods, the freeway revolts had "diverse outcomes from place to place."[55] From abundant case studies, scholars have distilled key conditions that predicted neighborhoods' success in deterring highway disruptions. The conditions include "persistent neighborhood activism, committed local leaders, []extensive cross-city, cross-class, and interracial alliances," and exposure through "influential newspapers and journalists."[56] These are precisely the advantages that distressed neighborhoods often lack.

Moreover, scholars contend that legal actions were instrumental to some neighborhoods' success.[57] The freeway rebels "often needed a final shutdown decision from the courts" to secure their victories; otherwise, "the

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49. Mohl, *supra* note 45, at 674.

50. Mohl, *supra* note 45, at 674 (alteration in original).

51. *See* Mohl, *supra* note 45, at 675 (explaining that, in the first years of interstate construction, "opposition never materialized or was weakly expressed").

52. Mohl, *supra* note 45, at 675.

53. *See* Mohl, *supra* note 45, at 675 (explaining some freeway revolts forced adoption of alternative routes, leading to some permanent shutdowns).

54. *See* Lewis Mumford, *The Highway and the City*, *in* THE HIGHWAY AND THE CITY 241 (1963) (describing highway constructions in metropolitan areas as "annexations and spoliations" and offering various examples from Boston, Chicago, Philadelphia, San Francisco, and Paris); *see also* Jack Doyle, *Highway Wars—1950s–1970s*, POPULAR HIST. DIG. (Oct. 25, 2020), https://pophistorydig.com/topics/tag/american-freeway-revolt/ [https://perma.cc/8KAF-WSC4] ("the automobile has been the chief destroyer of American communities") (quoting JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961)).

55. Mohl, *supra* note 45, at 676.

56. Mohl, *supra* note 45, at 676 (alteration in original).

57. *See* Mohl, *supra* note 45, at 676.

freeway would get built anyway."[58] In other cases, lawsuits helped to delay "land acquisition and construction for years," giving time for communities to organize.[59]

Today, the freeway revolts are history, but American neighborhoods are still faced with external disruptions from organized, powerful interest groups. Some of these disruptions are discreet and mundane, such as the differential treatment of REO properties by bank lenders, as NFHA's suits allege.[60] Others are just as visible and controversial as freeway constructions were decades ago, and these include the recent wave of data center constructions in American neighborhoods.[61]

Over the past few years, the construction of data centers has stormed into the national consciousness. Data centers are physical buildings used to house servers and computing equipment.[62] Although they are not new, the proliferation of artificial intelligence ("AI") has drastically driven up demand for computing power.[63] The opportunity to catch the economic tailwind of AI expansion incentivizes states and cities to rezone urban land to allow for data centers to be built in their jurisdictions.[64]

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58. Mohl, *supra* note 45, at 676.

59. Mohl, *supra* note 45, at 676.

60. *See* Nat'l Fair Hous. All. v. Bank of Am., N.A., 401 F. Supp. 3d 619, 623–24, 644 (D. Md. 2019) (plaintiff alleging that "across the board, properties located in communities of color were much more likely to have numerous objective routine maintenance and marketing deficiencies," and these deficiencies impact neighboring properties in ways that are "not minor, temporary, or localized"); *see also* Nat'l Fair Hous. All. v. Fannie Mae, 294 F. Supp. 3d 940, 944 (N.D. Cal. 2018) (plaintiff similarly alleging that "Fannie Mae has failed to conduct routine exterior maintenance and marketing of REO properties in communities of color, thereby leaving those REOs in a state of neglect"); Nat'l Fair Hous. All. v. Deutsche Bank Nat'l Tr., No. 18 CV 839, 2025 WL 975967, at *43 (N.D. Ill. Mar. 31, 2025) (alleging "statistically significant racial disparities [in REO maintenance] as well as evidence of defendants' policies of value redlining").

61. *See* Susan Milligan, *Debate over Data Centers Heats Up in the States*, INST. FOR BUS. GLOB. SOC'Y (July 10, 2026), https://www.hbs.edu/bigs/debate-over-data-centers-heats-up-in-the-states [https://perma.cc/5ZE2-Y382] (explaining data centers are a nationwide issue regulated at state and local levels, with seven in ten Americans opposing data center construction in their area).

62. *See* Arpan Lobo, *3 Things to Know About Data Center Debate in Michigan Legislature*, DET. FREE PRESS (June 27, 2026, 06:04 ET) [hereinafter Lobo, *3 Things to Know About Data Center Debate*]., https://www.freep.com/story/news/politics/2026/06/27/data-center-regulation-michigan-new-proposals/90706365007/ [https://perma.cc/7D4V-ZWLA].

63. *See* Lobo, *3 Things to Know About Data Center Debate*, *supra* note 62.

64. Nat'l Conf. of State Legislatures, *Subsidizing Servers: How States Are Competing to Attract Data Centers* (Apr. 1, 2026), https://www.ncsl.org/fiscal/subsidizing-servers-how-states-are-competing-to-attract-data-centers [https://perma.cc/5M5S-V6HR] (observing "38 states offer dedicated tax incentives for data centers, ranging from sales and use tax exemptions to property tax abatements." Moreover, as demands for data centers rise, "states are increasingly competing to attract these capital-intensive projects." Of these states, "at least nine states consider geographic factors. In Maryland and Virginia, the investment

Data centers, especially the "hyperscale" data centers being proposed, are detrimental to nearby neighborhoods' public health, quietude and livability, environmental quality, and access to critical resources such as water and electricity.[65] Data centers' thirst for power often means expanded reliance on fossil fuel power plants and on-site diesel generators that emit air pollution close to urban areas.[66] A recent study projects the cost to public health to be approaching $20 billion annually by 2028, noting that data centers contribute to "approximately 600,000 asthma symptom cases and 1,300 deaths."[67] Data centers generate noise and light pollution that further undermine urban neighborhoods' public health and livability.[68] These impacts are described as a "health earthquake" in some American neighborhoods.[69] Data centers also squeeze precious resources that neighborhoods rely on, including water and electricity. A typical data center consumes five million gallons of freshwater per day for cooling, an amount sufficient to supply a small city of up to 50,000 people.[70]

Neighborhoods have organized to push back against data center construction, just as they once organized against the freeways. Such organizing has indeed forced developers to withdraw some proposals for new data center projects.[71] State zoning laws, however, sometimes "make it

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threshold is lower if the data center is built in an opportunity zone or in distressed municipalities"); Maggie Dougherty, *Developer Withdraws Rezoning Request for Controversial Data Center in Hoffman Estates*, WTTW NEWS (July 1, 2026), https://news.wttw.com/2026/07/01/developer-withdraws-rezoning-request-controversial-data-center-hoffman-estates [https://perma.cc/S5VG-7JM2] (describing developers applying for land rezoning for data center construction in a Chicago suburb, garnering community opposition that ultimately led to the withdrawal of the rezoning request).

65. Lobo, *3 Things to Know About Data Center Debate*, *supra* note 62.

66. *See* Yuelin Han et al., *Health-Informed Computing: Estimating and Addressing the Public Health Impact of Data Centers* 1 (arXiv, Working Paper No. 2412.06288v4, 2026) https://arxiv.org/abs/2412.06288v4 [https://perma.cc/79ZV-23FU].

67. Han et al., *supra* note 66, at 2.

68. *See* Cecelia Smith-Schoenwalder, *'Living in Hell': Data Center Neighbors Grapple with Noise, Air Pollution*, U.S. NEWS & WORLD REP. (Apr. 28, 2026, at 14:04 ET), https://www.usnews.com/news/national-news/articles/2026-04-28/living-in-hell-data-center-neighbors-grapple-with-noise-air-pollution [https://perma.cc/Q2QD-NMUP] (noting that "[b]ackup diesel generators, construction, cooling systems and other machinery at data centers all produce sound" that feels "100% unnatural" and that the impacts of this noise pollution are "especially harmful to children").

69. *See* Smith-Schoenwalder, *supra* note 68 (using the term "health earthquake" to describe the health impacts from data centers that, in the event of a grid overload, turn to their backup diesel generators to emit their annual emission allowances "within just days").

70. *See* Miguel Yañez-Barnuevo, *Data Centers and Water Consumption*, ENV'T & ENERGY STUDY INST. (June 25, 2025), https://www.eesi.org/articles/view/data-centers-and-water-consumption [https://perma.cc/Z353-WVAP].

71. *See* Brian J. Rogal, *Data Center Developer Reverses Course in Hoffman Estates, Days Before Vote on Controversial Plan*, CHI. TRIB. (July 6, 2026, at 05:00 CDT),

difficult for communities to block data centers entirely."[72] Developers may sue the city, alleging differential treatment, should the local government approve other projects for industrial zones and not theirs.[73] This is not to mention that, in light of the economic incentives that data centers offer, distressed and marginalized neighborhoods may struggle to sufficiently organize and gain the backing of city regulators in the first place. Today, developers plan data center projects disproportionately in distressed, marginalized neighborhoods.[74]

Giving rights to distressed neighborhoods would expand the recourses available to marginalized communities against intrusive projects, from freeways to data centers. These retrospective rights to maintain a neighborhood's livability, stability, and integrity are critical to deter powerful institutional and governmental actors—from the federal government, to the bank lenders, and to the data center developers—from imposing their socio-economic advantages against marginalized communities. Thus, these retrospective rights of the neighborhood fill not only the physical voids of vacant lots, but also the social voids of political power, organization, and wealth.[75]

At the same time, distressed neighborhoods, which suffer from flight and disinvestment, are unlikely to wield these retrospective rights against individuals to exclude. In fact, these retrospective rights work in tandem with the prospective rights of the neighborhood for change, which the next section will cover.

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https://www.chicagotribune.com/2026/07/06/data-center-karis-critical-hoffman-estates/ [https://perma.cc/W3NW-WXG7].

72. Lobo, *3 Things to Know About Data Center Debate*, *supra* note 62.

73. *See* Arpan Lobo, *Why Michigan Communities Struggle to Block New Data Centers*, DET. FREE PRESS (May 2, 2026, 11:27 ET), https://www.freep.com/story/news/politics/2026/05/01/michigan-data-centers-zoning-local-control/89819738007/ (on file with the *Fordham Urban Law Journal*) (describing local governments' inability to prevent a data center development plan "[d]ue to zoning laws" in some states). In Michigan, the "townships can't actually prevent a data center project from moving forward, so long as developers can meet site planning standards and other typical requirements . . . . under industrial zoning, a land use many communities in Michigan have already established for things like manufacturing and construction facilities." *Id.*

74. Carla D. Walker & Ian Goldsmith, *From Energy Use to Air Quality, the Many Ways Data Centers Affect U.S. Communities*, WORLD RES. INST. (Feb. 17, 2026), https://www.wri.org/insights/us-data-center-growth-impacts [https://perma.cc/YF57-J9HC] (citing "[a] national review of roughly 700 data centers across the country [finding] that nearly half are in census tracts with above-median environmental burdens, such as air pollution, park access and water pollution," which correlates with "social vulnerability indicators, such as poverty and lower education levels").

