National urban policies, municipal zoning and disputes over Sanctuary Cities in Metropolitan America

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Abstract: Politiche urbane federali, piani municipali di zonizzazione e controversie sulle Città santuario nell'America metropolitana – The Author analyses one Century of contradictions and inconsistencies in National urban policies and describes the great changes in American urban landscape. America preserves its character of immigrant and suburban Nation but too many changes have occurred in neighborhoods and ordinary life of people. Downtown rehabilitation, sprawling and the transformation of suburbs are the main problems that local authorities are facing with; new forms of land use regulations and zoning appear to be indispensable to cope with them.

Keywords: sprawling, gentrification and form-based codes; racial zoning; disparate impact; federal conditional grants; Sanctuary cities.

1. A Century of controversial national public housing and urban development policies

Federal commitment in housing and urban development has been a road full of contradictions and inconsistencies at all times, notably after 1949 when one the most controversial programs in the nation's history was adopted. Since then, a key number of both federal and state constitutional facets raised by actions of seizing and demolishing large swaths of private and public property for the purpose of renovating and ameliorating neighborhoods[1], infrastructure, dismissed industrial sites and commercial activities.

After decades of economic depression and the war years, the Housing Act of 1949[2] and its later iterations were passed to help address the decay of

[1] In J.P. Byrne's words, «"Neighborhood" refers to a legible, pedestrian-scale area that has an identity apart from the corporate and bureaucratic structures that dominate the larger society» (*The Rebirth of the Neighborhood*, in *Fordham Urban Law J.*, Vol. 40, 2013, 1595 ff., at 1596).

[2] «An Act to establish a national housing objective and the policy to be followed in the attainment thereof, to provide Federal aid to assist slum-clearance projects and low-rent public housing projects initiated by local agencies, to provide for financial assistance by the Secretary of Agriculture for farm housing, and for other purposes» (81st Cong., 1st sess., Ch. 338, July 15, 1949); the roots of the Act's public housing provisions – that dates back to the XIX Century – and its lengthy gestation are well described by A. von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, in *Housing Policy Debate*, Vol. 11, No. 2, 2000, 299 ff., and Id., *The*

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urban housing provoked by the exodus to the suburbs. A large amount of federal financial resources should have buoyed cities in reconfiguring downtowns, clearing slums and rebuilding blighted areas, improving the available housing stock for American families and creating new and better neighborhood facilities. Local governments would have been encouraged to plan basic water and sewer facilities eligible for federal assistance and would have received grants and loans to cover the cost of land purchases and write-downs; middle-income working-class Americans, associated in non-profit cooperative ownership housing corporation or non-profit cooperative housing trust, would have been granted access to low-interest and long-term mortgage insurances for housing[3].

The enactment of the Housing Act 1949 came after 7 years of bitter legislative stalemate due to outlandish cross-parties alliances and polarizations into the parties themselves; the forming of a composite "liberal coalition" made up mainly of the Truman Administration, social welfare groups, trade unions and the U.S. Conference of Mayors faced the opposition of a group teamed up by rural southern Democrats, anti-New Deal Republicans, who took over the control of Congress in 1946, and the real estate industry whose branded harsh hostility to public housing became patent in 1944 when President Roosevelt, envisioning good housing as a national priority, announced his "Economic Bill of Rights" that would have been later embraced by Truman in his "Fair Deal agenda"[4].

The "Keynesian Urban Policy Era" began in earnest after the Great Crash of 1929 with the Federal Home Loan Bank Act of 1932 under President Hoover, and grew into the "Declaration of Policy" of the Section 1 of the Housing Act of 1937 aimed at fighting unemployment, insanitary housing conditions and shortage of dwelling units for low-income families in urban or rural communities[5].

The Act was the only "new liberal social legislation" during the Truman Presidency, but its main sponsor was "Mr. Republican" Robert Taft: even opposing the centralizing tendencies of Roosevelt's New Deal, Taft firmly believed that federal (housing-)welfare could have enabled the federal role in urban affairs to provide decent homes for low-incomes families.

To obtain federal funds, each participant city was required to develop a Workable Program to prevent future slums by adopting or improving

Origins of American Housing Reform, Working Paper Series, Harvard University, 1998.

[3] Housing Act 1949, as amended by the Housing Act of 1950 («An Act to amend the National Housing Act, as amended, and for other purposes», 81st Cong., 2nd sess., Ch. 94, April 20, 1950; Sec. 207 e 213).

[4] Achievements and failures of the Truman Administration are described in J. Patterson, *Grand Expectations: The United States, 1945-1974*, NY, 1996, 137 ff.

[5] «It is hereby declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation» (Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888, 891).

municipal codes on housing and zoning; impressively, it was maintained that the program constituted one the most significant development in federal-municipal relationship[6].

The simplistic vision of the Act relied on «the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family» (Sec. 2): according to the slightly revised form in which the bill on "Urban Redevelopment" (renamed "Urban Renewal" from the Housing Act of 1954 onward) was enacted, slums clearance and construction of new dwelling units would have solved the problems of American cities[7].

However, many obstacles stood in the way of the urban renewal.

Apart from the limitations inherent to the program itself as it relied mainly on large-scale demolitions, the outbreak of the Korean War worried Truman about the reoccurrence of inflation and shortage of materials, so he cut back the program soon after its beginning

Notwithstanding President Eisenhower's endorsement of the idea to amend the project for enhancing rehabilitation and conservation of existing structures, enforcing building codes, relocating displaced inhabitants, its Administration recommended sharp cuts in urban redevelopment funding.

Likewise, President Kennedy did not push for large allocations of public housing.

Cutting across different Presidencies, other factors conditioned the urban renewal: the real estate lobby and U.S. Savings and Loan League that opposed to cooperatives, labelled "un-American"; racial conflicts due to the frequent opposition of working and middle-class white people to public housing for African Americans in their neighborhoods; the design of dwelling units, in many cases conceived as high-rise buildings and large apartments blocks, revealed to be difficult environment for placing families with children.

Many observers avowed that policies of that kind nurtured slums, blight areas and ghettos they were meant to eradicate. In fact, urban areas of the Country were subject to many demolitions and few reconstructions of dwelling units: many spaces were destined to parking lots, civic centers, sport arenas, office buildings, or even left empty; highways recurrently routed through lively urban neighborhoods[8]. Hundreds of thousands of families were

[6] See C.S. Rhyne, *The Workable Program. A Challenge for Community Improvement*, in *Law & Contemporary Problems*, Vol. 25, No. 4, 1960, 685 ff.

[7] In *Berman v. Parker*, 348 US 26 (1954), the Supreme Court held in a unanimous opinion that the V Amendment does not limit Congress' power to seize private property with just compensation to any specific purpose. In 1945 Congress passed the District of Columbia Redevelopment Act which created the District of Columbia Redevelopment Land Agency whose purpose would have been to identify and redevelop blighted areas of Washington, D.C.; on the new agency was conferred the power of eminent domain – the ability to seize private property with just compensation. The Court concluded that the power to determine what values to consider in seizing property for public welfare is Congress' alone.

[8] The Federal-Aid Highway Act of 1956 gave state and federal government a complete control over new highways to be built by using the funds conveyed in the Highway

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displaced[9]; absent any concern on preservation, historical and cultural sites or buildings were destroyed[10]. That's why many cities across the Country have been collecting photographs of the past urban design in order to maintain remembrance of the way they were[11].

In any case, even where local authorities erected new low-income public housing complexes, racial and economic divisions in most American cities were intensified[12]. As happened in the NY State along the 1960s, site clearance, drying-up of federal funds and NYMBYism nurtured racial segregation and a crisis of affordable housing.

Something changed during Lyndon Johnson Presidency, when the new President, asking Congress to expand government public housing, called for the increase of dwelling units and for the transformation of the House and Home Financing Agency (HHFA) into a cabinet-level Department of Housing and Urban Development (HUD). President Johnson set new ambitious goals by way of the «construction or rehabilitation of 26 million housing units, 6 million of these for low and moderate income families»[13] and new measures on mortgage insurances favourable to lower income families.

The National Historic Preservation Act of 1966 aimed at treasuring, not demolishing, old buildings and established the Model Cities program as a key element of the "Great Society" programs and "War on Poverty" legislation.

Trust Fund, leaving the 10% of the construction costs to the States.

[9] According to the 1969 National Commission on Urban Problems' Report, *Building the American City*, «[a]s freeways have been extended to connect cities both with the fast-growing suburbs and with the 42.000-mile system of National Interstate Highways begun under the 1956 act, enormous numbers of homes in the paths of these highways have been demolished. … We thus have statistics for the 4 o 11 years during which the national interstate highway program has been in effect … [that] would give a total in cities of around 330.000 for the 11-year period. It should be emphasized that there are urban displacements only» (81).

