

C. Retarded Regional Development

What municipality would tolerate land theft, particularly if it retards regional development? What city would sanction individuals building illegally on land designated for roadbeds, schoolyards, a ring road, or a playground?⁶⁴⁴ What should Jerusalem do if illegal construction crops up on the roadbed of the forthcoming light rail mass transit system?⁶⁴⁵ In Jerusalem what responsible administration would permit violation of the long-standing principle maintaining a green belt around the walls of the Old City?⁶⁴⁶ What planning authority would look the other way when illegal structures are put up on an archaeological site of significance to three of the world's major religions? These examples illustrate just part of what is at stake in Jerusalem.

VIII. The Global Epidemic of Illegal Building and Demolitions

A. The Global Threat Posed by Illegal Building

Urban areas in developing countries are collapsing as a consequence of population explosion. This results in anarchy, as public services are unable to maintain pace with the demands put on them.⁶⁴⁷ The result is that the cities of the developing world become wastelands, which Claude Levi-Strauss described:

Filth, promiscuity, disorder, physical contact; rooms, shacks, excrement, mud; body moistures, animal droppings, urine, purulence, secretions, suppuration - everything that urban life is organized to defend us against, everything that we loathe, everything we protect ourselves against at great cost - all these by-products of cohabitation never here compose a limit of its spread.⁶⁴⁸

Many cities in developing countries are experiencing rapid and uncontrolled growth with millions of their inhabitants living in slums.⁶⁴⁹ It is now common for 30 to 60 percent of an entire city's population to live in houses and neighborhoods that have been developed illegally.⁶⁵⁰ It is very rare for infrastructure and services essential for health and well-being - piped water, sewers, storm drainage, all-weather roads, public transit, electricity, health care - to be furnished by the government to those who build illegally.⁶⁵¹ Illegal settlements are tolerated when the authorities lack the political and organizational will to dismantle them. Others are simply bulldozed.⁶⁵² Housing in squatter settlements is illegal in two senses. First, land is occupied illegally and the site is developed without regard for zoning and subdivision regulations (i.e., the permitted use of the land, permitted density, water supply, drainage, and access roads).⁶⁵³ Second, many individuals and businesses make money out of the development of illegal settlements or the needs of their inhabitants.⁶⁵⁴ For

⁶⁴⁴ According to one City official, demolition will not, by itself, solve the illegal building epidemic. This major criminal enterprise enables its participants to get rich quickly via illicit conduct including forged documents, intimidation, land theft, construction code violations and the like. Demolition, however, can protect essential urban assets like the ring roads and schools. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Mar. 3, 2002).

⁶⁴⁵ Anat Gezrge, *From Jerusalem to Paris in Three Stages*, HA'ARETZ (Hebrew newspaper), Sept. 23, 2001, p. 13.

⁶⁴⁶ Yadin Roman, *Jerusalem's Wall*, available at Internet Website (visited May 27, 2002) <www.eretz.com>

⁶⁴⁷ RICHARD G. HEERDEGEN, *LAND USE AND PLANNING: READINGS IN REGIONAL DEVELOPMENT* 68 (1967).

⁶⁴⁸ Claude Levi-Strauss, *Crowds*, 15 *NEW LEFT REVIEW* 3-6 (1962)

⁶⁴⁹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 7 (1989).

⁶⁵⁰ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 12 (1989).

⁶⁵¹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵² JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵³ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 26 (1989).

⁶⁵⁴ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).

example, landowners, land developers, and businesses make money from buying and selling land illegally.⁶⁵⁵ In some illegal settlements, extensive and highly profitable landlordism has developed.⁶⁵⁶

A tolerant but passive reaction by the government has serious disadvantages. These include:

- absence of public services normally associated with housing like water and sanitation;
- the inhabitants are not usually eligible for loans to buy, build or improve their illegal structure or to expand their business situated in it, since the illegal structure is not accepted as collateral;⁶⁵⁷ and
- illegal structures are scattered all over and this makes it very expensive to extend water, sewers, roads and public transit.⁶⁵⁸

B. Examples of Demolitions World-wide

It is often helpful to put local events in a broader, global perspective. Despite the impression one gets from the media and the NGOs, demolition of illegal structures was not invented or popularized by the Jerusalem Municipality. In fact, it is in wide use, often on a much larger scale, in dozens of countries around the world.