75. *See* Talen, *Plan v. Process*, *supra* note 42, at 179 (arguing that "throughout history, neighbourhoods managed to assert their relevance via political organization").

C. Prospective Rights of the Neighborhood

If retrospective rights of the neighborhood are negative rights guarding against disruptions by organized interests, the prospective rights of the neighborhood are positive rights that allow changes to spring from within the neighborhood. These are the rights for development, intervention, and reinvention. They should facilitate placemaking to regulate neighborhood functions, which often requires overcoming exclusionary legacies in urban design. The prospective rights prioritize forward-looking neighborhood functions rather than legacy property entitlements.

Everywhere in American cities, the built environment is designed to regulate neighborhood functions. Urban planners and geographers have long recognized that architecture regulates neighborhoods by shaping behavior.[76] Researchers continue to study how to optimize architecture's regulatory powers for the residents' well-being.[77] Optimization includes controlling crime,[78] promoting public health,[79] and fulfilling other regulatory objectives.[80] But evolving urban contexts require designing and creating new places in American cities.

Placemaking starts from inconspicuous neighborhood changes. Architects have long pointed out that the placements of "simple items, such as doors, bus stops, and park benches" change crime patterns.[81] But architecture also exerts influence in more persistent, less conspicuous ways. The "built environment plays a crucial role in health and well-being outcomes" of the neighborhood's residents.[82] The World Happiness Report—compiled by numerous international organizations, including the

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76. *See* Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1944 (2015).

77. *See* Elham Andalib et al., *The Interplay Between the Built Environment, Health, and Well-Being—a Scoping Review*, 8 URB. SCI., no. 184, Oct. 22, 2024, at 3 (surveying "research about the impact of the built environment on health and well-being").

78. *See* Neal K. Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039, 1041 (2002) (arguing that "one of the most important and underexplored forms of crime control is architecture").

79. *See* RUSSELL P. LOPEZ, THE BUILT ENVIRONMENT AND PUBLIC HEALTH 4 (2012) (describing recent "efforts to use the power of the built environment interventions to address . . . current health concerns").

80. *See* Katyal, *supra* note 78, at 1045 (recognizing, generally, that "architectural variables influence human behavior"); Rajiv C. Shah & Jay P. Kesan, *How Architecture Regulates*, 24 J. ARCHITECTURAL & PLAN. RSCH. 350, 351 (2007) (proposing three mechanisms by which architecture fulfills regulatory objectives: "First, architecture . . . play[s] a communicative role by expressing cultural or symbolic meanings. Second, architecture . . . affect[s] how people interact. Third, architecture can be biased by favoring certain social groups or values.").

81. Katyal, *supra* note 78, at 1047.

82. Andalib et al., *supra* note 77, at 4.

U.N. Sustainable Development Solutions Network, Oxford Wellbeing Research Centre, and Gallup—established "that the impact of access to green and blue spaces, scenic beauty, daylight, local environment quality, and community amenities could affect individual subjective well-being and happiness."[83] Furthermore, the Institute for Health Metrics and Evaluation anticipates that the physical environmental quality of a neighborhood "could affect different non-communicable diseases around the world such as cardiovascular disease, cancer, diabetes, and depression."[84]

Of all the residents of a neighborhood, children are perhaps the most sensitive to the built environment. In a study of the impact of the built neighborhood on childhood development, Karen Villanueva and colleagues established specific connections between the physical features of a neighborhood and various behavioral patterns and life outcomes for children.[85] The study imparts several pieces of practical wisdom: it discovers that urban compactness and walkability are important for health, but very high urban density also causes childhood behavior problems, social withdrawal, poor academic attainment, and other negative developmental outcomes.[86] Moreover, the study discovers that urban nodes are especially important to resident well-being: children would benefit from access to key local destinations, such as parks, stores, and other "physical places for social interaction and developing networks of support."[87] But not all nodes are created equal. Children tend to visit "more attractive parks with appealing attributes, such as better play equipment," rather than the closest one.[88] All in all, the neighborhood should retain the ability to create and maintain "key local destinations" needed to optimize its access, activity, safety, and health as a part of its prospective rights.[89] The prospective rights of the

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83. Andalib et al., *supra* note 77, at 1–2 (first citing SUSTAINABLE DEV. SOLS. NETWORK, WORLD HAPPINESS REPORT 2023 (John F. Helliwell et al. eds., 2023); and then citing SUSTAINABLE DEV. SOLS. NETWORK, WORLD HAPPINESS REPORT 2022 (John F. Helliwell et al. eds., 2022)).

84. Andalib et al., *supra* note 77, at 2.

85. *See* Villanueva et al., *supra* note 12, at 2 (arguing that "[t]he built environment is one important facet of the neighborhood setting, yet understanding its potential effect on children's development has been mostly overlooked"). The study then proceeds to discuss the environmental impacts of specific neighborhood characteristics, including housing density, traffic, and access to local destinations and nature. *See* Villanueva et al., *supra* note 12, at 3–5.

86. Villanueva et al., *supra* note 12, at 3.

87. *See* Villanueva et al., *supra* note 12, at 4 (arguing access to local destinations impacts childhood development through opportunities to learn, socialize, explore, and interact).

88. Villanueva et al., *supra* note 12, at 5.

89. *See* Villanueva et al., *supra* note 12, at 13, 14 (arguing access to better-quality destinations provides childhood development benefits and decreases socioeconomic inequality).

neighborhood should aim to enhance neighborhood capacities for place-creation through architectural interventions.

Often, however, placemaking requires overcoming the architectural legacies of established neighborhoods. Neighborhood distress is often rooted in evolving urban functions and neighborhoods' failures to adapt.[90] In distressed neighborhoods, architectural legacies are often outdated, unable to adapt to evolving neighborhood functions. Adaptation, in turn, begins with the neighborhood's physical locale. Where the neighborhood is losing its political power, Emily Talen observed, there is often a "parallel . . . loss of neighborhood as a [physically planned] locale."[91]

In other cases, neighborhoods may face intentionally exclusionary architectural legacies. Sarah Schindler argued that, historically, the physical designs of many American neighborhoods have often embodied hidden "exclusionary urban design tactics."[92] Some exclusionary architectural features are conspicuous and unmistakable: for example, walls and barriers at property boundaries.[93] Famous examples include Detroit's "Eight Mile Wall," once built to segregate Black communities,[94] and a "ten-foot-high, 1,500-foot-long fence" separating Hamden, Connecticut from nearby public housing projects.[95] Other architectural features that inhibit access are more subtle. For example, many bridges designed by influential 20th-century planner Robert Moses on Long Island were intentionally built so low that buses could not pass under them.[96] Neighborhood roads that lack sidewalks are even more banal and commonplace, but may be just as intentional. Wide, divided highways further inhibit neighborhood access and integration.[97] The placement of transit stops not only mold people's movement within a community but often determines where they can live and work.[98] All of these architectural legacies diminish neighborhood functions and limit activities.

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90. *See* Talen, *Plan v. Process*, *supra* note 42, at 182 (citing "historian Abu-Lughod's argument that neighborhoods based on historical conditions could not be successfully recreated when those conditions no longer existed").

91. Talen, *Plan v. Process*, *supra* note 42, at 178 (alteration in original).

92. Schindler, *supra* note 76, at 1939.

93. *See* Schindler, *supra* note 76, at 1955.

94. The "Eight Mile Wall," called the Birwood Wall, was built in the 1940s by a real estate developer James T. McMillan to keep "Blacks and Whites separated". Helmut Ziewers, *Birwood Wall*, HISTORIC DET. (Oct. 4, 2023), https://historicdetroit.org/buildings/birwood-wall [https://perma.cc/5TX2-QBXV].

95. *See* Schindler, *supra* note 76, at 1955–56 (explaining residents in the predominantly Black public housing were extremely isolated from the surrounding community).

96. *See* Schindler, *supra* note 76, at 1953.

97. *See* Schindler, *supra* note 76, at 1966 (observing that highways are often used to "intentionally displace poor black neighborhoods").

98. *See* Schindler, *supra* note 76, at 1960–63.

The right of the neighborhood to implement *extraordinary* architectural interventions is critical for overcoming these exclusionary legacies. Unlike *ordinary* interventions, which include regular upkeep, renovation, and construction, extraordinary interventions challenge established property boundaries, neighborhood spatial layouts, and zoning regulations.[99] Thus, extraordinary interventions likely require the neighborhood to wield its prospective rights to develop and adapt.

These extraordinary interventions work at different scales.[100] Relatively small-scale architectural interventions—such as the rehabilitation of a single building within the confines of an existing plot—face few legal hurdles.[101] Rehabilitation aims to recover the usability of "degraded and abandoned" buildings "for inclusion in the urban fabric."[102] It "can include all of the traditional elements of building alterations and additions, as well as repairs, maintenance, and other improvements."[103] The aim is to return the structure to its original use from a state of disrepair. Today, state and local laws are most likely to anticipate and even require rehabilitation.[104]

But mere rehabilitation is unlikely to reverse prolonged neighborhood distress, especially where the neighborhood can no longer accommodate the original functions of legacy structures due to demographic and economic shifts.[105] More than rehabilitation, adaptive reuse allows for implementing more imaginative projects to fight neighborhood distress. Although adaptive reuse is a broad term in the current literature,[106] it involves, at bottom,

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99. For example, the neighborhood could implement projects that require a zoning variance, combine adjacent vacant lots, or adapt distressed structures for reuse.

100. *See* Marco Alonso Martínez Cuaresma et al., *Voids and Architectural Regeneration: Systematic Review of Applied Approaches*, 9 URB. SCI., no. 344, Aug. 30, 2025, at 1.

101. *See id.*

102. *Id.* at 10; *see also* Eduardo Linhares Qualharini, Luiz Henrique Costa Oscar & Maiane Ramos da Silva, *Rehabilitation of Buildings as an Alternative to Sustainability in Brazilian Constructions*, 9 OPEN ENG'G 139, 140 (2019).

103. H.N. Osgood & A.H. Zwerner, *Rehabilitation and Conservation*, 25 LAW & CONTEMP. PROBS. 705, 707 (1960).

104. *See* Sarah Schindler, *The Future of Abandoned Big Box Stores: Legal Solutions to the Legacies of Poor Planning Decisions*, 83 U. COLO. L. REV. 471, 500 n.138, 527–28 n.255 (2012).