[10] In the late 1960s, most of the historic downtown Rondout district of Kingston (NY), along the Hudson River, was demolished in a federally funded urban renewal project, and thousands of people were displaced. More than 400 building were wrecked; most of them were historic structures built in the XIX Century. Other well-known examples of aggressive demolition policies are those that gutted the historic West End of Boston, the downtown of Norfolk in Virginia, the Waterfront of Newburgh in the New York State (see A. Pfau, S.K. Sewell, *Newburgh's "Last Chance": The Elusive Promise of Urban Renewal in a Small and Divided City*, in *J. of Planning History*, Vol. 19, No. 3, 2020, 144 ff.; see also R.B. Fairbanks, *Federal Urban Renewal in Three Small Texas Cities: A Mixed Legacy*, *ivi*, 187 ff.).

[11] See, e.g., the web page *98acresinalbany.wordpress.com* which, together with its related facebook page, documents the people displaced and the structures demolished in Albany (NY) to make way for the Governor Nelson A. Rockefeller Empire State Plaza. The goal of those pages is to digitally reconstruct the 98.5 acres appropriated by the State for the Empire State Plaza and South Mall Arterial to show the area as it was in 1962, when evictions and demolitions began. Photographs collected in many official archives across the Country preserve lost architecture, commerce and street life.

[12] See *A. Pfau, D. Hochfelder, S. Sewell, Urban Renewal, November 12, 2019, in www.inclusivehistorian.com.*

[13] Housing and Urban Development Act of 1968 («An Act to assist in the provision of housing for low and moderate income families, and to extend and amend laws relating to housing and urban development», Sec. 1601).

The Model City was «a mix of federal power and local control as the federal government worked directly with city hall and local communities»[14]; it did have some success in authorizing the use of urban renewal funds for acquiring and restoring historic buildings, but was hardly opposed in its purpose to coordinate the actions of numerous redundant federal, state and local agencies engaged in a multi-layered attack on the complex roots of urban poverty, and was undermined by all those who continued to seek turf protectionism and to resist the programme coordination efforts.

State level was bypassed and the programme's accent on decentralization and local control to some extent predicted the "New Federalism" course of the Republican policy that would soon follow. «The Model Cities programme's requirements for citizen participation … also helped to identify and train a new generation of inner-city and minority community leaders, a generation of local activists who would soon enter city hall»[15]; it called for "maximum feasible participation" of citizens, particularly African Americans newly empowered under 1965 Voting Rights Act.

After the riots that devasted Detroit and Newark in 1967 which were also due to policies that concentrated black people in ghettos, in 1968 the Kerner Commission concluded that «Our nation is moving toward two societies, one black, one white – separate and unequal»[16]. Soon after the homicide of Martin Luther King, Congress passed the Fair Housing Act of 1968 aimed at barring housing discriminations and requiring states and local authorities funded with federal money to try to overcome housing segregation.

As the novelist James Baldwin put it, "urban renewal" meant "Negro removal" in most cases[17]; in other circumstances, the "federal bulldozer"[18] driven by the sturdy power of eminent domain displaced thousands of Italian-American residents from Boston's West End, Mexican-Americans from L.A.'s Bunker Hill, and so on. From the opposite perspective, conservatives called for "law and order" after the riots.

In 1960 less than the 40% of the Act's 6-year goal of 810.000 dwelling

[14] M.A. Levine, *Model Cities*, in R.W. Caves, *Encyclopedia of the City*, NY, 2005, 464-465.
[15] *Ibidem*, 465.
[16] As asserted in the *Report of the National Advisory Commission on Civil Disorders*: «Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans. … In this effort, city governments will require state and federal support. The Commission recommends: – State and federal financial assistance for mayors and city councils to support the research, consultants, staff and other resources needed to respond effectively to federal program initiatives. – State cooperation in providing municipalities with the jurisdictional tools needed to deal with their problems; a fuller measure of financial aid to urban areas; and the focusing of the interests of suburban communities on the physical, social and cultural environment of the central city»; *ex multis*, see S. Fine, *Violence in the Model City: The Cavanagh Administration, Race Relations, and the Detroit Riot of 1967*, East Lansing, 2007.
[17] K.B. Clark, *A Conversation with James Baldwin* – transcript of a television interview – in *Freedomways*, No. 3, Summer 1963, 361-368, republished in F.L. Standley, L.H. Pratt, *Conversations with James Baldwin*, Jackson, 1989, 42.
[18] M. Anderson, *The Federal Bulldozer. A Critical Analysis of Urban Renewal, 1949-1962*, Cambridge, 1964.

units were built[19] and until 1969 the total did not exceed the 1949 original goal.

Notwithstanding the *Brown* ruling, a 1961 JFK's Executive Order[20] against discrimination, and the legislation passed under Lyndon Johnson Presidency, segregation of tenants by race – well represented by the Eight Mile Wall in Detroit – continued until the Fair Housing provisions of title VIII of the Civil Rights Act of 1968 which barred discrimination in the sale, rental, financing of housing and in the provision of brokerage services[21]. Dealing with 42 U.S. Code § 1982 and Fair Housing provisions, in *Jones v. Mayer* the Supreme Court held that «all shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property»[22].

Relying on *Jones*, the federal judiciary dealt a harsh blow to racial segregation in public housing in *Gautreaux v. Chicago Housing Authority*[23], where the court held that by concentrating thousands of public housing units in isolated African-American neighborhoods and segregating tenant assignment by race, CHA and HUD violated the Equal Protection Clause. The court put an end to the veto power of white CHA aldermen in predominantly white districts exercised in preclearance decisions used to prevent any deliberation of the City Council.

Since the mid-1970s rehabilitation has become preferred to demolition as new way of revitalizing historic downtown business and residential districts, but the result was a phenomenon of gentrification[24] even worse and

[19] A. von Hoffman, *A Study in Contradictions*, cit., 312.

[20] E.O. 10925 – Establishing the President's Committee on Equal Employment Opportunity.

[21] A crude description of what housing segregation by race meant is given by M. Adams: «In 1967, a year before King was assassinated, my parents bought a vacant lot in Detroit's exclusive, mostly white Palmer Woods neighborhood. In the seventies, they built their dream home there, one of the proudest achievements of their lives. As a child, I never questioned how they managed to buy the lot during the height of the civil-rights movement. Just before my mother died, in 2013, she told me that they had been forced to rely on a highly compensated white intermediary, who concealed the fact that the ultimate buyers – my parents – were black. … Detroit's segregation wall demonstrates the role that the federal government played in separating the races throughout the nation. The segregation that we continue to see today didn't happen by accident. It was the result of official policy. Federal appraisal maps used racial classifications. The F.H.A. refused to guarantee black buyers' mortgages. Public housing – which depended on federal funds – was explicitly segregated by race. The F.H.A. supported the use of racially restrictive covenants, which barred the sale of private homes to buyers of color» (*The Unfulfilled Promise of the Fair Housing Act*, in *The New Yorker*, April 11, 2018, www.newyorker.com); see also M. Adams, *Racial Inclusion, Exclusion and Segregation in Constitutional Law*, in *Constitutional Commentary*, Vol. 28, No., 1, 2012, 1 ff., and Id., *Separate and [Un]Equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, in *Tulane Law Rev.*, Vol. 71, No. 2, 1997, 413 ff.

[22] *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

[23] *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969); *ex multis*, see J.K. Levit, *Rewriting Beginnings: The Lessons of Gautreaux*, in *The John Marshall Law Rev.*, v. 28, 1994, 57 ff.

[24] See, *ex multis*, J.J. Palen, B. London (eds.), *Gentrification, Displacement and*

harder to cope with than displacements of the previous decades.

In his attempt to take control of the domestic programs passed under previous Democratic Administrations, Nixon decided a moratorium on all federal housing programs in 1973[25]. Nixon truly wished to terminate various federal programs but for prudential reasons at a time of racial instability opted to do it gradually. His own housing bill, passed as the Housing and Community Development Act in 1974, was signed by Ford after the Watergate scandal. The Act terminated the urban renewal program by incorporating its functions along with those of other programs – Model Cities included – into the Community Development Block Grant which allowed local authorities greater flexibility in their use of intergovernmental funds for training, education, law enforcement and community development.

Nixon shifted federal housing policy away from new construction of subsidized housing (aid to places) towards means-tested subsidies to aid people reside in privately owned housing to be financed by the enactment a general revenue sharing[26]. Nixon's Executive Order 11452[27] created the Council for Urban Affairs, charged with «the formulation and implementation of a national urban policy» by consolidating a multitude of urban programs that flourished along the 1960s according to four principles: interagency collaboration, program consolidation, federalism, and public-private partnership.

Anyway, rehabilitation replaced clearance and the strict top-down approach of 1949 yielded to citizen's participation.

President Carter issued Executive Orders[28] to coordinate nonurban programs and to target federal spending on distressed cities and neighborhoods; he proposed the creation of a National Development Bank even, but the project failed for conflicts among HUE, EPA and the Treasury about the Department which would run it, and because of Snowbelt/Sunbelt disputes over allocations as well. Carter abandoned its urban policy soon as his own Commission on a National Agenda for the Eighties issued a report in 1980 that urged the switch from aid to places to aid to people[29].

Neighborhood Revitalization, Albany, 1984; K.P. Nelson, *Gentrification and Distressed Cities. An Assessment of Trends in Intrametropolitan Migration*, Madison, 1988.