1. Examples from Western and Developing Countries

The use of demolitions by governments struggling to cope with illegal construction is by no means limited to the Arab areas of Jerusalem. If one expands the horizon to consider the worldwide use of demolition (to cope with illegal building), many striking similarities and one stark difference are revealed. In recent decades, municipalities and governments in all parts of the world have struggled with illegal building not unlike that in Jerusalem. Many use demolition and some, out of frustration with the endemic nature of the problem, promulgate ordinances to 'regularize' existing unlawful development. The difference is the nearly complete lack of publicity when other governments demolish *vis-a-vis* the incessant denunciation of rather infrequent demolitions by the Jerusalem Municipality.

It is instructive to consider the following instances of illegal building across many countries:

- The city had to pay a company thousands of U.S. dollars to tear down and haul away an illegally built second-story addition to a residence. The decision to demolish the illegal addition came at the end of a legal battle lasting more than two years, during which the homeowner ignored three court orders to stop building. In one of the court hearings the judge ordered the homeowner to take the addition down within 30 days or serve 60 days in jail. He elected to go to jail.⁶⁵⁹ [United States]
- The army used troops and bulldozers to demolish what were described as illegally built houses and shops in a shantytown on the southern outskirts of

⁶⁵⁵ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).

⁶⁵⁶ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 86 (1989).

⁶⁵⁷ HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (2002).

⁶⁵⁸ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 100 (1989).

⁶⁵⁹ Will Rogers, *Illegal Home Addition Will Be Torn Down*, ST. PETERSBURG TIMES, Nov. 22, 1991, p. 1.

the capital city. Soldiers fired their rifles into the air to keep excited residents away from the demolition work. The demolished buildings belonged to Muslim war refugees, who were accused by an official of putting up their structures on land belonging to the government and private citizens. Officials indicated that 35 buildings were demolished in one day, but some indications indicated that the actual number could be much higher. An official claimed that he had warned those living in the shantytown that demolition was imminent. One woman screamed, "My house has gone."⁶⁶⁰ [Lebanon]

- Dozens of people fought wrecking crews trying to demolish illegal buildings in a poor suburb of the capital city, setting fire to several cars, a witness reported.⁶⁶¹ [Iran]
- The government's planning department announced a policy to clear all illegal squatters from hillsides and rooftops, claiming that they had given as much notice as possible of their plans. Demonstrators blocked rush-hour traffic for an hour in protest of the Government's decision to demolish their illegal homes. A woman protester said, "The Government has done nothing to help us. Where will we live when they demolish our home." Twenty-two protesters, men and women, were dragged, kicking and screaming to police vans. As the vans drove away the protestors could be heard banging on the doors, bellowing, "the police beat us, the police beat us." Families living in the flats claim that they have no place to go. One also claimed that he was a *bona fide* purchaser of his residence and that he regularly paid his property tax and utilities bills.⁶⁶² [China]
- City officials gave additional time to two department stores to demolish floors they had added illegally on top of their buildings. The stores were originally given permits to build four floors but subsequently added seven more floors despite official warnings. The Municipality brought lawsuits against them, but it took about a decade before the Supreme Court delivered its verdicts against the illegal additions. The stores were subsequently able to exploit illegal loopholes to avoid complying with the Supreme Court's decision for an additional five and eight years respectively.⁶⁶³ [Thailand]
- The local government's policy to demolish an additional 285 illegally built homes was criticized as "discriminative" because buildings belonging to people with powerful connections were spared. Already 123 illegal homes have been torn down.⁶⁶⁴ [Indonesia]
- Using bulldozers and other heavy equipment, the urban development authority demolished a basement-plus-three floor commercial complex. It was the largest unauthorized structure pulled down. The owner of the complex produced forged documents of title to support his fraudulent claim to the underlying property. The true owner of this very valuable real estate was the Urban Development Authority.⁶⁶⁵ [India]

⁶⁶⁰ William E. Farrell, *Lebanese Army Bulldozes 'Illegal' Homes*, NY TIMES, Oct. 9, 1982, p. 6.

⁶⁶¹ No byline, *Iran Riot*, THE INDEPENDENT (London), Sept. 22, 1992, p. 10.

⁶⁶² Patricia Young, Joseph Lo & Mariana Wan, *Peak-hour Delayed by Protesting Squatters*, SOUTH CHINA MORNING POST, Dec. 15, 1994, p. 3.