105. *See* Álex Escolà-Gascón et al., *Abandoned vs. Regenerated Places: Evidence of Five Social Impacts That Improve Urban Planning,* 146 CITIES, Dec. 8, 2023, art. 104739, at 1, 1 (observing that "[r]estoration efforts frequently fail due to changing demographic and industrial factors. These include but are not restricted to aging populations, depopulation of large cities, and demands to make urban environments green and sustainable"); Schindler, *supra* note 104, at 502 (arguing that the loss of big box retailers from a neighborhood often signals that the location "would no longer be 'appropriate or viable'" for that type of retailer).

106. Francesca Lanz & John Pendlebury, *Adaptive Reuse: A Critical Review*, 27 J. ARCHITECTURE 441, 454 (2022) (observing that "within the wealth of writing on adaptive reuse, there is no common and shared agreement on what adaptive reuse precisely is and what it entails").

"converting underutilized or abandoned spaces into functional and socially integrated urban assets" that serve an updated neighborhood purpose.[107] In other words, it involves transforming abandoned land or buildings into new places: small parks, new housing, agricultural spaces, community spaces, and cultural institutions.[108] Generally, it is a flexible, resource-efficient strategy promising low environmental impacts while adding utility to existing urban plots.[109] As a bonus, it preserves existing community fabrics and cultural memories.[110] However, legislators in different cities have only recently and gradually begun paving legal pathways for adaptive reuse.[111] As things stand, altering the functions of an existing building often raises code, zoning, nuisance, and even contractual issues.[112] These legal obstacles deter widespread adaptive reuse. Uncoordinated, purely market-oriented efforts "ha[ve] not been successful on a large scale."[113] Thus, adaptive reuse has not yet led to neighborhood-wide transformations across the country. Prospective rights of the neighborhood promise a more coordinated adaptive reuse of existing buildings.

Extraordinary architectural interventions at an even larger scale include public impact projects and other developments that straddle existing neighborhood boundaries.[114] Public impact projects include building or improving large urban parks, public spaces, supermarkets, or other

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107. Cuaresma et al., *supra* note 100, at 10; *see also* Chiara Garau, Reza Askarizad & Francesco Pinna, *Urban Governance to Support Adaptable Solutions for Conversion of Residual Street Spaces into Social Spaces*, 15 SCI. REP., Sep. 1, 2025, art. 32241, at 1, 1 (describing "leftover" urban spaces that are "seldom targeted by systematic regeneration policies." The paper suggests that adaptive reuse holds promises to "revitali[ze] such residual spaces [to] . . . improve urban life by addressing congestion, social disconnection, and inequitable access to public realm amenities").

108. *See* Cuaresma et al., *supra* note 100, at 10.

109. *See* Lanz & Pendlebury, *supra* note 106, at 441–42 (observing that adaptive reuse emerged from the 1970s conservation movement, but still "reflects a cultural attitude proper to our time").

110. *See* Lanz & Pendlebury, *supra* note 106, at 454–55.

111. *See* Schindler, *supra* note 104, at 503 (observing that "[l]ocal governments are beginning to recognize the sustainable development opportunities embodied in adaptive reuse projects and thus some have passed adaptive reuse ordinances").

112. *See* Schindler, *supra* note 104, at 508 (discussing potential contractual limitations on adaptive reuse of commercial properties through "restrictive covenants and contract clauses." Often, the seller of a vacated commercial property contractually prohibits the buyer from using the property to host a competing business.).

113. Schindler, *supra* note 104, at 509.

114. *See, e.g.*, Jing Dong et al., *Potential Evaluation and Implementation Strategy for Pocket Park Construction in High-Density Urban Areas: A Case Study in Dalian, China*, 13 FRONTIERS ARCHITECTURAL RSCH. 319, 319, 320, 322–23, 328–29 (2024) (documenting the building of "pocket parks" as "an important element of urban renewal" and as "a major component of green infrastructure").

prominent neighborhood nodes, which aim to improve neighborhood connections and well-being.[115]

The most ambitious interventions reconsider the neighborhood's existing spatial layout, including the layout of property boundaries, physical structures, or access paths.[116] For this reason, interventions at the neighborhood scale are likely to be "difficult and costly to implement."[117] The difficulty is as much legal as it is physical. For example, if a distressed neighborhood wants to introduce a supermarket to heal a food desert, it may find it difficult to find a plot "that is appropriate for the size of the supermarket, due to fragmentation of property that results from the ease of selling smaller pieces of land."[118] As things stand, changing zoning regulations, building codes, and property boundaries must be initiated and orchestrated by government policies and developers, and not by the neighborhood itself.[119] In distressed neighborhoods, there are few channels for resident inputs and coordination. Just as NFHA had to document thousands of individual properties to advance its lawsuits, architectural interventions in distressed neighborhoods are also siloed. Distressed neighborhoods stand to benefit from few concerted, extraordinary, and neighborhood-centered projects that experiment with breaking, transforming, and optimizing existing spatial layouts.[120]

All in all, the prospective rights of the neighborhood are rights for placemaking, architectural intervention, transformation, and self-reinvention. Unlike the disruptions of highways and data centers, architectural interventions should be considered, inclusive, collaborative, and neighborhood-centered. They are essential to neighborhood revival.

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115. *See* Nikos A. Salingaros, *Theory of the Urban Web*, 3 J. URB. DESIGN 53, 53 (1998) (arguing that "[a]ny urban setting can be decomposed into human activity nodes and their interconnections").

116. Villanueva et al., *supra* note 12, at 4, 6 (discussing "destination accessibility" as key to maximizing the distribution of neighborhood resources. To this end, the article points to efforts that challenge existing boundaries, such as "redesigning the street network[] or building new services and destinations").

117. Villanueva et al., *supra* note 12, at 6.

118. Renee E. Walker, Christopher R. Keane & Jessica G. Burke, *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 HEALTH & PLACE 876, 877 (2010).

119. *See* Villanueva et al., *supra* note 12, at 6.

120. Clarence Arthur Perry, who invented the concept of the American neighborhood unit during the Progressive Era, had already foreseen the danger of siloed development of a neighborhood, lamenting that "an isolated physical development . . . meant an isolated social development." Howard Gillette, Jr., *The Evolution of Neighborhood Planning: From the Progressive Era to the 1949 Housing Act*, 9 J. URB. HIST. 421, 432 (1983).

II. RIGHTS OF THE NEIGHBORHOOD IN THE INTERNATIONAL CONTEXT

There are many international case studies in which distressed neighborhoods fight external disruptions and implement internal interventions. Case studies from Japan and China, discussed below, demonstrate different manifestations of the rights of the neighborhood in law, policy, and practice. While the Japanese experiences represent evolutions of longstanding legal traditions, the Chinese experiences are novel, nascent, and responsive to emerging issues in China's rapid urbanization. Both showcase, in different ways, attempts to activate distressed neighborhoods' retrospective and prospective rights.

These international experiences respond to unique circumstances of urbanism in different countries, cultures, economies, and legal regimes. They are not necessarily blueprints for any American city to emulate. However, they demonstrate that neighborhood-scale interventions lie at the heart of efforts to fight urban distress in both one of the most experienced (Japan) and one of the most progressive (China) legal regimes of urban governance. They also echo the importance of both retrospective and prospective rights of distressed neighborhoods.

A. Japan: *Machizukuri* and Land Readjustment

The neighborhood has always been central to Japanese urbanism. For this reason, Japan's experience in collective neighborhood management is based on longstanding legal frameworks. Importantly, Japan's practices reflect the retrospective and prospective rights of the neighborhood.

Neighborhood boundaries define Japanese urbanism: during the early years of Western contacts with Edo Period Japan, Western observers immediately noticed the characteristic "discontinuity" of Japanese cities, which was distinct from Western cities at the time.[121] British geographer Paul Waley characterized Tokyo as "a city of villages."[122] Downstream of this patchwork, seemingly chaotic urban form, Western planners became increasingly intrigued by Japanese "initiatives that allow parts of the city to change flexibly according to different rhythms and varying principles."[123]

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121. *See* Carola Hein, *Machi: Neighborhood and Small Town—The Foundation for Urban Transformation in Japan*, 35 J. URB. HIST. 1, 1 (2008) [hereinafter Hein, *Machi: Neighborhood and Small Town*], https://repository.brynmawr.edu/cgi/viewcontent.cgi?article=1021&context=cities_pubs (on file with the *Fordham Urban Law Journal*).

122. *Id.* at 2.

123. *Id.*

In Japan, *machi*, or neighborhood, is the cell that powers urban transformations.[124] *Machiwari*, or urban planning, "refers to the dividing of land for building neighborhoods."[125] Neighborhood development is guided by the concept of *machizukuri*, which means "making a neighborhood" or "making a community." [126] In practice, *machizukuri* councils arise "out of citizen participation and community organization."[127]

However, *machizukuri* gives rights to the neighborhood beyond representing neighborhoods' majority interests. Instead, it centers the physical neighborhood in its purpose, premise, and administration. First, the purpose: Japanese neighborhood development evolved over the years to respond to frequent natural disasters. Due to its geography, Japan is uniquely prone to natural disasters such as volcanic eruptions, typhoons, and earthquakes.[128] Not entirely unlike the freeway frenzy in the United States, these natural disasters often cause widespread neighborhood destruction and distress. To deal with these stressors, one of the most common techniques under *machizukuri* is *kukakuseiri,* or the legal process of land readjustment.[129]

Japan's land readjustment law was first born in the countryside for managing agricultural land.[130] The 1919 Urban Planning Law extended this legal scheme to cities.[131] The law, necessitated by the Great Kantō

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124. *See id.*

125. Carola Hein, Toshikeikaku *and* Machizukuri *in Japanese Urban Planning: The Reconstruction of Inner City Neighborhoods in Kōbe*, 13 JAPANSTUDIEN 221, 227 (2002) [hereinafter Hein, Toshikeikaku *and* Machizukuri].

126. *Id.*; *see also* Hiroki Nakajima & Akito Murayama, *Inclusive Urban Regeneration Approaches Through Small Projects: A Comparative Study of Three Japanese* Machizukuri *Cases*, 152 CITIES, July 3, 2024, art. 105241, at 1, 2 (explaining that the "term *machizukuri* combines two Japanese concepts, 'machi' and 'zukuri,' which roughly correspond to community and development, respectively").

127. *See* Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 222.

128. Felipe Francisco De Souza, *Concepts on Land Readjustment*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 15, 26 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018) [hereinafter De Souza, *Concepts on Land Readjustment*].

129. *See* Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 228 ("The two urban planning techniques used most often in Japan are *kukakuseiri* [land readjustment] and *saikaihatsu* [urban renewal]" (alteration in original)).