[25] As the newly appointed President of the Council for Urban Affairs Patrick Daniel Moynihan said, «There is hardly a Department or Agency of the National Government whose programs do not in some way have important consequences for the life of cities and those who live in them»; Moynihan stressed the need for the Federal Government to pay attention to its hidden policies, its hidden urban policies (reported in *The Effect of Channelization on the Environment. Hearing before the Subcommittee on Flood Control-Rivers and Harbors of the Committee on Public Works of the U.S. Senate*, 92nd Congress, Washington, July 27, 1971, 117).

[26] H. Silver, *Obama's Urban Policy: A Symposium*, in *City and Community*, Vol. 9, No. 1, 2010, 3 ff., at 4.

[27] E.O. 11452 – Establishing the Council for Urban Affairs.

[28] Among others, E.O. 12072 – Federal Space Management, and E.O. 12074 – Urban and community impact analyses.

[29] «Much evidence seems to indicate, however, that such strategies achieve very little in upgrading those localities, let alone in helping the underemployed, and dependent whose fortunes are not directly tied to the functioning of local economies. Localities

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The advent of Reagan's "New Federalism" marked the curtail of federal activism and the end of general revenue sharing: between 1980 and 1990 federal urban expenditure fell 46%. Additionally, the HUD fell in disrepute in 1989 because of an investigation into corruption and political favouritism in HUD's low-income housing programs which began months after Secretary "Silent Sam" Pierce left office[30].

Both Reagan and G.H.W. Bush cut federal spending according to supply-side economics; many cities experienced their worst fiscal and service crises since the Great Depression[31]. The Republicans opted for supporting non-profit, voluntary and charitable efforts and public housing was marginalized; instead, the amount of voucher subsidies for private rental housing increased.

Unlike the wide territorial range of the Model City program, the Republicans' "Enterprise zones" «targeted specific places for a reduction or elimination of taxes and regulations in the expectation that firms would open in response to such incentives»[32]. In many cases, enterprises ran away and the system of rental vouchers for tenants fostered a "free market" housing program that remained outside the reach of planned integration schemes[33].

The Clinton Administration tried to combine features of "Model City" with "Enterprise Zone" programs by enacting in 1993 the "Empowerment Zones" and "Enterprise Communities" to encourage local community planning and economic growth in distressed communities using tax incentives and federal investment. Upon the request of President Clinton, under the guide of future NY Governor Andrew Cuomo, HUD realized a survey on the "state of cities"[34] with the purpose to inquire into socio-demographic changes and urban dynamics. The Report set an agenda for Congress to resolve those issues and stressed three major findings:

1. Thanks to a booming national economy, most cities were experiencing a strong fiscal and economic recovery. However, too many central cities were still left behind and continued to face the challenges of population decline, loss of middle-class families, slow job growth, income inequality, and poverty;

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have proved to be very difficult to shore up or "revitalize", despite all our place-oriented redevelopment programs. Federal assistance to local government has often been ineffective in eliminating the multiple distress of "pockets of poverty" within "pockets of plenty". It is time, then, despite all the difficulties entailed, to alter the pattern of place-oriented, spatially sensitive, national urban policies, and to ask, instead, what more people-oriented, spatially neutral, national social and economic policies might accomplish, if not in the immediate future, then certainly in the long run» (*A National Agenda for the Eighties*, 1980, 68-69).

[30] See G. Ifill, A*fter Years of Obscurity, HUD Emerges in Scandal*, in *The Washington Post*, May 30, 1989.

[31] See D. Caraley, *Washington Abandons the Cities*, in *Political Sc. Q.*, Vol. 107, No. 1, 1992, 1 ff.

[32] H. Silver, *National Urban Policy in the Age of Obama*, in J. De Filippis (ed.), *Urban Policy in the Time of Obama*, Minneapolis, 2016, 11 ff., at 20.

[33] See A.F. Schwartz, *Housing Policy in the United States: An Introduction*, NY, 2006.

[34] U.S. Department of Housing and Urban Development, *The State of the Cities*, 1999.

2. Some older suburbs were experiencing problems once associated only with urban areas – job loss, population decline, crime, and disinvestment. Simultaneously, many suburbs, including newer ones, were straining under sprawling growth that was creating traffic congestion, overcrowded schools, loss of open spaces, and other sprawl-related problems as well as a lack of affordable housing;

3. There was a strong consensus on the need for joint city/suburb strategies to address sprawl and the structural decline of cities and older suburbs. The suggestion was to increase cooperation between cities and counties – urban as well as suburban communities – to address the challenges all metropolitan areas were facing.

In 2005, William Barnes of the National League of Cities harshly concluded that «[u]nder Democratic and Republican leaders alike, urban policy has receded into a Washington backwater, and it is unlikely to reemerge as a priority any time soon»[35].

G.W. Bush had to face with the outbreak of the financial crisis. The Housing and Economic Recovery Act of 2008 (HERA) established the Federal Housing Finance Agency (FHFA) charged with the effective supervision, regulation, and housing mission oversight of Fannie Mae, Freddie Mac, Common Securitization Solutions, LLC (CSS), and the Federal Home Loan Bank System, which included the 11 Federal Home Loan Banks (FHLBanks) and the Office of Finance. Since 2008, FHFA has also served as conservator of Fannie Mae and Freddie Mac. The housing bubble and the mortgage-backed securities crisis occupied the scene of politics and made urgent the reform of the financial system that would be soon a priority issue on the Obama Administration's agenda.

Hastily labelled as "the first urban President in more than a century"[36] by reason of his experience as director of the Development Communities Projects in Chicago, his commitment in advocating for changes in high-poverty neighborhoods, his calling for replicating Geoffrey's Canada's "Harlem Children's Zone"[37] during the presidential campaign, Obama disappointed the expectations of a comprehensive national urban policy and of a renovated centrality of federal government's role in American cities.

Two wars, the Great Recession, the ambitious Obamacare, the Republican control over the Congress since 2010 were all factors that downgraded the importance of urban policy over the eight-years Presidency;

[35] W.H. Barnes, *Beyond Federal Urban Policy*, in *Urban Affairs Rev.*, Vol. 40, No. 5, 2005, 575 ff.

[36] D. Gergen, *David Axelrod's 'Believer'*, in *The New York Times Sunday Book Review*, February 12, 2015, in www.nytimes.com,

[37] The Harlem Children's Zone is a public-private partnership whose mission is to «to end intergenerational poverty in Central Harlem and lead the way for other long-distressed communities nationwide and around the world … [and to break] the cycle of intergenerational poverty with on-the-ground, all-around programming that builds up opportunities for children and families to thrive in school, work, and life». It provides a complete network of services to community, like those for early childhood, education, and career programs according to the idea "from cradle to college"; see www.hcz.org.

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race relations too were «another urban-related area in which the high expectations for President Obama fell short»[38].

As he had to face with congressional refusal to new spending programs, Obama relied much on modernizing federal governance, mainly through the creation, soon in 2009, of the White House Office of Urban Affair charged with the coordination of seventeen federal agencies and with the cooperation with cities and metropolitan areas. Anyway, Obama effectively directed the Office of Management and Budget, the Domestic Policy Council, the National Economic Council, and the Office of Urban Affairs «to conduct a comprehensive review of federal programs impacting places, the first of its kind in thirty years»[39].

One piece of Obama's strategy for catalyzing change in high-poverty neighborhoods was the 2010 Neighborhood Revitalization Initiative (NRI), a bold new place-based approach to help neighborhoods in distress transform themselves into neighborhoods of opportunity. NRI engaged the White House Domestic Policy Council (DPC), White House Office of Urban Affairs (WHOUA), and the Departments of Housing and Urban Development (HUD), Education (ED), Justice (DOJ), Health and Human Services (HHS) and Treasury in support of local solutions to revitalize and transform neighborhoods. The interagency strategy was designed to catalyse and empower local action while busting silos, prioritizing public-private partnerships, and making existing programs more effective and efficient.

All that said, the Obama's Office of Urban Affairs played a very secondary role in place-based policies by comparison with OMB's and Domestic Policy Council's engagement in the "Sparking Community Revitalization" made up of four policy objectives: a) "Building Promise Zones"[40], modelled on Clinton-era "Empowerment Zones" and based on a tax

[38] H. Silver, *National Urban Policy in the Age of Obama*, cit., 23.
[39] D. Douglas, *Place-based Investments*, June 30, 2010, in obamawhitehouse.archives.gov; «An effective place-based policy requires comprehensive interagency collaboration and investment that can ensure an increased impact of federal dollars and a greater return on federal investments. By concentrating resources, this approach asserts the primacy of place in moving our nation towards more robust social and economic outcomes. A place-based policy is about finding the place-specific triggers not only to localized neighborhood and community growth but also to metropolitan and regional growth. Federal programs that meet urban and rural areas where they are and federal policies that respond to the ways that people live will meet the demands of communities that are striving for a better quality of life. A place-based program looks at a distressed neighborhood as a system. For example, instead of only focusing on underperforming schools, the Department of Education's Promise Neighborhood program recognizes the role an entire community plays in a child's education. Promise neighborhoods create a continuum of service from pre-k to college to career by partnering with community-based organizations that provide a network of services that include workshops for parents with young children, in-school and after-school tutoring, mentoring, and community building programs just to name a few» (*ivi*).
[40] «Promise Zones are high poverty communities where the federal government partners with local leaders to increase economic activity, improve educational

credits strategy to promote job creation; b) "Ending Homelessness"; c) "Bringing Healthy Food to Communities"; and d): "Creating Sustainable Communities"[41].