⁶⁶³ Poona Antaseeda, *Department Store Closures: Illegal Buildings Remain Open*, BANGKOK POST, July 3, 1999.

⁶⁶⁴ No byline, *Bias Cited in Destruction of Villas*, JAKARTA POST, Apr. 22, 1998.

⁶⁶⁵ No byline, *India: BDA Demolishes Huge Illegal Building*, THE HINDU, Oct. 21, 2001.

- The government promulgated an ordinance for legitimizing illegal constructions where a fee is paid. Notices previously issued to pull down illegal buildings were suspended. The new ordinance is not applicable, however, where the land belongs to the government, local authority, or a statutory body or if the government allocates the land for a specific purpose. It is also not applicable to land planned for building roads, watercourses, water bodies, natural drainage or hazardous industrial development. An official announced that new rules of responsibility and accountability for illegal construction would be drafted and that every effort would be made to ensure that there would be no illegal construction in the future. The proposed rules would insure that the builder, promoter, and the architect would not be given water, drainage, and electricity connections until they conform to legal norms and procure the building use certificate. The official further stated that if, despite precautions, new illegal constructions crop up they will be destroyed.⁶⁶⁶ [India]
- Building inspectors escorted by police are touring the area in a crackdown on illegal building. They have been told to enforce court orders halting work on homes that could now face demolition in which many people have invested their life savings. Several developers have ignored court orders and kept on building to present the judges with a *fait accompli*.⁶⁶⁷ [Spain]
- The Construction Police started to destroy illegal construction in the capital city. In recent years a “kiosk epidemic” has spread across the capital, resulting in cutting down trees and destroying beautiful public gardens.⁶⁶⁸ [Albania]
- The United Nations mission in Kosovo took on the illegal construction barons, seizing a building for demolition after a local official who tried to tighten building regulations was killed. One baron had continued building a five-story block on public land, despite having received a demolition order. At least 2,500 unauthorized buildings have shot up in Pristina in the 15 months since the end of the bombing in Yugoslavia. According to a UN official, local organized crime rings are behind the building boom. [UN forces in the autonomous province of Kosovo, Yugoslavia]
- “The building code, passed by parliament, permits a maximum of nine floors per building. Like all other zoning regulations, this was virtually ignored by landowners. Additional floors were built atop converted houses whose ground floors were used as retail and shopping outlets, and courtyards were filled in by new constructions. Since high-rise apartments were erected directly at the street limit, the possibilities of street enlargements [widening] became virtually nil. More stifling, even sidewalks were eaten up and the city became one of the few treeless modern cities. Its smothered pedestrians are denied access to shaded and secure sidewalks, let alone the lush beauty of foliage. Instead of pacifying the forces ravaging the beleaguered habitat, many of the gifted architects and builders, instead of arousing the public, became willful participants, often accessories to the very processes that were despoiling the city. ... Hence, the ruthless plundering of the country’s scenic natural habitat and the dehumanization of its living space became starkly visible. With the

⁶⁶⁶ No byline, *Final Nod to Regularize Illegal Buildings*, Nov. 23, available at Ahmedabad Internet Website (visited Nov. 13, 2001) <www.ahmedabad.com/news/2k/nov/23building.htm>.

⁶⁶⁷ Tim Brown, *Britons Face Big Losses in Costa Villas Dispute*, DAILY TELEGRAPH, Sept. 27, 1989, p. 2.

⁶⁶⁸ No byline, *Destruction of Illegal Construction Behind the Palace of Culture*, ALBANIAN TELEGRAPHIC AGENCY, Jan 7, 2000,

absence of governmental authority, the despoliation of the environment became more rampant. What had not been ravaged by war was eaten up by greedy developers and impetuous consumers. Hardly anything was spared. In such a free-for-all context, any concern for the aesthetic, human or cultural dimensions of living space is bound to be dismissed as superfluous or guileless.”⁶⁶⁹ [Lebanon]