130. *See* Felipe Francisco De Souza, *The Successful Extensive Use of Land Readjustment in Japan*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 52, 52 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018); Norihiko Yanase, *Land Readjustment and Post-Disaster Reconstruction in Japan*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 63, 64 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018) (establishing that "[i]t is well known that land readjustment evolved from arable land readjustment").

131. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 52; *see also* MINORU MATSUI, CASE STUDY: LAND READJUSTMENT IN JAPAN 34 (Mansha Chen, Shigeyuki

Earthquake, met the needs of a nation planning post-disaster reconstruction.[132] After World War II, Japan passed the Special City Planning Law in 1946 to deploy land readjustment for post-war reconstruction.[133] So, from its inception, Japan's land readjustment scheme was designed in the context of distressed, disorganized, and changing urban areas. In 1954, Japan passed the Land Readjustment Law (the "1954 Law"), which laid the modern legal foundation for land readjustment in Japanese cities.[134] Since then, the application of land readjustments in Japan has expanded from disaster reconstruction to responding to other urban needs, including controlling urban sprawl and fostering urban rehabilitation.[135]

Second, Japan's land readjustment law embraces the premise of an active neighborhood. Under the 1954 Law, "land readjustment means to alter the shape and land conditions of lots and install or improve public facilities in a city planning area in order to provide better public facilities and increase the usage of each lot."[136] In eschewing rigid property boundaries to emphasize the functions and usage of neighborhood land, Japan's land readjustment law recognizes the neighborhood as a distinct entity with cohesive interests, rather than merely as loose assemblies of distinct plots and houses.

For each land readjustment project, the implementer must consult the entire neighborhood to set out specific development objectives.[137] By consulting the existing community, modern Japanese land readjustment law centers neighborhood needs and allows "the land readjustment processes to actually enhance and enrich places based on social networks instead of

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Sakaki & Mara T. Baranson eds., 2019) (noting that the Urban Planning Law of 1919 followed the earlier Agricultural Land Consolidation Law, passed in 1899, that focused on rural land readjustment and development. The 1919 law introduced land readjustment into the urban setting).

132. *See* MATSUI, *supra* note 131, at 34; *see also* Nakajima & Murayama, *supra* note 126, at 3 (arguing that "*machizukuri* practices have developed as citizen-participatory approaches in experiences, . . . [focused on] reconstruction after large disasters").

133. *See* Felipe Francisco De Souza, *A Brief History of Land Readjustment in the World and Case Studies*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 81, 85 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018) [hereinafter De Souza, *A Brief History of Land Readjustment*].

134. *See* MATSUI, *supra* note 131, at 34; Felipe Francisco De Souza & Takeo Ochi, *Land Readjustment and the Law in Japan*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 33, 33–34 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018).

135. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 29.

136. Akio Hosono, *Land Readjustment: Making Cities Inclusive, Safe, Resilient and Sustainable*, *in* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH 1, 3 (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018); De Souza & Ochi, *supra* note 134, at 33.

137. *See* MATSUI, *supra* note 131, at 10.

obliterating them."[138] This operating premise of Japan's land readjustment law manifests in rights of the neighborhood as "collective rights to manage neighborhood development."[139]

Last, the administration of land readjustment—both the participants and the implementation process—also reflects the rights of the neighborhood. Participating in land readjustment can be either voluntary or compulsory.[140] Both public entities—such as governments (national, prefectural, and local) and public corporations—and private actors—such as landowner cooperatives, land readjustment corporations, or even individual property owners—could initiate a land readjustment project.[141] These participants would come together to form an implementation agency tasked with building consensus among all property owners and leaseholders in the neighborhood.[142] But not all implementation agencies face the same hurdles in obtaining neighborhood consensus. If the implementer is a private entity representing only individual property rights, it must obtain unanimous consent from "all of the other land right holders" in the neighborhood.[143] In contrast, if the implementer is an entity that embodies collective neighborhood interests, be it a landowner cooperative or a local government, then its burden of obtaining consensus would be substantially reduced: it would only need to obtain the "agreement of two-thirds of the land owners and two-thirds of the land lease holders."[144] This lowered requirement makes land readjustment schemes much more likely to pass review. This legal design elevates the rights of the neighborhood.

Once the neighborhood agrees to a land readjustment, the implementation process prioritizes neighborhood functions over property forms. Under land readjustment law, the implementation agency collects agreements from land right holders.[145] In turn, with inputs from urban planners and other technical experts, it replots the assembled land along new property lines.[146] After

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138. De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 19 (quoting André Sorensen, *Prefácio* [Preface], *in* MÉTODOS DE PLANEJAMENTO URBANO: PROJETOS DE LAND READJUSTMENT E REDESENVOLVIMENTO URBANO, at xi, xi (Felipe Francisco De Souza ed., 2009)).

139. Nakajima & Murayama, *supra* note 126, at 3.

140. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 29.

141. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 29.

142. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 29.

143. MATSUI, *supra* note 131, at 10 (noting that "an agreement ratio of 100 percent is required for individual-implemented LR projects").

144. MATSUI, *supra* note 131, at 10 (adding that, if the implementer is the local government, it generally strives to "collect the agreement of 80–90 percent in consideration of the project risk").

145. MATSUI, *supra* note 131, at 10.

146. *See* De Souza & Ochi, *supra* note 134, at 35; Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 228 (describing local *machizukuri* groups being empowered to "draw up

replotting, each landowner would typically receive a smaller plot than what he had originally contributed to the project.[147] The percentage decrease in land area is calculated as the "contribution ratio."[148] However, the landowner would be adequately compensated by the increase in land value due to the land readjustment.[149] The leftover land from the replotting would be used to create public spaces and facilities, including new nodes, parks, roads, and sidewalks, all of which aim to help raise neighborhood connectivity and livability.[150]

As a case in point, Kōbe's Mano neighborhood applied land readjustment to fight neighborhood distress. Just like many American neighborhoods today, Mano exhibited severe neighborhood distress in the 1960s: old structures, aging and declining population, narrow streets, a lack of open space, and environmental pollution due to a mixture of factories and housing.[151] The neighborhood boundaries that Mano inherited from its last land readjustment in the 1910s no longer serve the neighborhood's modern functions.[152]

The neighborhood renewal efforts in Mano started in 1978 with the formation of a *machizukuri* council.[153] The council aimed to "prevent[] a further decrease of population, attract[] young families, creat[e] an equilibrated mixture of functions, and construct[] attractive housing" through land readjustment.[154] These are the very goals distressed neighborhoods in the United States share today. In Mano, the public deliberated and decided to readjust 124.6 hectares of land, including "25.9 hectares of urban renewal" with "street and park construction."[155] The council implemented projects that redefined the neighborhood space, created new nodes such as "small parks on former industrial [land] . . . , a kindergarten, and a home for old people."[156] They broke down preexisting boundaries by "broadening of two major streets and . . . [building] 'green' roads that connected . . . [the] parks."[157] These interventions are scaled

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their own master plans under the advice of consultants and thus infringe on a field usually reserved for urban planners in city government" for a specific neighborhood).

147. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 27.
148. De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 27.
149. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 27.
150. *See* De Souza, *Concepts on Land Readjustment*, *supra* note 128, at 27.
151. *See* Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.
152. *See* Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.
153. *See* Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.
154. Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.
155. Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 230.
156. Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.
157. Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229.

primarily to serve the neighborhood, rather than any larger urban subdivisions.

Japan's land readjustment law is now longstanding and well-established. It has developed stable, uniform, and predictable processes. These innovations, discussed above, which were designed to fight neighborhood distress under *machizukuri*, are now adapted across the world. In recent decades, the World Bank and the Japan International Cooperation Agency have actively shared Japan's experience and methodologies with more than 60 developing countries with fast-growing metropolises.[158] Many of these countries adopted land readjustment schemes to better manage emerging urban areas on the urban periphery.[159] For the United States, however, the most pertinent lessons from Japan's *machizukuri* are its applications in established neighborhoods facing distress and disruptions. Indeed, several states, including California, Hawaii, and Texas, have previously looked to Japan's land readjustment experience to confront local urban distress.[160] Hawaii, for example, studied Japan's land readjustment experience when "the old urban structure of Honolulu needed extreme intervention," although no formal policy came to fruition.[161] Today, persistent and even resurgent urban distress in American cities warrants revisiting these earlier explorations.[162] While adoption of Japan's specific procedures remains unlikely, American courts could distill Japan's experience down to its most essential elements: managing neighborhoods as a functional unit, breaking down outdated neighborhood boundaries, and activating a distressed

158. *See* De Souza, *A Brief History of Land Readjustment*, *supra* note 133, at 89.

159. *See* LAND READJUSTMENT: SOLVING URBAN PROBLEMS THROUGH INNOVATIVE APPROACH, at v (Felipe Francisco De Souza, Takeo Ochi & Akio Hosono eds., 2018) (explaining that developing countries use land readjustment to manage rural to urban migration, uncontrolled urban expansion, and environmental degradations); *see also* De Souza, *A Brief History of Land Readjustment*, *supra* note 133, at 89–91 (discussing various countries' attempts at implementing land readjustment mechanisms inspired by Japan's system).

160. *See* De Souza, *A Brief History of Land Readjustment*, *supra* note 133, at 88; *see also* Marian Bergeson & Madelyn J. Glickfeld*, The Evolution of Land Readjustment Law in California: Solving a Hidden Land Use Problem,* 1 LAND ASSEMBLY & DEV. 45, 50–53, 61–62 (1987) (discussing California's need for land readjustment and attempts to introduce enabling legislation through S.B. 442 (the proposed California's "Land Readjustment Law") in the 1980s).

161. De Souza, *A Brief History of Land Readjustment*, *supra* note 133, at 88.

162. *See* Victor Wooddell, *Measuring Economic Distress in American Communities from 2013 to 2023*, AM. CMTYS. PROJECT (Mar. 10, 2026), https://www.americancommunities.org/measuring-economic-distress-in-american-communities-from-2013-to-2023/ *[*https://perma.cc/YP26-A5ZE*]* (observing a generally flat but recently resurgent community distress score in "Big Cities" in the United States).

neighborhood's agency for transformation.[163] In these ways, *machizukuri* gives rights to distressed neighborhoods to actively preserve their integrity and ensure future development and self-reinvention.

B. China: From *Danwei* Neighborhoods to *Laopoxiao* Renovations

If Japan's *machizukuri* and land readjustment law rely on longstanding and well-worn legal traditions and methodologies to give rights to the neighborhood, the rights of the neighborhood in China manifest in novel experimental approaches. pecifically, China's recent push to intervene in distressed urban residential neighborhoods (called "*laopoxiao*") emphasizes the need to maintain neighborhood functions in the urban fabric. Fundamentally, China's experiences reflect the neighborhoods' prospective rights for development and self-reinvention in a specific urban planning context.