Notwithstanding the focus on "Choice Neighborhoods"[42] – housing, people, neighborhoods – and its new important features by comparison with Clinton-Era HOPE VI program[43], with which shared the goal of deconcentrating poverty, Obama's urban policy was modest and reached only a small number of cities and neighborhoods within[44]. Obamacare and the reform of the financial system occupied the scene.

Towards the end of Obama's Presidency, the Supreme Court offered an important decision in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*[45]. Earlier constructions of the Fair Housing Act just

opportunities, leverage private investment, reduce violent crime, enhance public health and address other priorities identified by the community. The 22 urban, rural, and tribal Promise Zones were selected through three rounds of national competition, in which applicants demonstrated a consensus vision for their community and its residents, the capacity to carry it out, and a shared commitment to specific, measurable results» (www.hudexchange.info); «Promise Zones would provide tools to revitalize communities by attracting private investment, creating jobs, improving affordable housing, expanding educational opportunities, providing tax incentives for hiring workers and investing within the Zones, and partnering with local leaders to navigate Federal programs» (www.obamawhitehouse.archives.gov/issues/urban-and-economic-mobility/community-revitalization).

[41] See www.obamawhitehouse.archives.gov/issues/urban-and-economic-mobility/community-revitalization.

[42] «The Choice Neighborhoods program leverages significant public and private dollars to support locally driven strategies that address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation. Local leaders, residents, and stakeholders, such as public housing authorities, cities, schools, police, business owners, nonprofits, and private developers, come together to create and implement a plan that revitalizes distressed HUD housing and addresses the challenges in the surrounding neighborhood. The program helps communities transform neighborhoods by revitalizing severely distressed public and/or assisted housing and catalyzing critical improvements in the neighborhood, including vacant property, housing, businesses, services and schools» (www.hud.gov/cn).

[43] According to H. Silver, «CNI differs from HOPE VI in several ways. First, the revitalization may extend beyond the perimeter of public housing developments to encompass the surrounding neighborhood, to improve all residents' health, safety, employment, and education. … Second, it supports the replacement or rehabilitation of both distressed public housing and other types of HUD-subsidized rental housing with energy-efficient, mixed-income housing that would remain physically and financially viable and affordable for at least twenty years. … Third, unlike HOPE VI or much earlier renewal programs, CNI requires one-to-one replacement of demolished subsidized units, although it permits replacing up to half the units with voucher in metropolitan areas with soft rental housing markets. Fourth, public housing authorities need no longer be the lead agencies for neighborhood transformation» (*National Urban Policy in the Age of Obama*, cit., 33).

[44] See, *ex multis*, H. Silver, *National Urban Policy in the Age of Obama*, cit., 30, and T.S. Sugrue, *A Decent-Sized Foundation. Obama's Urban Policy*, in J. Zelizer, *The Presidency of Barack Obama. A First Historical Assessment*, Princeton, 2018, 144 ff.

[45] *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015); the decision was delivered in June 25, 2015.

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forbade discriminations. Delivering the 5-4 opinion of the Court, Justice Kennedy held that "disparate impact" claims are cognizable under the Fair Housing Act:

«Recognition of disparate-impact claims is consistent with the FHA's central purpose. ... The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation's economy. … These unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification. … Much progress remains to be made in our Nation's continuing struggle against racial isolation. In striving to achieve our "historic commitment to creating an integrated society" … we must remain wary of policies that reduce homeowners to nothing more than their race. But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse. The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that "[o]ur Nation is moving toward two societies, one black, one white – separate and un-equal." ... The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society».

Disparate impact, also referred to as "adverse (or "discriminatory) effect", raises when a law, that on its face is neutral, in practice has an oversized effect on a particular group[46]. The Supreme Court expressly had held in *Washington v. Davis*[47] that disparate impact theory cannot be used to establish a constitutional claim under the Equal Protection Clause of the XIV Amendment.

By virtue of the 2015 Supreme Court decision, the HUD is justified in requiring local authorities to report how they use federal housing fund to reduce racial disparities, even the unintended ones.

In July 16, 2015, after two years of discussion, the HUD announced the Affirmatively Furthering Fair Housing Rule (AFFH). Under the rule, state and local governments receiving federal funds for housing and community

[46] For example, «a policy that has a disparate impact on people with disabilities might include a zoning code definition of "family" prohibiting more than three unrelated persons from living together in a single housing unit. If this policy were applied in a way that prohibits congregate living facilities for people with disabilities from locating in the community, the policy would have a disparate impact on a protected class» (B.J. Connolly, D.H. Merriam, *Planning and Zoning for Group Homes: Local Government Obligations and Liability under the Fair Housing Amendments Act*, in *The Urban Lawyer*, Vol. 47, No. 2, at 265-266);

[47] *Washington v. Davis*, 426 U.S. 229 (1976): «We have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule, *McLaughlin v. Florida*, 379 U. S. 184 (1964), that racial classifications are to be subjected to the strictest scrutiny, and are justifiable only by the weightiest of considerations». See, *ex multis*, S.R. Bagenstos, *Disparate Impact and the Role of Classification and Motivation in Equal Protection Law after Inclusive Communities*, *Cornell L. Rev.*, Vol. 101, 2016, 1115 ff.

development were required to identify and address the barriers provoking exclusion on racial grounds, and protected groups such as families with children or persons with disabilities as well, and to formulate plans to overcome these barriers.

HUD also noted that the "Analysis of Impediments to Fair Housing Choice" introduced in 1995 was ineffective in part because it failed to incorporate participation by members of the community. Many commentators and public institutions suggested strengthening community participation in local plans in order to overcome historic patterns of residential segregation, promoting more integrated neighborhoods, reducing concentrations of poverty, responding to the disproportionate housing needs among people of color and other protected groups[48].

Just as HUD had started accomplishing the AFFH Rule, the Trump Administration not only suspended and then terminated it[49], but also deleted all data and resources related to the Fair Housing planning from the HUD webpage[50].

2. Trump's crackdown on Sanctuary Cities and the questioned constitutionality of conditional grants

A few months after his election, Trump reiterated his will to launch «a nationwide crackdown on sanctuary cities». «American cities – the President said – should be sanctuaries for law-abiding Americans, for people that look up to the law, for people that respect the law, not for criminals and gang members that we want the hell out of our country»[51].

Trump's attack on Sanctuary Cities essentially constituted a great part of his electoral campaign and was immediately codified into in the Sec. 1 of Executive Order 13768 ("Enhancing Public Safety in the Interior of the United States") five days after he took over the office: «Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter

[48] See M. Austin Turner, X. De Sousa Briggs, A. Gardere, S. Greene, *Federal Tools to Create Places of Opportunity for All*, Urban Institute, October 2020, in www.urban.org; X. Becerra, *Request for Comment – Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants (FR-5173-N-15; Docket ID: HUD-2018-0001)*, March 6, 2018, in www.oag.ca.gov; V. Been, K. O'Regan, *Docket No. FR-5173-N-15: Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants; solicitations of comment*, March 6, 2018, in www.furmancenter.org.

[49] B. Samuels, *Trump administration ends Obama fair housing rule*, in *The Hill*, July 23, 2020, in www.thehill.com.

[50] Data and resources have been archived by the Urban Institute and are publicly available at "*Data and Tools for Fair Housing Planning*," Urban Institute Data Catalog, accessed December 23, 2020, in datacatalog.urban.org/dataset/data-and-tools-fair-housing-planning.

[51] See A. Abramson, *"I Can Be More Presidential Than Any President". Read Trump's Ohio Rally Speech*, in *Time Magazine*, July 26, 2017, in time.com/4874161/donald-trump-transcript-youngstown-ohio.

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the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States. Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic».

The enactment of this immigration policy worried many City Mayors. Among them, the Mayor of Boston instantly railed against Trump: «If people want to live here – said Marty Walsh in a press conference at City Hall –, they'll live here. They can use my office. They can use any office in this building. … We will not be intimidated by a threat to federal funding … we will not retreat one inch. To anyone who feels threatened or vulnerable, you are safe in Boston»[52].

A Sanctuary city in contemporary times[53] may be defined as «a city or police department that has passed a resolution or ordinance expressly forbidding city or law enforcement officials from inquiring into immigration status and/or cooperation with Immigration and Customs Enforcement (ICE)»[54].

In so far as irregular migrants tend to live in dense urban settings, immigration law is an area of legislation that produce notable effects on federal, state and local urban policies. Migrants tend to live in dense urban areas because of the higher chance to find a job or suitable accommodations, better access to relational, ethnic, social, or cultural networks and greater anonymity[55]. Hence, irregular migrants become an urban target group for the various facets of urban development and public services policies.