- The President ordered the demolition of all illegal structures in the Federal Capital Territory - to wit those erected on sewage lines, green area, and security zones. The illegal structures were blamed for “severely distort[ing] the master plan” and constituting “serious safety and security hazards.”⁶⁷⁰ As a consequence of the demolition, thousands were made homeless.⁶⁷¹ [Nigeria]
- The builder of a high rise known as the Glass Towers in the capital city is brought before the Supreme Court. They are charged with numerous violations, in particular that the structures were extended onto the roadbed, preventing its future widening and misappropriated a road running on one side of the structures. The Supreme Court ordered the builder to tear down the encroachment at his expense, and to bring the remainder of the structure in compliance with the city plan. A investigative journalist described the intimidation of a courageous public official who opposed rampant illegal building, the planning officials who are a “nest of corruption and inefficiency,” the “lawyer Mafia” that has arisen to represent the “despoilers,” and the abuse of the legal system to delay or frustrate the demolition orders.⁶⁷² [Pakistan]
- The City Council announced that a court decision to demolish an illegal addition to the back of someone’s garage should serve as a warning of the need to get proper building permits.⁶⁷³ [Australia]
- An Administrative Report was issued to the city’s Committee on Planning and Environment which contained a recommendation that a building at a certain location is “a nuisance and dangerous” and called for it to be demolished within 14 days in accordance with the city Charter.⁶⁷⁴ [Canada]
- The Supreme Court ruled that the municipal authorities have the right to demolish the huts of slum-dwellers that are located on public property. It was estimated that up to 50 million people could be affected nationwide.⁶⁷⁵ [India]
- The government directed law enforcement agencies to demolish the squatter colonies set up by immigrants from a neighboring country. The objective was

⁶⁶⁹ SAWIR KHALAF, BEIRUT RECLAIMED 65, 67, 113 -14, 116 (1993).

⁶⁷⁰ Rotimi Ajayi, *Obasanjo Orders Demolition of All Illegal Structures*, VANGUARD (Lagos, Nigeria), July 16, 2001.

⁶⁷¹ No byline, *Nigeria Protests Against Demolition*, THE NEWS (Lagos, Nigeria), Oct. 19, 2000.

⁶⁷² Ardeshir Cowasjee, *Glass Lions*, THE DAWN (Karachi, Pakistan), May 9, 1999, available at Dawn Internet Website (visited Dec. 2, 2001) <<http://www.dawn.com/weekly/cowas/990509.htm>>.

⁶⁷³ MEDIA RELEASE, Wollongong City Council, *Council Acts on Illegal Building Work*, Aug. 15, 2001, available at Internet Website (visited Nov. 24, 2001) <http://www.wollongong.nsw.gov.au/news/media/20010815_building.html>.

⁶⁷⁴ Carlene Robbins, *Administrative Report, from Vancouver City Building Inspector, to Standing Committee on Planning and Environment*, Oct. 18, 1999, available at Internet Website (visited Dec. 7, 2001) <<http://www.city.vancouver.bc.ca/ctyclerk/cclerk/991216/pe1.html>>. In another Canadian jurisdiction City officials recommended that the City Council order an owner to demolish her house after repeated problems with squatters, drugs and prostitution. If approved, the owner would be required to demolish the house within 14 days or the city would do it and bill the owner. News, *City Hall: Officials Want Owner to Demolish House*, VANCOUVER SUN, Dec. 16, 1999, p. B1.

⁶⁷⁵ Jeremy Seabrook, *Third World Review: No Room for the Homeless/India’s Bombay Slums*, GUARDIAN, Dec. 14, 1985, p. 5.

to “eradicate the squatter colonies” comprising the houses of 1,201 families.⁶⁷⁶ [Malaysia]

- Nearly all of the 8,000 residents of a town were forcibly relocated, and all but 50 of their 1,500 homes demolished, by the Government’s effort to attract tourists and open new sites to archaeologists.⁶⁷⁷ [Egypt]
- The National Housing Authority announced that it would “do its part by evicting about 16,000 of an estimated 432,450 squatter families in the capital city. The shacks had to go because they were an eyesore and a hazard.”⁶⁷⁸ [Philippines]

It may surprise the reader that not one of these twenty examples took place in Jerusalem. They occurred in countries with widely varied political systems that are situated on every continent on earth, with the exception of Antarctica.⁶⁷⁹ And as for the stark difference mentioned just before the twenty bullets: to the best of this author’s knowledge not a single human rights group, international body, or foreign government has criticized demolitions in any of these locales. Of particular interest are examples 2 and 12, both of which took place in Lebanon. The example of Lebanon is particularly noteworthy, given the 1997 speech by that country’s Prime Minister calling for a united effort to prevent the ‘Judaization’ of Jerusalem.⁶⁸⁰ Moreover, in item number 11, the demolition was actually carried out by UN peacekeeping forces in Pristina, the capital of the Kosovo autonomous area of Yugoslavia. Note that the United Nations has been the forum for ferocious attacks on Israeli policies to combat illegal construction in Jerusalem.⁶⁸¹