In China, the dominant form of urban residential neighborhoods today is the *xiaoqu*, which directly translates to "small district."[164] The *xiaoqu*'s modern-day urban form descends from the *danwei* housing system from the Mao Era.[165] The *danwei*, or "work-unit," was designed as an economic entity that regulated production.[166] At the same time, they also became a spatial framework for organizing the urban fabric of Chinese cities.[167] Each *danwei* endeavored to house its workers in the urban vicinity of its working quarters.[168] The resulting industrial-residential complex came to be known as *linli danwei*, or "work-unit*/danwei* neighborhoods."[169] In many ways,

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163. *See* Bergeson & Glickfeld, *supra* note 160, at 50 (discussing the "massive problems posed by antiquated subdivisions" and the lack of "statutory guidance" to overcome these constraints on neighborhood development).

164. Fabienne Wallenwein, *The Housing Model* xiaoqu 小区: *The Expression of an Increasing Polarization of the Urban Population in Chinese Cities?* (Sep. 12, 2013) (M.A. thesis, Ruprecht Karl University of Heidelberg) (on file with Heidelberg University).

165. *See id.* at 29. The Mao Era dates from 1949 to 1976.

166. *See id.* at 28–29.

167. *See* 老房装修研究院 [Laofang Zhuangxiu Yanjiuyuan], 住宅小区形式的发展(上) [The Formal Development of the Residential Neighborhood, Part I], 知乎 [Zhihu] (May 22, 2019) [hereinafter Laofang Zhuangxiu Yanjiuyuan], https://zhuanlan.zhihu.com/p/66706749 (on file with *Fordham Urban Law Journal*) (arguing that China first embraced the "neighborhood *danwei*" vision in the immediate aftermath of the founding of the People's Republic of China. Under this vision, the residential areas associated with a single *danwei* are organized into urban neighborhoods with standardized forms. The article references several case studies of Beijing neighborhoods built between 1953 and 1954, specifically neighborhoods along Fuxingmenwai Avenue and Xibianmenwai Avenue, that reflect the neighborhood *danwei* ideal); *see also* Wallenwein, *supra* note 164, at 33 (arguing that "*danweis* were the defining element of spatial organization in urban residential areas").

168. *See* Wallenwein, *supra* note 164, at 28–29.

169. *See* Laofang Zhuangxiu Yanjiuyuan, *supra* note 167.

danwei neighborhoods are comparable to company towns in the U.S., albeit more geographically compact and situated within a larger urban setting.[170]

Although residential units in a *danwei* neighborhood were often assigned based on seniority or marital status, each *danwei* neighborhood exhibited low residential segregation and equitable facilities.[171] This is because these neighborhoods were planned, designed, and constructed within a well-defined enclosure and they thoroughly integrated public spaces within.[172]

Over time, the *danwei* neighborhood evolved into the modern *xiaoqu*, which, with China's shift from a planned to a market economy, came to be designed, planned, and constructed by commercial real estate developers.[173] Compared to *danwei* neighborhoods, *xiaoqus* could be even more standardized in their sizes, capacities, forms, and functions.[174] This is often by legal design: Chinese government planners have designated a *xiaoqu's* target capacities to be between 10,000 and 15,000 people, or 3,000 to 5,000 households.[175] They typically cover around fifteen to twenty hectares of urban land.[176] Because they are descended from the *danwei* neighborhood, *xiaoqus* are also enclosed, gated, but internally connected spaces.[177] The *xiaoqu* limits internal automobile traffic,[178] but offers a walkable space with various shared amenities, including schools, grocery stores, repair shops, green spaces, and recreational facilities.[179] Each *xiaoqu* is a distinct physical entity just like Tokyo's distinct neighborhoods, as aforementioned, except less organic and more deliberately planned. In the context of the modern Chinese city, the *xiaoqu* is the "basic structural unit of urban residential district planning."[180]

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170. *See* Wallenwein, *supra* note 164, at 19.

171. *See* Wallenwein, *supra* note 164, at 29.

172. *See* E.M. Bjorklund, *The Danwei: Socio-Spatial Characteristics of Work Units in China's Urban Society*, 62 ECON. GEOGRAPHY 19, 21–23 (1986) (discussing the workings of a *danwei* compound as a confined, delineated, and compact place with shared public spaces).

173. *See* Wallenwein, *supra* note 164, at 3, 31.

174. *See* Laofang Zhuangxiu Yanjiuyuan, *supra* note 167 (describing various standardized metrics in sizes, capacities, forms, and functions associated with *xiaoqu* design when this concept was first popularized in China after 1957. These ideas continued the pre-existing trend towards increasing standardization of residential neighborhoods that began under the *danwei-jiefang* system).

175. *See* Wallenwein, *supra* note 164, at 8.

176. *See* Wallenwein, *supra* note 164, at 9.

177. *See* Wallenwein, *supra* note 164, at 7, 24; *cf.* Laofang Zhuangxiu Yanjiuyuan, *supra* note 167 (describing that public transit was allowed to traverse some early *xiaoqus*, signifying intentionally-designed traffic patterns within a *xiaoqu*).

178. *See* Wallenwein, *supra* note 164, at 7 (noting that the *xiaoqu* maintains "an inner circulation system").

179. *See* Laofang Zhuangxiu Yanjiuyuan, *supra* note 167.

180. Wallenwein, *supra* note 164, at 7.

As a fruit of planning, a *xiaoqu* is typically built wholesale: in the same years, to the same design, and with the same amenities.[181] But although standardized in isolation, *xiaoqus* built across different periods of China's rapid urbanization exhibit vast gulfs in quality, design, and features. Different xiaoqus also serve different socio-economic segments of the city: they not only target different segments of the commercial market,[182] but many also serve as "compensation housing" or government-funded social welfare housing in many cases.[183] Because of both temporal and market differentiations of *xiaoqus*, there are many *xiaoqus* scattered across Chinese cities that have significantly fallen behind the times.

Today, across Chinese cities, many early *xiaoqus* built between the 1950s and 1990s cannot meet modern living standards. Their lack of modern amenities and physical decay contribute to neighborhood distress.[184] Units in such *xiaoqus* are collectively called the *laopoxiao*, which means old, derelict, and small.[185]

In recent years, in recognition of the *laopoxiao*'s distress, cities across China have endeavored to intervene without displacing current residents.[186] China's *laopoxiao* interventions received policy support from national and local governments. The most recent Fifteenth Five-Year Plan relied on the neighborhood as a unit of development and mandated continued

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181. *See* Wallenwein, *supra* note 164, at 7.

182. *See generally* Wallenwein, *supra* note 164, at 39–60 (distinguishing *xiaoqus* built for different segments of the market, from working class *xiaoqus* to middle class *xiaoqus* and finally, to luxury *xiaoqus*).

183. *See* Wallenwein, *supra* note 164, at 55.

184. *See*秒**懂成都楼市** [Understanding Chengdu's Housing Market], 拆了！成都一老破小"推倒重建"！成功了！[Demolished! Chengdu's Old and Dilapidated Housing "Razed and Rebuilt"! A Success!], 今日头条TOUTIAO (Dec. 9, 2024), https://www.toutiao.com/article/7446252587378950667/ [https://perma.cc/H2FW-ZFSW] (documenting a Chengdu neighborhood called Gongrencun (Worker's Village), built in 1953, that experiences severe distress due to the lack of modern amenities (such as the lack of private bathrooms and kitchens) and physical decay (including aging electrical wiring, piping, and unpermitted building additions)).

185. *See* 王建国等 [Wang Jianguo] et al.,城市更新的创新实践与关键突破学术笔谈 [Innovative Practices and Key Breakthroughs in Urban Renewal], 城市规划学刊 [URB. PLAN. F.], no. 2, 2025, at 1, 3 (China) (using the term "*laopoxiao*" to describe old, dilapidated, and small residential units, which are targets of government-led interventions).

186. *See* 中国政府网 [China Government Website], 老房子旧房子改造、资金安排 . . . 如何推进城市更新，五部门最新发声 [Old Houses, Renovations, Funding Arrangements . . . How to Promote Urban Renewal—Latest Statements from Five Departments], 中华人民共和国中央人民政府 [CENTRAL PEOPLE'S GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA] (May 20, 2025), https://www.gov.cn/zhengce/202505/content_7024516.htm [https://perma.cc/DZU8-KWPC] (quantifying the renovation of 280,000 *laopoxiao xiaoqus* in cities across China from 2019 to 2024).

interventions of *laopoxiao* neighborhoods across the country.[187] The Central Government's directive only supplements existing legislation at the local level. For example, Chengdu, a city in southwestern China, implemented new regulations in 2022 under the prior Fourteenth Five-Year Plan to improve, modernize, or adapt old *xiaoqus* and other residential compounds built before 2004.[188] The renovation could aim to make functional additions to *laopoxiao* housing, including adding private kitchens and bathrooms that meet the minimum standards laid out in the "National Code for Residential Building Design."[189] Government subsidies in the form of forgiven land premiums for additional land used to expand public facilities and private living areas undergird these calls to action.[190]

Chengdu's housing interventions focus on buildings that exhibit a certain degree of disrepair.[191] Importantly, the policy considers both safety and functional amenities as elements of disrepair.[192] For example, the lack of

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187. Guowuyuan Guanyu Yinfa "Chengshi Gengxin 'Shiwuwu' Guihua" De Tongzhi (国务院关于印发《城市更新"十五五"规划》的通知) [State Council Notice on Issuing the Urban Renewal "15th Five-Year Plan"] (promulgated by State Council, May 22, 2026), Central People's Government of the People's Republic of China, May 28, 2026, https://www.gov.cn/zhengce/zhengceku/202605/content_7070540.htm [https://perma.cc/HZC3-UR2T] (China) (Section 3.2 of the directive specifies a national quota of 115,000 additional neighborhood renovation projects by 2030).

188. 四川省住房和城乡建设厅 [SICHUAN DEP'T OF HOUSING & URB.-RURAL DEV.], 《成都市城镇老旧院落改造"十四五"实施方案》出炉 [Chengdu's Implementation Plan for the Renovation of Old Urban Residential Compounds Under the "14th Five-Year Plan" is Released] (Feb. 11, 2022), https://jst.sc.gov.cn/scjst/c101448/2022/2/11/3a651b20234b4969baa41641dcfe64ed.shtml (on file with *Fordham Urban Law Journal*) (projecting the modernization of 2,242 old residential compounds between 2022 and 2025, impacting 233,000 residents).