Since Thomas Paine's idea of America as "asylum for mankind", all great narratives that crossed the U.S. History have never excluded immigration and the role of the cities as engines for social and economic mobility.

Thus, from the one hand, some scholars and activists propose the idea of the City as the territorial jurisdiction of inclusion of all its inhabitants by theorizing a "right to the city"[56] that deems residency status as irrelevant in most interactions between people and public administration. A patent example of this approach is the so-called "local bureaucratic membership"

[52] M.E. Irons, C. Guerra, *Walsh rails against Trump, calls immigration actions 'direct attack'*, in *The Boston Globe*, January 25, 2017, www.bostonglobe.com.

[53] A former case involving similar questions to that of state enforcement of federal policies and regulations by arresting, detaining and prosecuting under federal law violations was *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

[54] B. Gonzalez O'Brien, L. Collingwood, S.O. El-Khatib, *The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration*, in *Urban Affairs Rev.*, Vol. 55, No. 1, 3 ff., at 4.

[55] See D. Kaufmann, *Comparing Urban Citizenship, Sanctuary Cities, Local Bureaucratic Membership, and Regularizations*, in *Public Administration Rev.*, Vol. 79, No. 3, 2019, 443 ff.

[56] *Ex multis*, H. Lefebvre, *Le droit a la ville*, Éditions Anthropos, 1968; M. Purcell, *The Right to the City: the Struggle for Democracy in the Urban Public Realm*, in *Policy & Politics*, Vol. 43, No. 3, 311 ff.

aimed at facilitating access of the undocumented to city services. Many Cities – New York, San Francisco, New Haven, Los Angeles, Washington D.C. – have experienced the issuance of special municipal ID cards that allow irregular migrants to identify themselves to schools, hospitals, libraries, frontline city officials, and so on[57].

From the other hand, in the Homeland Security Era after September 11 attacks, federal policies that involve state and local police forces in immigration enforcement encountered an intensification, along the lines laid down by Reagan with the Anti-Drug Abuse Act of 1986, later followed by Clinton in 1996 with the introduction of the 287 (g) Program in the Immigration and Nationality Act.

The 287(g) is a memorandum of agreement between the ICE and state and local law enforcement agencies that permit state or local designated officers to perform limited immigration law enforcement functions after receiving appropriate training and to function under the supervision of ICE officers. The two most common types of agreement are the Jail Enforcement Model (JEM), aimed at identifying irregular immigrants in correctional facilities, and the Warrant Service Officer Model, by which nominated state and local law enforcement officers will be trained, certified, and authorized by ICE to perform limited functions of an immigration officer within the law enforcement agency's jail and/or correctional facilities[58].

Similar programs are the C.A.P. – *Criminal Alien Program*, and the *Secure Communities Initiative*.

The first one, which has merged federal programs that have existed for decades[59], allows ICE officials to search and classify biometric and biographical data in prisons often leading to racial profiling operations[60]. The second one was initiated in 2008 by Bush who made agreements with 14 local jurisdictions, which became 1210 during Obama Presidency.

The Secure Communities revolves around the old British *writ of detainer*: by using the information obtained from the local jurisdictions, through the immigration detainer the ICE requires to keep the immigrant in prison for a further 48 hours from the expected date of release to be able to take him in custody and initiate deportation proceedings.

In *Galarza v. Szalczyk*[61], the Third Circuit Court of Appeals established that Lehigh County Prison (Pennsylvania) violated the XIV Amendment by

[57] See N. Delvino, *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, 2017, in www.compas.ox.ac.uk; E. de Graauw, *Municipal ID Cards for Undocumented Immigrants: Local Bureaucratic Membership in a Federal System*, in *Politics & Society*, Vol. 42, No. 3, 2014, 309 ff.

[58] See www.ice.gov/287g.

[59] See L.M. Olszewski, *Expansion of U.S. Immigration and Customs Enforcement's Criminal Alien Program in the War on Terror*, 2008, in www.calhoun.nps.edu.

[60] See T.G. Gardner, A. Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program (September 1, 2009). The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity*, 2009, in www.ssrn.com.

[61] *Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir. 2014).

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complying with an ICE warrant to detain Ernesto Galarza, a US citizen of New Jersey wrongly classified as an undocumented immigrant; the court made clear that a *detainer* is different from a judicial warrant and is not mandatory. Lately, some State courts ruled that even the voluntary execution of a *writ of detainer* constitutes a violation of the X Amendment if implemented under the threat of federal funding cut[62].

Some States opposed to Obama immigration policy[63] using the *attrition through enforcement* strategy, by attacking every aspect of an illegal alien's life to make it difficult for him to live in that place so he would deport himself; others opposed to Trump restrictive policy evoking the *anti-commandeering* doctrine announced by the Supreme Court in *New York v. U.S.*[64], and further explicated in its 2018 decision *Murphy v. NCAA*[65].

The *California Values Act*[66], for example, by stating that «immigrants are valuable and essential members of the California community», and that «a relationship of trust between California's immigrant community and state and local agencies is central to the public safety of the people of California», has introduced in the Government Code a ban on using State funds to implement federal immigration policies, to investigate the status of immigrants, to perform functions of immigration offices, and so on; on the other hand, it has established the principle of opening all public offices, schools, museums, health facilities, libraries to all California residents regardless of the immigration status recognized by federal regulations.

Likewise, in 2003 the Alaska Legislature passed a joint resolution of the two Houses[67] on the adoption of a state policy to oppose any portion of the Patriot Act that would violate the rights and liberties the Federal and State Constitutions guarantee; in immigration matters, in accordance with the state policy and in the absence of any reasonable suspicion of criminal activity under Alaska law, the joint resolution prohibits any agency or instrumentality of the State from initiating, participating in, or assisting with an inquiry, investigation, surveillance, or detention, recording, filing, or sharing intelligence information concerning a person or organization even if authorized under the Patriot Act.

In many cases, sanctuary policies are pursued locally. S*anctuary Cities*[68]

[62] A. Gomez, *Judge bashes Miami-Dade for helping federal immigration agents*, in *USA Today*, March 3, 2017.

[63] It is worth noting that during the Obama Presidency, 3.063.255 people were "removed", and 2.186.486 "*returned*": «Removals are the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed has administrative or criminal consequences placed on subsequent reentry owing to the fact of the removal»; «Returns are the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal» (DHS, *2018 Yearbook of Immigration Statistics*, Table 39: *Aliens Removed or Returned*, in www.dhs.gov).

[64] *New York v. United States*, 505 U.S. 144 (1992).

[65] *Murphy v. National Collegiate Athletic Association*, 584 U.S._ (2018).

[66] Government Code, Chapter 17.25 added by Stats. 2017, Ch. 495, Sec. 3.

[67] HJR022D -1- SCS CSHJR 22(JUD).

[68] In modern times, the first U.S. Sanctuary City was Berkeley which in 1971 offered

have truly been on the scene for decades; therefore, they did not arise as a reaction to President Trump's immigration policy[69].

It is possible to identify at least 5 types of local or state opposition policies to federal immigration regulations (or state alienage law)[70] by attrition[71]:

1) State/local regulations prohibit the police with prosecuting civil or criminal offenses related to immigration. One of the earliest examples is the Los Angeles Police Department's 1979 "Special Order 40" which prohibits police from questioning people for the sole purpose of ascertaining the regularity of their status under federal immigration laws. Similarly, the San Francisco "City and County of Refuge" ordinance of 1989 establishes that state and local police officials are under no obligation to apply the "civil aspects" of federal immigration laws; the 2013 "Due Process for All" forbids state officials to collaborate with ICE (for example, it prohibits providing data on prisoners who are about to be released); all the rules are now codified in the San Francisco Administrative Code, which dedicates Chapter 12H to the "immigration status"[72];

2) Prohibition to execute federal detainers, except for serious crimes[73];

3) Prohibition to grant access to prisons to ICE officials[74];

4) Restrictions to the disclosure of information about residents and inmates at local prisons[75];

5) Ban on the participation of local police in joint operations with federal agents[76].

hospitality to soldiers returning from Vietnam aboard the USS Coral Sea.

[69] *Ex multis*, see H. Bauder, *Sanctuary Cities: Policies and Practices in International Perspective*, in *Int'l Migration*, Vol. 55, No. 5, 2017, 174 ss.

[70] These issues are further explored in A. Tarzia, *Il Giudice e lo straniero. Linguaggi e culture nei percorsi giurisdizionali*, Naples, 2020, Ch. 5 (La Corte Suprema e il *Plenary Power* nella *Homeland Security Era*).

[71] See C.N. Lasch, R.L. Chan, I.V. Eagly, D.F. Haynes, A. Lai, E.M. McCormick, J.P. Stumpf, *Understanding "Sanctuary Cities"*, in *Boston College L. Rev.*, Vol. 58, 2018, 1703 ss., spec. 1736 ss.

[72] According to Sec. 12H.2, «[n]o department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision».

[73] E.g., the *New York City Local Law No. 62* of 2011.

[74] E.g., the *New York City Local Law No. 58* of 2014.

[75] For example, a Cook County (Illinois) ordinance states: «Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty».