189. Chengdu Shi Guihua He Ziran Ziyuanju, Chengdu Shi Zhufang He Chengxiang Jiansheju Guanyu Yinfa "Chengdu Shi Weijiu Zhufang Chengtaohua Gaizao Guihua He Yongdi Zhichi Cuoshi (Shixing)" (成都市规划和自然资源局, 成都市住房和城乡建设局关于印发《成都市危旧住房成套化改造规划和用地支持措施（试行）》的通知) [Notice from the Chengdu Municipal Bureau of Planning and Natural Resources and the Chengdu Municipal Bureau of Housing and Urban-Rural Development on the Issuance of the "Chengdu Municipal Dangerous Housing Complete Renovation Plan and Land Use Support Measures (Trial)"] (promulgated by Chengdu Mun. Bureau of Plan. & Nat. Res. & Chengdu Mun. Bureau of Hous. & Urb.-Rural Dev., Apr. 1, 2024), https://mpnr.chengdu.gov.cn/ghhzrzyj/sjwj/2024-04/01/content_55729899988943b6a70dc608e86b1d67.shtml (China) (on file with *Fordham Urban Law Journal*).

190. *See id.*

191. *See* 成都日报 [Chengdu Daily], 成都市城市更新条例 [Chengdu City Urban Renewal Regulations Enacted], 成都市人民政府 [THE PEOPLE'S GOVERNMENT OF CHENGDU MUNICIPALITY] (Apr. 2, 2026), https://www.chengdu.gov.cn/cdsrmzf/c169603/2026-04/02/content_07412ab064a34170b84c03159c1a8cdc.shtml (on file with *Fordham Urban Law Journal*).

192. *See id.* (specifying the law's focus on both *minsheng* (livability or functional amenities) and *anquan* (safety)).

certain design amenities, such as in-unit bathrooms, adequate ventilation, and elevators, were grounds for two apartment buildings in Chengdu's Xialianchi Street to qualify for government-assisted reconstruction.[193] Because of the law's focus on building livability and functions, entire *xiaoqu* neighborhoods, which were built in a similar fashion, often collectively qualify for government-assisted rehabilitation and reconstruction. Thus, Chengdu's *laopoxiao* rehabilitations, in practice, are neighborhood-centered endeavors.

Moreover, Chengdu's *laopoxiao* interventions encourage neighborhood self-reinvention, rather than mandating mere maintenance. For example, in the interventions of the Fanghua Street neighborhoods, the project not only focused on rehabilitating dilapidated structures, but also functionally reinvented the neighborhood space.[194] After extensive public consultations, the Fanghua Street neighborhood implemented much-needed facilities such as elevators, and accessibility ramps, and created new spaces for various shops, parks, and attractive urban nodes.[195] These facilities will be shared by all of the *xiaoqu*'s residents.

In China's case, the collectivism in *laopoxiao* interventions is necessitated by the existing architectural form. Because most of China's *xiaoqu* are composed of apartment buildings, the residents' residential units are physically connected to one another. The interlinkages between different private property owners are physical and unavoidable. Thus, collective interventions are not merely preferable in China's urban context; they are necessary.

Unlike China's *xiaoqus*, American neighborhoods are primarily composed of independent houses, obscuring their interlinkages. However, the absence of architectural linkages only hides the nevertheless important social and functional linkages. As the NFHA surveys so painstakingly demonstrated,[196] the management of private properties within the same neighborhood is interlinked and interdependent.

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193. *See* 陈齐美 (Chen Qimei), 距离太古里900米，这个48年房龄老小区开启"原拆原建"新模式 [900 Meters from Taikoo Li, This 48-Year-Old Residential Community Launches a New "Demolition and Reconstruction" Model], 成都房产发布 [CHENGDU REAL ESTATE RELEASE] (May 20, 2026), *reprinted in* 新浪财经 [SINA FINANCE], https://finance.sina.com.cn/wm/2026-05-20/doc-inhyphnp1810387.shtml [https://perma.cc/FE4Z-ZU6B].

194. *See* 黄明玥 [Huang Mingyue] & 雷倢 [Lei Jie], 30年 '老破小'蝶变潮流艺术街区 [30-Year-Old "Laopoxiao" Transforms into a Fashionable District], QQ.COM (July 30, 2025), https://news.qq.com/rain/a/20250730A09A4D00 [https://perma.cc/2HPY-K5ME].

195. *See id.*

196. *See* Nat'l Fair Hous. All., *supra* note 3.

III. RIGHTS OF THE NEIGHBORHOOD IN PROPERTY THEORY

Every property owner understands that neighborhood conditions affect property value.[197] But the inability of American neighborhoods to collectively intervene in neighborhood distress is rooted in the traditional conception of American property law, despite various attempts to overcome the limitations.

This section first explains why existing solutions in collective management of the physical neighborhood fall short in American cities. Next, it characterizes the rigidity of American property law that limits potential solutions. However, this section ends by surveying novel property theories and international legal developments that may point a way forward.

A. Why Existing Solutions Fall Short

American neighborhoods exhibit differing capacities to implement collective management. Both private and public solutions to enable neighborhood collective action, including nuisance law, HOAs and covenants, and eminent domain, fall short in deterring disruptions and enabling extraordinary interventions that address the exigencies of distressed neighborhoods.

The private "law of neighbors" is subdivided into two primary categories: nuisance law and the law of servitudes.[198] Nuisance law protects a landowner from "intrusions" that are "substantial and unreasonable."[199] For the purpose of neighborhood collective governance, nuisance law is simultaneously too rigid and not strong enough. It is too rigid because "intrusion" is by definition reliant on accepting existing property boundaries.[200] It is also not strong enough to deter neighborhood disruptions as it is often conceived of as a balancing act: an "activity is unreasonable [only] if the social harm . . . outweighs . . . [the] social utility."[201] In *Boomer v. Atlantic Cement Co.*, a nuisance action, the New York Court of Appeals declined to enjoin and close down a cement plant, which had undisputedly caused severe nuisance against nearby property owners, because there was a "large disparity in economic consequences of the

197. *See* Chengri Ding & Gerrit-Jan Knaap, *Property Values in Inner-City Neighborhoods: The Effects of Homeownership, Housing Investment, and Economic Development*, 13 HOUS. POL'Y DEBATE 701, 701 (2003).

198. *See* THOMAS W. MERRILL, HENRY E. SMITH & MAUREEN E. BRADY, PROPERTY: PRINCIPLES AND POLICIES 933, 979 (4th ed. 2022).

199. *Id.* at 933–34.

200. *See id.* at 950 (underscoring the centrality of boundaries in nuisance law by observing that "nuisance law . . . picks up where trespass leaves off").

201. *Id.* at 934.

nuisance and of the injunction."[202] By the same token, freeways and data centers could also present extraordinarily high social or economic utilities, although these utilities are, by and large, extrinsic to any individual neighborhoods.[203]

The second and more promising category of the law of neighbors, servitudes, includes easements and covenants.[204] Of the two, only covenants exhibit important utility as "a governance mechanism."[205] Covenants are legal restrictions or mandates created alongside property titles that pass down from one property owner to another "[that] prescribe affirmative behavior on the part of the burdened landowners."[206]

To enforce covenants that govern the use of neighborhood lands,[207] well-organized neighborhoods have formed private governance institutions such as homeowners' associations ("HOAs").[208] And conversely, HOAs sometimes help establish the covenants by filing a Declaration of Covenants, Conditions and Restrictions ("CC&Rs") in the local property records.[209]

But neighborhood management through HOAs and covenants has two significant limitations in fighting distress. First, these instruments are unlikely to cover distressed neighborhoods. HOAs are predominantly installed in newer, affluent, and suburban neighborhoods, rather than older, distressed, inner-city neighborhoods.[210] Typically, HOAs are put in place

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202. 257 N.E.2d 870, 872 (N.Y. 1970); *cf.* Jost v. Dairyland Power Coop., 172 N.W.2d 647, 653 (Wis. 1969) (allowing plaintiffs to recover monetary damages for crop damages and diminution of land value from a nearby coal-burning powerplant under a nuisance theory, but adopting from the Restatement of Torts that "[i]t may be reasonable to continue an important activity if payment is made for the harm it is causing").

203. *See supra* Part I.B (the freeway and data center debates).

204. *See* MERRILL, SMITH & BRADY, *supra* note 198, at 979.

205. MERRILL, SMITH & BRADY, *supra* note 198, at 979. In contrast to covenants, easements are narrow in scope: they are affirmative property rights for "a particular grantee" (or grantees owning a particular tract of land) to "engage in one particular use" on a particular piece of real property. MERRILL, SMITH & BRADY, *supra* note 198, at 982–83.

206. MERRILL, SMITH & BRADY, *supra* note 198, at 979; *see also* William B. Stoebuck, *Running Covenants: An Analytical Primer*, 52 WASH. L. REV. 861, 863–64 (1977).

207. *See* Barbara Coyle McCabe, *Homeowners Associations as Private Governments: What We Know, What We Don't Know, and Why It Matters*, 71 PUB. ADMIN. REV. 535, 536 (2011).

208. *See* Robert H. Nelson, *Homeowners Associations in Historical Perspective*, 71 PUB. ADMIN. REV. 546, 546 (2011) [hereinafter Nelson, *Homeowners Associations in Historical Perspective*] (characterizing "homeowners associations (HOAs), along with condominiums" as "form[s] of collective housing ownership" that rel[y] on "[p]rivate neighborhood governments" and noting that HOAs emerged in American suburbs).

209. *See* McCabe, *supra* note 207, at 536.

210. *See* Nelson, *Privatizing the Neighborhood*, *supra* note 16, at 864–65 (connecting "the private neighborhood association" to "the balkanization of American life attendant to the suburbanization of the nation." The article further contrasts the situation with the "denial of a similar private opportunity to people in the inner city").

by developers "in advance of the first housing occupants," at the inception of property rights.[211] Most HOAs "are created in local governments' real property records long before the homes are built."[212] In recent years, HOAs have become far more commonplace across American neighborhoods. In fact, there are "30 times more HOAs in the United States today than there were in 1970."[213] Similarly, covenants are longstanding property interests created through deeds during property subdivision or transfer.[214] Once a neighborhood has matured and its property rights established, the legal pathway to retrofit HOAs and accompanying covenants *post facto* is uncertain.[215] So, distressed neighborhoods are unlikely to be governed by HOAs and covenants, limiting their collective management options.

Second, HOAs and covenants are poor instruments for enabling extraordinary neighborhood interventions. HOAs assume diverse forms—they "range in size from a few houses to communities that rival small to mid-sized cities"—and have power to pass a broad range of rules under their CC&Rs, or covenants.[216] These powers, however, are frozen in time. At the time of the writing of the covenants, it is difficult to foresee and respond to the sources of future neighborhood distress and the extraordinary interventions required. Covenants are longstanding interests created alongside property rights that could not be created at will in a time of need, and may even burden possible alternative interventions.[217] Moreover, covenants are often narrowly-defined; they usually concern existing features of the land.[218] When the surrounding neighborhood has drastically changed,

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211. *See* Nelson, *Homeowners Associations in Historical Perspective*, *supra* note 208, at 547.

212. McCabe, *supra* note 207, at 536.

213. McCabe, *supra* note 207, at 536.

214. Stoebuck, *supra* note 206, at 868–69 (estimating that "over ninety percent of the real property covenants . . . are included in a writing . . . such as a deed, easement agreement, or lease.").

215. *See* Nelson, *Homeowners Associations in Historical Perspective*, *supra* note 208, at 548 (discussing the legal uncertainties associated with "the possibility of creating new HOAs in existing neighborhoods").

216. Robert C. Ellickson, *Stale Real Estate Covenants*, 63 WM. & MARY L. REV. 1831, 1847 (2022) (arguing "aging covenants . . . can usefully constrain a landowner's choices among land uses and building designs").

217. Nelson, *Homeowners Associations in Historical Perspective*, *supra* note 208, at 548 (questioning the possibility to "retrofit a new HOA").

218. Stoebuck, *supra* note 206, at 866, 869–70 (describing that the seminal case establishing the legal doctrine of covenants, *Spencer's Case*, concerned "a covenant respecting an existing thing" on the land. Moreover, one essential element of a covenant is "touch and concern." In turn, "[t]he clearest example of a covenant that meets the requirement is one calling for the doing of a physical thing" or "refrain from doing a physical thing to land." The article gives several examples of covenants that fulfill this requirement, such as "a covenant to repair," a "covenant[] not to plow the soil," or "not to build a structure." All

the covenant can no longer carry its management functions.[219] In such a circumstance, a court may terminate the easement under the "change of neighborhood doctrine."[220] But that leaves the neighborhood with no fallback options for collective management. Thus, HOAs and covenants fall short as vessels to break existing boundaries and facilitate extraordinary interventions in distressed neighborhoods. Covenants may even contribute to neighborhood distress.

Alternatively, a city may turn to public instruments. In cases of neighborhood blight, cities could use eminent domain to condemn the properties in question.[221] The United States Supreme Court affirmed in *Kelo v. City of New London* that a city may take private property for "public use" through eminent domain as a part of a "development plan."[222] In *Kelo*, the Supreme Court "afford[ed] legislatures broad latitude in determining what public needs justify the use of the takings power."[223] But *Kelo* gave power to municipalities, not to neighborhoods. Moreover, state law has quickly rolled back *Kelo's* power: in the aftermath of the ruling, "many states passed laws restricting the use of eminent domain" for economic development.[224] All of these developments make eminent domain a cumbersome instrument for fighting neighborhood distress.

Eminent domain also tends to displace existing neighborhood residents, undermining the retrospective rights of the neighborhood against disruptions. Wendell Pritchett observed that urban renewal through eminent domain tends to undermine the rights of the poorest, most vulnerable property owners.[225] Under eminent domain, "blighted properties [a]re considered less worthy of the full bundle of rights recognized by American law."[226] While property owners receive market values for their property—values greatly diminished by neighborhood distress—tenants receive even less for severing their relationships with their neighborhood.[227]

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of these examples implicate rather concrete and narrow acts, which could hardly anticipate extraordinary interventions against neighborhood distress at a future time).

219. *See* Ellickson, *supra* note 216, at 1847–48 (summarizing the findings from economists Wyatt Clarke and Matthew Freedman that while new covenants increased property value by an average of 8%, this premium disappeared entirely by year forty of the covenant).

220. Stoebuck, *supra* note 206, at 882–83.

221. *See* Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 3–4 (2003).

222. 545 U.S. 469, 489–90 (2005).

223. *Id.* at 483.

224. Schindler, *supra* note 76, at 1968–69 (recognizing that "many of those new laws retained exceptions allowing its use to clear blight").

225. *See* Pritchett, *supra* note 221, at 3–4.

226. Pritchett, *supra* note 221, at 4.

227. *See* Pritchett, *supra* note 221, at 4 (observing that "tenants were grudgingly given relocation assistance, but they were not entitled to undisturbed possession").

Ultimately, siloed property ownership within distressed neighborhoods is a product of American property law's unusual rigidity. In turn, solutions towards recognizing rights for distressed neighborhoods, must begin in the abstract domain of property theory.

B. American Property Law's Unusual Rigidity and Progressive Visions

In the American common law tradition, property rights abide by strong but rigid principles, at the center of which is exclusive ownership. Progressive visions, however, are challenging this fundamental assumption. These developments may lead to wider recognition of the rights of distressed neighborhoods in the future.

Exclusive, absolute, and standardized property ownership is the cornerstone of traditional property law in the United States. Blackstone viewed "the right to exclude . . . [as] both a necessary and sufficient condition of property."[228] The United States Supreme Court has recognized that "the right to exclude others" is "one of the most essential" elements of property rights.[229] In turn, as Thomas Merrill argued, other property rights flow from this power to exclude, including the right of free use, the right to transfigure, the right to transfer during life, and the right to devise upon death.[230] Nuisance law, aforementioned, evinces the siloed nature of American property rights.[231] In the urban renewal context, planners and policymakers likewise "shared an ideology that held private property rights sacrosanct."[232]

In recent years, property scholars have attempted to breach this core characteristic of traditional American property law. In 2009, four prominent property law scholars—Gregory Alexander, Eduardo Peñalver, Joseph Singer, and Laura Underkuffler—issued a joint declaration on a new property theory to resolve property conflicts and design property institutions for the future.[233] Their proposal came to be called the "Progressive Property Theory."[234] It at once affirms traditional property law's legally powerful and

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228. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 734 (1998) (clarifying that Blackstone's view, as expressed in the quoted language, is one of several competing theories of the right to exclude, but is, however, a widely shared view).

229. *Id.* at 730 (quoting Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979)).

230. *See id.* at 740–44 (observing that "most of the other attributes commonly associated with property" derive from the right to exclude).

231. MERRILL, SMITH & BRADY, *supra* note 198, at 933 (noting that nuisance law protects property rights from "intrusions" and is closely related to trespass law).

232. Pritchett, *supra* note 221, at 5.

233. *See* Gregory S. Alexander et al., *A Statement of Progressive Property*, 94 CORNELL L. REV. 743, 743 (2009).

234. Brandon M. Weiss, *Progressive Property Theory and Housing Justice Campaigns*, 10 U.C. IRVINE L. REV. 251, 256 (2019).

deeply ingrained idea of individual control and recognizes the imperative needs to capture "plural and incommensurable values" that property implicates.[235] To this end, this theory gives "effect to the significant interests of non-owners while modifying the rights of owners."[236]

Progressive Property Theory redefines the obligations of property ownership. Advocates view "[p]roperty rights and their correlative obligations . . . as social goods, worthy of vindication by the state, only insofar as they are consistent with community and human flourishing more generally."[237] The call to harmonize property title with the value choices that would promote community and human flourishing changes property rights significantly. These obligations may assume different shapes and forms in different political contexts and as applied to different subject areas. Housing scholars argued that Progressive Property Theory may provide the necessary theoretical groundings for much-needed housing policies, such as inclusionary zoning, rent control, and redefining the implied warranty of habitability.[238] This is because Progressive Property Theory recognizes that "property rights do not exist in the abstract, severed from the communities in which they arise."[239] As the NFHA suits demonstrate, this collective social good is dependent on the use (and misuse) of individual properties.

If American courts were to gradually embrace Progressive Property Theory, they might precipitate the legal emergence of novel rights for the neighborhood. The dissemination of international experiences may be persuasive to courts considering what plural and incommensurable values neighborhoods encompass. Although experiences from Japan and China would not offer exact policy templates for American cities, they plot some coordinates and data points to help us understand the rights—both retrospective and prospective—that courts should vindicate. Japan's and China's experiences, discussed above, point to the general directions of exploration: Japan's land readjustment scheme was designed to respond to neighborhood disruptions and to enable continued neighborhood development and self-reinvention. China's *laopoxiao* interventions embrace a functional view of the neighborhood, eschewing property law's formalism in favor of restoring neighborhood safety and livability.

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235. Alexander et al., *supra* note 233, at 743.

236. J. Peter Byrne, *Cultural Property: "Progressive Property in Action"*, 10 TEX. A&M J. PROP. L. 1, 26 (2024).

237. Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 749 (2009).

238. *See* Weiss, *supra* note 234, at 268–71, 273–75.

239. *See* Weiss, *supra* note 234, at 270.

C. International Instrument of Change: Neighborhood and Sustainable Development Goal 11

Another impetus for change may lie in the United States' international commitments. In 2015, "the United Nations General Assembly . . . voted . . . to make 'sustainable cities and communities' another target within the 2030 Agenda for Sustainable Development," which became SDG 11.[240] SDG 11 lays out the overarching goal to "make cities and human settlements inclusive, safe, resilient and sustainable."[241] This global vision, scholars agree, "vitally depend[s] on their integration with the local developmental agenda."[242] Accordingly, SDG 11 contains specific targets that reflect the retrospective and prospective rights of the neighborhood. For example, Target 11.5 elevates the importance of efforts to "reduce the adverse effects of natural disasters."[243] Target 11.9 calls for cities to "implement[] integrated policies and plans towards . . . resilience to disasters . . . [and] holistic disaster risk management."[244] Both targets echo the retrospective rights of the neighborhood for stability and integrity. Moreover, Target 11.7 emphasizes the importance for cities to "provide access to safe and inclusive green and public spaces."[245] Target 11.8 urges different levels of government to strengthen development planning.[246] These targets mirror the prospective rights of the neighborhood for development, transformation, and self-reinvention.

The provisions of SDG 11 are tailored towards fast-expanding metropolises in the global south.[247] However, as the experiences from Japan and China show, there are many common challenges and goals in the management of urban neighborhoods that cut across countries at different development stages. Challenges such as urban poverty, polarization, pollution, decaying infrastructure, and lack of economic connectivity cut

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240. Sinan Küfeoğlu, *SDG-11: Sustainable Cities and Communities*, *in* EMERGING TECHNOLOGIES: VALUE CREATION FOR SUSTAINABLE DEVELOPMENT 385, 386 (Springer 2022).

241. Andrzej Klimczuk et al., *Editorial: Towards 2030: Sustainable Development Goal 11: Sustainable Cities and Communities. A Sociological Perspective*, 9 FRONTIERS SOCIO. 1, 1 (2024).