[76] For example, according to the *Seattle's "Welcoming City" resolution*, «the City will reject any offer from the federal government to enter into a Sect. 287(g) agreement per the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

The reasons for the formulation of sanctuary policies are disparate: a) to maintain control of state criminal justice and to ensure the separation between criminal and deportation law, the principle of equality in alienage law, freedom from federal commandeering; b) to strengthen the cohesion of the local community and the trust of foreigners in the police force; c) to avoid illegal arrests; d) to guarantee the Equal Protection of the Laws and to stem racial-based police activities; e) to promote diversity and inclusion.

No doubt that by means of the Executive Order 13768 Trump brought a strong action against Sanctuary Cities; meanwhile, some bills on the issue were presented in Congress[77].

Sec. 9 of the E.O. 13768 declared that is the policy of the Executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373[78]; in 2018 the Department of Justice added the further condition of the enforcement of 8 U.S.C. 1644[79] for the purpose of providing federal funds under the Byrne JAG Program[80].

Several States sued for complaining about a federal coercive action effectively equivalent to commandeering[81].

Following the ruling in *Murphy v. NCAA*, several District Courts declared sections 1373 and/or 1644 unconstitutional for violating the *anti-commandeering doctrine*[82]. After decisions of other federal courts to the

[77] H.R. 516 – *Ending Sanctuary Cities Act of 2019*; H.R.1885 – *No Federal Funding to Benefit Sanctuary Cities Act*; and even a *bill* on "*sanctuary campuses*" in colleges (H.R.483 – *No Funding for Sanctuary Campuses Act*).

[78] "*Communication between government agencies and the Immigration and Naturalization Service*": «Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual».

[79] "*Communication between State and local government agencies and Immigration and Naturalization Service*": «Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States».

[80] «The JAG Program provides states, tribes, and local governments with critical funding necessary to support a range of program areas including law enforcement, prosecution, indigent defence, courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, technology improvement, and crime victim and witness initiatives and mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams», in www.bja.ojp.gov; JAG is the most important program to finance state judicial systems.

[81] See Congressional Research Center, *Immigration Enforcement & the Anti-Commandeering Doctrine: Recent Litigation on State Information-Sharing Restrictions*, March 10, 2020, in www.fas.org.

[82] For example, declaring the unconstitutionality of §§ 1373 and/or 1644, *City of Philadelphia. v. Sessions*, 309 F. Supp. 3d 289 (E.D. Pa. 2018); *City of Evanston v. Barr*, 412 F. Supp. 3d 873, 889 (N.D. Ill. 2019); *City of Chicago v. Barr*, 405 F. Supp. 3d 748, 763 (N.D. Ill. 2019); *Oregon*, 406 F. Supp. 3d at 973; *City of Los Angeles v. Sessions*, No.

contrary, the Court of Appeals for the Second Circuit has decided that the abovementioned sections do not violate the X Amendment and that the Attorney General has not acted in an "arbitrary and capricious" manner by establishing conditions for federal funding[83]; later on, on appeal to a suit brought to the District Court by the City of Chicago complaining the unconstitutionality of the new financial conditions of the JAG program, the Court of Appeals for the Seventh Circuit held that «The Attorney General's use of extra-statutory conditions on federal grant awards as a tool to obtain compliance with his policy objectives strikes at the heart of [a] core value, which is the separation of powers among the branches of the federal government. The authority to pass laws and the power of the purse rest in the legislative not the executive branch»[84].

This question, therefore, not only is still open, but revives another one related to the autonomy of local authorities with respect to the States, with regard, especially, to the compliance of Sanctuary State laws with the State Constitution when they impose certain policies to local authorities with charters of autonomy[85].

In 2017, Miami-Dade County was the first to join the E.O. 13768 and immediately started cooperation with ICE. Not doing so would have meant losing about $ 335 million in federal funds[86].

A further difficult question is: *quid juris* when State sanctuary laws prohibit voluntary forms of local collaboration with federal administration?[87] In California, again, a first instance decision declaring the California Values Act unconstitutional for violation of the charter city's autonomy was then overturned on appeal[88], and in fact confirmed by the State Supreme Court, which refused to hear the case.

CV 18-7347-R, 2019 WL 1957966, at *4 (C.D. Cal. Feb. 15, 2019); *City & Cty. of San Francisco*, 349 F. Supp. 3d at 949-53; *City of Chicago*, 321 F. Supp. 3d at 872.

[83] Decided February 2, 2020, in reversing *N.Y. v. Dep't of Justice*, 343 F. Supp. 3d 213 (S.D.N.Y. 2018), in www.nycourts.gov.

[84] *City of Chicago v. Barr*, No. 19-3290 (7th Cir. 202), decided April 30, 2020.

[85] In *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991), 812 P.2d 916 (Cal. 1991), relying on *Ex Parte Braun* (1903) 141 Cal. 204 [74 P. 780], the Court explained: «After almost a century of litigation inspired by the uncertain meaning of "municipal affairs," we see no reason to question the soundness of *Ex Parte Braun* or to depart from its holding. The opinion remains a germinal gloss on the home rule provision of article XI, section 5(a), and one vital meaning of the doctrine it embodies-a recognition of the affirmative constitutional grant to charter cities of "all powers appropriate for a municipality to possess ..." and of the important corollary that "so far as 'municipal affairs' are concerned," charter cities are "supreme and beyond the reach of legislative enactment"».

[86] Cfr. C. Boyer, *State Courts, Immigration, and Politics in the Trump Era*, in *Albany L. Rev.*, Vol. 82, No. 4, 2018/2019, 1411 ff., spec. 1442 ff.

[87] About the issue, see T.G. Gardner, *The Promise and Peril of the Anti-commandeering Rule in the Homeland Security Era: Immigrant Sanctuary as an Illustrative Case*, in *St. Louis Univ. Public L. Rev.*, Vol. 34, 2015, 313 ff., at 316.

[88] *City of Huntington Beach v. Los Alamitos Community United*, January 10, 2020, in www.courts.ca.gov; cfr. D. Ettinger, *Supreme Court lets stand decision requiring Huntington Beach to follow law restricting involvement with immigration enforcement*, April 1, 2020, in www.atthelectern.com.

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Besides defining federalism-related issues, immigration appears so central to American urban development that some authors wonder why it is not explicitly discussed as an aspect of urban policy[89].

3. Rethinking Euclidean planning zones and other challenges in Metropolitan America

In a 1926 case, *Village of Euclid v. Ambler Realty*[90], the Supreme Court held that «very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district». Writing for the Court, Justice Sutherland legitimated the idea of the single-family lifestyle in low-density residential zones by accepting the exclusion of multi-family housing from those "Euclidean" districts.

That ruling was a forerunner of the post-war American Dream built upon the idea of the white nuclear family living in a single detached house surrounded by a yard[91] (those lily-white places attracting tens of millions of middle- and working-class families fairly represented in 1950s and 1960s sitcoms).

The decision of the Supreme Court contributed to forge the unique American zoning paradigm that led the urban development of the Country in the post-war period: land uses had been regulated according to a pyramidal scheme whose vertex were single-family residential zones, and by establishing who could live in that houses and how people could interact in that portion of territory; at lower levels situated commercial, industrial, and then agricultural uses. Later on, the growing separation of public and private spheres steered local ordinances to turn out to be less hierarchical and more segregationist, with a generalized prohibition to mix land uses[92], which favoured the sprawling landscape of suburban America[93].

The foregoing stratified on a Jim Craw laws' approach to zoning that

[89] R. Su, *Immigration as Urban Policy*, in *Fordham Law J.*, Vol. 38, No. 1, 2010, 363 ff.
[90] *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).
[91] See A.C. Micklow, M.E. Warner, *Not Your Mother's Suburb: Remaking Communities for a More Diverse Population*, in *The Urban Lawyer*, Vol. 46, No. 4, 2014, 729 ff.; see also E. Levy, *The American Dream of Family in Film: From Decline to a Comeback*, in *J. of Comparative Family Studies*, Vol. 22 [monographic number on *The American Dream of Family: Ideals and Changing Realities*], No. 2, 1991, 187 ff.
[92] See S. Hirt, *Home, Sweet Home: American Residential Zoning in Comparative Perspective*, in J. *of Planning Education and Research*, Vol. 33, No. 3, 292 ff.
[93] A.C. Micklow, M.E. Warner, *Not Your Mother's Suburb*, cit., 731. «The land use classes are further divided into subclasses (e.g., residential branches into one-family, two-family, and multi-family residential) and then designated to relatively large districts. For each zone, the code typically specifies primary (permitted by right) uses, accessory uses (e.g., garages in residential zones), and conditional uses (e.g., civic buildings in residential zones). In hierarchical codes, as already noted, mixing is allowed in the lower-level zones. But in the more common nonhierarchical codes, any mixing is very limited» (S. Hirt, *The Devil Is in the Definitions. Contrasting American and German Approaches to Zoning*, in *J. of the American Planning Association*, Vol. 73, No. 4, 2007, 436 ff., at 439).

had originated the "separate but equal" doctrine in *Plessy v. Ferguson*[94].