242. Vaidya & Chatterji, *supra* note 23, at 174.

243. *Goal 11: Sustainable Cities and Communities*, THE GLOBAL GOALS, https://globalgoals.org/goals/11-sustainable-cities-and-communities/ [https://perma.cc/H6RC-VZGX] (last visited July 27, 2026).

244. *Id.*

245. *Id.*

246. *See id.*

247. *See* Vaidya & Chatterji, *supra* note 23, at 175 (recognizing that "[t]he contemporary global urbanization is being driven by newly industrializing countries of Asia and Africa," where developing countries experience the most pressing lack of strong institutions and civic infrastructures to "comprehensively address urban issues").

across neighborhoods in the global north or south, in developed or developing countries, and in growing or shrinking cities.[248] So, in many ways, international calls to action may help to supplement and refine the rights of distressed neighborhoods.

D. From the Rights of Nature to the Rights of the Neighborhood

Giving rights to distressed neighborhoods feels less radical where the law has already given rights to nature and rivers—or has seriously grappled with such possibilities. The conceptualizations of novel rights by courts and scholars from across the world may serve as a template for giving rights to distressed neighborhoods.

The idea of giving rights to nature is not new. In 1971, the United States Supreme Court heard *Sierra Club v. Morton*.[249] The case arose when the Sierra Club, an environmental membership corporation, petitioned the courts to enjoin the development of recreational facilities in the Mineral King Valley.[250] Rather than pleading any harms against its own members, the Sierra Club sued to protect the Mineral King Valley's "great natural beauty nestled in the Sierra Nevada Mountains . . . adjacent to Sequoia National Park" for nature's intrinsic values.[251] The Supreme Court majority rejected its pleading, affirming the conventional understanding that mere concern for nature cannot "constitute standing in the legal sense."[252] But the Sierra Club's defeat in front of the majority elicited an important dissent by Justice Douglas. He floated the idea of giving the right to sue to preserve nature, reasoning that "[t]his suit would . . . be more properly labeled as Mineral King v. Morton."[253] Central to his dissent was Christopher Stone's seminal article, which opined on the possibility of giving legal standing to nature, challenging the "rightlessness of rightless 'things.'"[254] In the article, Stone traced the gradual expansion of legal rights from citizens to slaves, to women, to children, to foreigners, to marginalized members of society, and even to animals.[255] He questioned why the law could not extend the same

248. *See* Vaidya & Chatterji, *supra* note 23, at 176 (discussing the need to "improve functional efficiency of civic infrastructure" to address wide-ranging issues of poverty, social polarization, sustainability, and urban forms that enable economic development in the global context).

249. Sierra Club v. Morton, 405 U.S. 727, 728 (1972).

250. *Id.*

251. *Id.* at 728.

252. *Id.* at 731.

253. *Id.* at 742 (Douglas, J., dissenting).

254. Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 453 (1972).

255. *See id.* at 450–54.

process to give rights to "forests, oceans, rivers and other so-called 'natural objects' in the environment."[256]

In giving rights to nature, Stone's proposal makes an important theoretical leap: from living things to inanimate objects. Granted, "nature" not only almost always contains many living things, but is often defined by them: forests must host trees; reefs are commonly associated with corals; and grasslands, grass-dominated ecosystems. However, Stone's scope also seems to encompass non-living elements of nature: oceans and rivers are essentially defined by their geographic—rather than ecological—characteristics. Subsequent scholarship also views nature to encompass inanimate "resources."[257] Alberto Acosta, an Ecuadorian economist, characterizes the extraction of both ecological and mineral resources as evidence of a "predator lifestyle" against nature.[258]

The idea of giving rights to nature is now ascendant in Ecuador. In 2008, Ecuador enshrined the rights of nature in its Constitution, "the first of their kind."[259] In the decade that followed, the jurisprudence in this area of law matured.[260] In 2021, Ecuador's Constitutional Court ruled that "the mangrove ecosystem is a 'subject of rights' as protected by . . . [Ecuador's] Constitution."[261] The court observed that mangrove forests have "multiple relationships within and between ecosystems and human beings," supporting the "'buen vivir' (good living) of the communities close to this ecosystem."[262] One year later, in 2022, the same court in Ecuador also declared that "the Monjas River was a subject of rights."[263] The case arose from the City of Quito's failure to control stormwater and wastewater discharge into the river.[264] Plaintiffs argued that "the water level exceed[ing the river's] ecological flow threatened the river's 'existence, functions and structure.'"[265] The court's reasoning was similar to the mangrove case: it

256. *Id.* at 456.

257. *See generally* Alberto Acosta, *Toward the Universal Declaration of Rights of Nature: Thoughts for Action*, 2010 AFESE J. (Aug. 24, 2010), https://www.garn.org/wp-content/uploads/2021/09/Toward-the-Universal-Declaration-of-Rights-of-Nature-Alberto-Acosta.pdf [https://perma.cc/6SK6-ELN7] (characterizing South America's international export of natural resources as exporting nature).

258. *Id.* n.10.

259. Mihnea Tănăsescu et al., *Rights of Nature and Rivers in Ecuador's Constitutional Court*, 30 INT'L J. HUM. RTS., Feb. 7, 2024, at 1, 1.

260. *Id.* (observing that although "[e]arly cases did not routinely uphold nature's rights . . . . recent political and judicial developments in Ecuador have provided fertile ground for a new wave of constitutional [rights of nature] jurisprudence").

261. *Id.* at 4–5.

262. *Id.* at 4.

263. *Id.* at 5.

264. *Id*.

265. *Id*.

observed that "[n]ature is a system, . . . and its components . . . interrelated."[266] The river's rights derive from its interconnections with other components of the ecosystem, and these components are both living and nonliving.

In Ecuador's conception, the rights of nature arise from its role in the "maintenance of life systems and groups."[267] These rights are "focused on ecosystems and groups, not on individuals."[268] The neighborhood, too, is a group and a system, assembling and sustaining individual residents, houses, and communities. Le Corbusier famously described the house as "a machine for living in."[269] As the NFHA plaintiffs have asserted, and as scholars of UPE have conceptualized, neighborhoods are but larger, more complex machines tying together the life outcomes of the communities they encompass.[270] If nature, rivers, forests, and oceans can be understood as rights-bearing systems because of their role in sustaining collective life, the neighborhood might similarly be reconceived as a rights-bearing entity.

IV. CONCLUSION: LEVERAGING THE PARADOX OF RETROSPECTIVE AND PROSPECTIVE RIGHTS

Recognizing the rights for distressed neighborhoods opens a small window for the ideals of Progressive Property Theory to shine into the ongoing debates surrounding American neighborhoods. These debates are both old and new, abstract and concrete, ranging from fighting neighborhood segregation to permitting data centers in the urban vicinity. However, the rights of distressed neighborhoods do not mandate any specific resolutions to these debates. On the contrary, these rights may at first appear to pull neighborhood actors in opposing directions.

The retrospective and prospective rights pose an apparent paradox: while the retrospective rights of preservation and integrity resist physical neighborhood changes, the prospective rights call for transformations. At the same time, they cannot stand independently without the other: retrospective rights protect existing neighborhood connections and nodes against drastic, external disruptions; prospective rights challenge entrenched, rigid, unadaptable property interests by breaking down existing neighborhood boundaries that are no longer functional in changed urban contexts.

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266. *Id*.

267. Acosta, *supra* note 257.

268. Acosta, *supra* note 257.

269. LE CORBUSIER, TOWARDS A NEW ARCHITECTURE 95 (Frederick Etchells trans., Dover Publ'ns 1986) (1923).

270. *See* Salingaros, *supra* note 115, at 54 (describing "[t]he urban web [a]s a complex organizing structure").

Decisionmakers (courts, policymakers, and neighborhood actors) must not only live with this paradox, but wield it to elevate sustainable and inclusive neighborhood solutions while rejecting harmful proposals. A possible first step to discern both categories is to reference international experiences. Although, as aforementioned, American courts cannot replicate the legal superstructure governing Japan's and China's neighborhoods, they can pay attention to the concrete solutions applied and values attained. For example, Japan's land readjustment law was originally born as a technique for rural planning and later adapted for post-disaster reconstruction.[271] This overarching legal context shaped the modern-day institution of land readjustment in Japan.[272] However, the concrete solutions of redrawing neighborhood boundaries and creating new neighborhood nodes, such as in the case of the Mano neighborhood, bear wider applicability.[273] Similarly, China's government-supported wholesale interventions of entire *xiaoqus* may be difficult to replicate elsewhere,[274] but the assessment of disrepair on the basis of both safety and amenities may inspire novel "prayers for relief" in the United States. NFHA and other fair housing organizations may look to international examples as a reference points in their legal claims to balance the paradox of the neighborhood's retrospective and prospective rights.

A further step to evaluate a neighborhood solution is to ask whether it strengthens urban functions. Although neighborhoods are different socially, geographically, economically, and even legally, they also share an intrinsic and inescapable sameness in their urban functions. Easterling observed this tendency towards conformity, from individual buildings to entire neighborhoods. She noted that "[b]uildings are often no longer singularly crafted enclosures . . . but reproducible products set within similar urban arrangements."[275] Although "[a]rchitecture makes unique objects—like stones in the water—[it is] a constant flow of repeatable spatial formulas [that] construct[] a sea of urban spaces."[276] Thus, she characterized modern neighborhoods as "infrastructure space," urging everyone to view the neighborhood space from a different angle:

> "Picture the places where we live: the parking places, skyscrapers, turning radii, garages, street lights, driveways, airport lounges, highway exits, big boxes, strip malls, shopping malls, small boxes, free zones, casinos, retail outlets, fast food restaurants, hotels, cash machines, tract housing,

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271. Yanase, *supra* note 130, at 64.

272. *Id.* (noting "more institutional reforms" that shaped the application of land readjustment in urban contexts from its rural origin).

273. Hein, Toshikeikaku *and* Machizukuri, *supra* note 125, at 229–30.

274. Support from national and local governments, *supra* note 37, at 11.

275. EASTERLING, *supra* note 40, at 11.

276. *Id.* at 13.

> container ports, industrial parks, call centers, golf courses, suburbs, office buildings, business parks, resorts. In the retinal afterglow is a soupy matrix of details and repeatable formulas that generate most of the space in the world."[277]

In this view, neighborhoods are created for their ability to serve urban communities, whether to promote public health,[278] reduce segregation,[279] or attain other objectives.[280] Accordingly, the law should work to further these goals and preserve these values. Getting there may require both the push and the pull of retrospective and prospective rights for distressed neighborhoods.

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277. *Id.* at 11.

278. *See generally* Andalib et al., *supra* note 77.

279. *See generally* Schindler, *supra* note 76.

280. In keeping with the demands of the Progressive Property Theory. *See* Alexander et al., *supra* note 233, at 743 (describing "plural and incommensurable values").