Almost 50 years later, in *Village of Belle Terre v. Boraas*[95], Justice Douglas for the Court still recognized the preservation of traditional family values as a legitimate State objective.

A New York village of Belle Terre ordinance had restricted land use to one-family dwellings, defining the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit and expressly excluding from the term lodging, boarding, fraternity, or multiple dwelling houses. After the owners of a house in the village, who had leased it to six unrelated college students, were cited for violating the ordinance, this action was brought to have the ordinance declared unconstitutional as violative of Equal Protection and the rights of association, travel, and privacy.

The District Court held the ordinance constitutional, and the Court of Appeals reversed. The Supreme Court held that «the ordinance – which is not aimed at transients and involves no procedural disparity inflicted on some but not on others or deprivation of any "fundamental" right – meets that constitutional standard, and must be upheld as valid land use legislation addressed to family needs».

Urban sprawl, demographic changes (an increasing aging and more racially and ethnically diverse population[96] beyond 2030[97], mainly), deindustrialization[98], technology and the rise of the clustered knowledge economy[99], new constitutional sensibilities on the concept of family, gender equality, fight against racial discrimination, have been defying that archetype upon which suburbs were built, calling for new zoning and land use regulations.

At present, American suburbs are undergoing thorough transformations due to the increase of singles[100], elders,

[94] *Plessy v. Ferguson*, 163 U.S. 537 (1896).
[95] *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).
[96] U.S.' increased diversity over the 21st Century is reflected in the rapid population growth of Latino or Hispanic Americans (the nation's largest minority), Asian Americans, and persons identifying as two or more races – along with smaller gains in Black and Native American populations. All together, these groups increased by 51% between 2000 and 2018, compared with just a 1% increase in the white population (in www.brookings.edu).
[97] U.S. Census, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060*, February 2020, in www.census.gov/content/census/en/library/publications/2020/demo/p25-1144.html.
[98] See, *ex multis*, T. Neumann, *Remaking the Rust Belt. The Postindustrial Transformation of North America*, Philadelphia, 2016; C.E. Taft, *From Steel to Slots. Casino Capitalism in the Postindustrial City*, Cambridge, 2016; P. Cooper-McCann, *Negotiating the Postindustrial City*, in *J. of Planning History*, Vol. 18, No. 4, 2019, 329 ff.; and the landmark B. Bluestone, B. Harrison, *The Deindustrialization of America. Plant Closings, Community Abandonment, and the Dismantling of Basic Industry*, NY, 1982.
[99] R. Florida, *The Changing Demographics of America's Suburbs*, in *Bloomberg City Lab*, November 7, 2019, in www.bloomberg.com.
[100] According to US Census data, the percent of one-person households has passed from

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multigenerational[101] and ethnic households.

According to Generations United – a National nonprofit that improves children, youth and older adults' lives through inter-generational programs and policies –, five major factors emerge as causes of the increase in multigenerational households[102]:

a) *slower starts*: people are marrying later and more unmarried 20-somethings continue to live with their parents, by choice or economic necessity;

b) *suburbanization of immigration*[103]: Latin Americans and Asians have immigrated to the U.S. in large numbers; their presence in the suburbs has increased in the last decades and statistics demonstrate that immigrants are more likely to live in multigenerational families; simultaneously, a number of low-income African Americans are being pushed out of gentrifying parts of cities;

c) *availability of kin*: There are more Baby Boomers now financially secure and able to offer their parents a place to live in their old age while providing a home to their own children;

d) *health and disability issues*;

e) *economic conditions*: The Great Recession caused job loss or other forms of reduced income; sharing household expenses across generations make them more practicable.

These changes are so profound that some wrote about the "end of suburbs"[104], as many affluent and educated people are moving back to the

16,7 in 1969 to 28,4 in 2019 (www.census.gov/library/visualizations/2019/comm/one-person-households.html).

[101] The U.S. Census Bureau defines multigenerational families as those consisting of more than two generations living under the same roof. Many researchers also include households with a grandparent and at least one other generation. According to a Generations United survey, between 2000 and 2016, the number of multigenerational households increased by a remarkable 21.6 million, passing from 42.4 million in 2000 to 64 million in 2016. Today, 1 in 5 American households are multigenerational (www.gu.org). The National Association of Realtors found that buyers who completed their transaction after the pandemic began in March 2020 were more likely to purchase a multigenerational home (NAR, *2020 Profile of Home Buyers and Sellers*, available in www.nar.realtor).

[102] See www.gu.org/explore-our-topics/multigenerational-households.

[103] This phenomenon is quite the opposite of the earlier 20th century pattern where immigrants packed themselves into inner-city neighborhoods. «As of 2010, more than half of all immigrants (51 percent) resided in the suburbs. Today's suburban immigrants are also more highly educated than those of the past. One reason they choose suburbs is for access to their schools. The second trend is the racial and ethnic transformation of suburbia. Part of this is due to immigration, but another part is the suburbanization of African Americans. Between 1970 and 2000, the share of African Americans living in suburban Atlanta increased from 27 percent to 78 percent; while in greater Washington D.C it rose from 25 percent in 1970 to 82 percent» (R. Florida, *The Changing Demographics of America's Suburbs*, cit.); see also R. Florida, *The New Geography of American Immigration*, in *Bloomberg City Lab*, October 15, 2019, in www.bloomberg.com.

[104] L. Gallagher, *The End of the Suburbs: Where the American Dream Is Moving*, NY, 2013.

cities; some others talked about the rise of "new melting-pot suburbs"[105] or called for a "new sociology of the suburbs"[106] akin to the urban sociology pioneered by Robert Park and the Chicago School of the early 20th Century; others, observing that the older pattern of rich suburbs that grew as bedroom communities or homes to industrial or office parks near poor cities is reversed, with poor suburbs now surrounding rich cities, coined new terms like "Slumburbia"[107] to catch the "migration of poverty"[108].

Plainly, exclusive suburbs still do exist and continue to thrive: more urbanized, closer-in and walkable ones; connected to pulsating urban centers by public transit; home to knowledge institutions like universities, colleges, or major R&D labs; surrounded by amenities like coastlines, mountains, or parks; or those that have developed new economic functions and connections to the knowledge economy like the Silicon Valley[109].

Anyway, even if white Americans still live in mostly white neighborhoods[110], the 20th Century narrative on white suburb as a privileged residence in the metropolitan landscape, separated from workplace[111], with low services and infrastructure costs, high property values and low poverty is definitely blurred. Notwithstanding, racial steering[112] in the U.S. housing markets did not vanish at all[113].

All these great transformations not only convey a metamorphosis of suburbs' cultural identity but require more public services and renovated regulations on zoning and land use classifications.

There is a demand for smaller (one-person households) and larger (multigenerational families) houses, subsidized mortgages, more services for elders, new technologies and ease of communication that would allow to

[105] W.H. Frey, *The rise of melting-pot suburbs*, May 26, 2015, in www.brookings.edu.
[106] K. Lacy, *New Sociology of Suburbs: A Research Agenda for Analysis of Emerging Trends*, in *Annual Rev. of Sociology*, Vol. 42, 2016, 369 ff.
[107] T. Egan, *Slumburbia*, in *The New York Times*, February 10, 2010, in opinionator.blogs.nytimes.com.
[108] A.J. Howell, J.M. Timberlake, *Racial and Ethnic Trends in the Suburbanization of Poverty in U.S. Metropolitan Areas, 1980–2010*, in *J. of Urban Affairs*, Vol. 36, No. 1, 2014, 79 ff.
[109] R. Florida, *The Changing Demographics of America's Suburbs*, cit.
[110] W.H. Frey, *Even as metropolitan areas diversify, white Americans still live in mostly white neighborhoods*, March 23, 2020, in www.brookings.edu.
[111] A.R Markusen noted that «[t]he most striking aspects of modern U.S. city spatial structure are the significant spatial segregation of residence from the capitalist work-place, the increasing low-density settlement, and the predominant single-family form of residential housing. … The fundamental separation between "work" spheres and home corresponds roughly to the division of primary responsibility between adult men and women for household production and wage labor, at least historically» (*City Spatial Structure, Women's Household Work, and National Urban Policy*, in *Signs*, Vol. 5, No. 3, Supplement. *Women and the American City*, 1980), S22 ff., at S27 and S29, respectively)
[112] «Racial steering may be defined as behaviors by real estate agent vis-à-vis a client that tend to direct the client toward particular neighborhoods and/or away from others» (G. Galster, *Racial Steering by Real Estate Agents: Mechanisms and Motives*, in *The Rev. of Black Political Economy*, Vol. 19, No. 1, 1990, 39 ff.).
[113] See M. Hall, J.M. Timberlake, E. Johns-Wolfe, A. Currit, *The Dynamic Process of Racial Steering in U.S. Housing Markets*, March 2020, in www.osf.io.

combine home and work.

These new needs couple with a reprioritization of the zoning hierarchy in privileging commercial uses that has started to materialize in 1990s. Many localities, relying on *Kelo v. New London*[114] ruling, have adopted form-based codes that allow for a greater mixing of land uses, sometimes reprioritizing commercial uses over residential ones.

In *Kelo*, a 5-4 opinion delivered by Justice Stevens, the majority held that the city's taking of private property to sell for private development qualified as a "public use" falls within the meaning of the Takings Clause. The city was not taking the land simply to benefit a certain group of private individuals, but as part of an economic development plan. Such justifications for land takings – the majority argued – should be given deference. The takings were qualified as "public use" even though the land was not going to be used by the public. The Fifth Amendment don't necessitate "literal" public use but the «broader and more natural interpretation of public use as 'public purpose'»: economic development on private property is a legitimate public use because of the increase in tax value and the raise of tax revenue.

Some commentators emphasized the risk of demolition of lower-valued buildings in favor of commercial development and of displacement of people living within, as the decision allows the condemnation of land on which poor people live under the guise of alleviating blight[115].

As regards multi-family housing (apartment buildings, condominiums, duplexes, townhouses, to name just a few), already in the 1970s the New Jersey Supreme Court has offered in *Mount Laurel I-II* an alternative view of suburban landscape by allowing minimum levels of affordable multi-family housing[116]. After the generalized tumbling down in 2009-2011, an year-on-year growth of the number of multi-family building permits has been recorded[117]: trend towards smaller homes suggests that space is becoming

[114] *Kelo v. City of New London*, 545 U.S. 469 (2005).

[115] I. Somin, *Is Post-Kelo Eminent Domain Reform Bad for the Poor?*, in *Northwestern Univ. Law Rev.*, Vol. 101, No. 4, 2007, 1931 ff.: soon after *Kelo*, the Author noted, «most of the states that have enacted post-*Kelo* reform laws have either banned both blight and economic development takings (five states, plus Utah, which enacted its reform law prior to *Kelo*), or defined "blight" so broadly that virtually any property can be declared "blighted" and taken (sixteen states). Several other states have enacted reforms that provide no real protection to any property owners because of other types of shortcomings».

[116] *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 67 N.J. 151 (1975), and *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 158 (1983); see M.A. Hughes, P.M. Vandoren, *Social Policy through Land Reform: New Jersey's Mount Laurel Controversy*, in *Political Science Quarterly*, Vol. 105, No. 1, 1990, 97 ff.; see J.P. Byrne, *Are Suburbs Unconstitutional?*, in *The Georgetown Law J.*, Vol. 85, 1997, 2265 ff.

[117] See Statista, *Multifamily Home in the United States*, 2020, in www.statista.com: «This statistic [̲"Volume of multifamily housing units completed in the U.S. 1997-2020"̲] shows the volume of multifamily housing units completed in the United States from 1997 to 2020. In 2019, there were 281,000 multifamily housing units built in the United States and 280,000 are forecast to be completed in 2020» (33); «There were 524,000 building permits for multifamily housing units granted in the United States in 2019,

increasingly limited, or that consumers prefer smaller homes due to smaller mortgages, lower maintenance costs and lower utility costs.

It's worth noting that resistance to the introduction of alternative forms of housing has been frequently opposed by reasons of concerns about overcrowding, degradation of neighborhood quality, decline of property values, rise of costs in infrastructure related to the increase in density (in suburbs, sewer, water, electrical and even roadway systems has traditionally been designed specifically for single-family houses); on the contrary, new forms of houses could finally recognize the centrality of the caregiving issue in multigenerational families.

On this matter, in *State v. Baker*[118], the New Jersey Supreme Court paved the way to overcome discriminatory family definitions, such as those provided in zoning regulations limiting the number of persons living together. Grounding the decision in the Substantive Due Process, the Court rejected *Belle Terre* and invalidated a zoning ordinance that prohibited more than four unrelated individuals living together.

Some commentators noted that municipalities have essentially two options: to define family functionally or to avoid definitions and employ regulations to prevent overcrowding: «Defining a functional family can be troublesome for policymakers because the definition needs to be enforceable. In many cases, a functional family is synonymous with a single housekeeping unit identified by communal cooking, pooled finances, or shared domestic responsibilities. The functional family definition offers some promise because

compared with 473,000 over the previous twelve months. In contrast, there were around 862,000 building permits for single-family housing units authorized in 2019. Multifamily housing projects are on the increase. Multifamily homes refer to buildings that contain at least two housing units, including apartment buildings and duplexes. In 2019, building work had started on over 400,000 multifamily housing units in the United States – the highest number recorded in recent decades. Overall, there were more than 56 million multifamily dwellings in the United States in 2018, and the number is predicted to exceed 155 million by 2023. What are the trends in size of different properties? One of the noticeable differences between multifamily and single-family housing is the size of the units. In 2019, the median size of a multifamily unit in the United States reached 1,076 square feet; in contrast, the median size of a single-family housing unit was more than twice as large» ("Number of multifamily building permits in the U.S. 2000-2019", 34).

[118] *State v. Baker*, 81 N.J. 99 (1979): «The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimizes many uses which defeat that goal. Plainfield's ordinance, for example, would prohibit a group of five unrelated "widows, widowers, older spinsters or bachelors or even of judges" from residing in a single unit within the municipality. ... On the other hand, a group consisting of 10 distant cousins could so reside without violating the ordinance. Thus the ordinance distinguishes between acceptable and prohibited uses on grounds which may, in many cases, have no rational relationship to the problem sought to be ameliorated. Regulations based upon biological traits or legal relationships necessarily reflect generalized assumptions about the stability and social desirability of households comprised of unrelated individuals' assumptions which in many cases do not reflect the real world».

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it removes the marriage or blood-related requirement from the regulation, but still conforms to a traditional view of what makes a family. Another option for policymakers is to adopt lifestyle-neutral ordinances or form-based codes. These types of ordinances retain the height and yard restrictions of traditional single-family ordinances without regulating the household composition with restrictive definitions»[119].

In effect, various municipalities have been adopting form-based codes. The Chicago Metropolitan Agency for Urban Development[120] has detailed the following differences between form-based codes and conventional zoning.

Conventional zoning arose out of the need to protect public health, safety, and welfare by preventing the most negative impacts of siting, size, and use of buildings. In general, conventional zoning:

a) Separates uses related to daily activity, such as home, school, and work;

b) Frequently promotes low-density development and relatively limited housing choices;

c) Often encourages excessive land consumption and automobile dependency;

d) Ends up focusing on what uses are not allowed, rather than encouraging what the community actually wants;

e) Applies standards and design requirements generically, in a "one-size-fits-all" manner, throughout the entire community;

f) Uses regulations such as floor area ratio, which can shape the form of development in ways that are hard to visualize beforehand and may encourage developers to "max out" the massing of a building within allowed limits, often at the expense of its architectural detailing and sensitivity to existing context;

g) Regulates private development, but typically not the design or character of the streets that serve it. This usually leaves development of standards to the city engineer or public works department, which tend to focus on accommodating automobile traffic.

On the contrary, form-based codes:

a) Encourages a mix of land uses, often reducing the need to travel extensively as part of one's daily routine;

b) Promotes a mix of housing types;

c) Is "proactive," focusing on what the community wants and not what it dislikes;

d) Results from a public design process, which creates consensus and a clear vision for a community, to be implemented by the form-based code;

e) Tailors the requirements to it specific places or neighborhoods by reflecting local architecture and overall character;

f) Emphasizes site design and building form, which will last many years beyond specific numerical parameters such as density and use regulations that are likely to change over time;

g) Addresses the design of the public realm and the importance that

[119] A.C. Micklow, M.E. Warner, *Not Your Mother's Suburb*, cit., 748.
[120] Chicago Metropolitan Agency for Planning, *Form-Based Codes: A Step-by-Step Guide for Communities*, Chicago, 2013, available in www.formbasedcodes.org.

streetscape design and individual building character have in defining public spaces and a special "sense of place";

h) Provides information that is easier to use than conventional zoning codes because it is shorter, more concise, and emphasizes illustrations over text.

Our overview of national and local urban policies may lead to some major findings.

Over more than a Century, the federal government has played a role in crafting and perpetuating racial zoning throughout the Country. Disparities and segregations (by income, race, personal and social conditions, to name a few) in and among neighborhoods still persist and drive markable injustices in safety, education, employment, health. Over the last decades, federal decisions to underfunds equity goals in housing patently did not contribute to cope with problems of sprawling and unsustainable development. To some Authors, the history of American urban policy appears be "a narrative of failure" even[121].

American Cities and American way of life have experienced radical changes due to transformations in all facets of urban life. America remains a suburban nation, but so many issues raised and still constitute a dilemma for municipalities: downtown rehabilitation programs, sprawling, transformation of suburbs, zoning and new forms of regulation involving citizens by strengthening participation.

Whichever way all the issues here evoked will be addressed and whatever direction the 21st Century federalism will take over[122], the U.S. "immigration exceptionalism" will continue to be inextricably imbricated with urban policies and to play a major role in the trajectory of urban development programs.

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[121] M.B. Katz, *Narratives of Failure? Historical Interpretations of Federal Urban Policy*, in *City and Community*, Vol. 9, No. 1, 2010, 13 ff.

[122] See W.A. Galston, K. Davis, *21st Century Federalism: Proposals for Reform*, January 2014, in www.brooking.edu.