2. U.S. Laws on Demolitions

Governmental demolition of buildings is common in other countries such as the United States. For example, in slum clearance,⁶⁸² growth management,⁶⁸³ zoning,⁶⁸⁴ urban renewal, or in cases of housing code enforcement,⁶⁸⁵ public agencies may even demolish privately owned buildings without paying compensation to the owners or, in the alternative, order the owner to demolish his/her structure.⁶⁸⁶ The courts have upheld the Constitutionality of the statutes permitting building demolition.⁶⁸⁷ These statutes are so common that model demolition ordinances have been drafted by national code-drafting agencies such as the Building Officials Conference of America,⁶⁸⁸ the American Public Health

⁶⁷⁶ M. Jegathesan, *Malaysia to Demolish Indonesian Squatter Homes, Step up Patrols*, AGENCE FRANCE PRESSE, Jan. 31, 2002, p. 13.

⁶⁷⁷ Douglas Jehl, *Qurna Journal: After 4,000 Years, It’s Time for Urban Renewal*, NY TIMES, Mar. 4, 1997, p. A4.

⁶⁷⁸ Paul Watson, *Manila Squatters Cleaned Out of Philippines Polishes Image for Economic Summit*, TORONTO STAR, Nov. 20, 1996, p. A17.

⁶⁷⁹ The specific locales are identified in brackets at the end of each paragraph.

⁶⁸⁰ No byline, Source: Radio Lebanon, *Lebanese PM Urges Halt to Normalization With Israel*, BBC SUMMARY OF WORLD BROADCASTS, Part 3 Asia-Pacific, Pakistan, Organization of the Islamic Conference Summit in Islamabad, speeches, FE/D2876/S3, Mar. 25, 1997.

⁶⁸¹ See Ministry of Foreign Affairs, *Israel’s Response to the Report Submitted Pursuant to United Nations General Assembly Resolution ES-10/2* (Document A/ES/-10/6; S/1997/494), para. 18 (1998).

⁶⁸² Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635, 639-46 (1969). Among the categories of structures which are, by state statute, subject to demolition are those which have fire hazards, those which are unsafe (dangerous to health or life), and those which are dilapidated, unfit or obsolete. *Ibid.*

⁶⁸³ E.g., *Pinecrest Lakes v. Shidel*, Fla. App. LEXIS 13464, 795 So.2d 191 (2001). In this recent case the appeals court ordered the demolition of 40 newly constructed upscale apartments, worth in excess of \$3 million (U.S.), that were deemed to be in violation of the county’s comprehensive land use plan due to their proximity to single-family homes. *Ibid.*, p. 207.

⁶⁸⁴ E.g., *Welton v. East Oak Street Building Corp.*, 70 F.2d 377 (7th Cir. 1934).

⁶⁸⁵ Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635-36, 638 (1969).

⁶⁸⁶ E.g., *Pinecrest Lakes v. Shidel*, Fla. App. LEXIS 13464, 795 So.2d 191 (2001); Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635-36 (1969).

⁶⁸⁷ E.g., *Polsgrove v. Moss*, 154 Ky. 408, 157 S.W. 1133 (1913); *Swett v. Sprague*, 55 Me. 190 (1867); *Maxedon v. Rendigs*, 9 Ohio App. 60 (1917); *City of Saginaw v. Budd*, 3 Mich. App. 681, 143 N.W.2d 608 (1966), *rev’d on other grounds*, 381 Mich. 173, 160 N.W.2d 906 (1968).

⁶⁸⁸ Building Officials Conference of America, *Basic Building Code Sec. 125.1* (4th ed., 1965).

Association-U.S. Public Health Service.⁶⁸⁹ The International Conference of Building Officials had also promulgated a provision of its Uniform Building Code that permits demolition, in this instance when any of 17 conditions are found.⁶⁹⁰ There is even a Uniform Code for the Abatement of Dangerous Buildings, which specifically addresses the circumstances in which buildings can be destroyed.⁶⁹¹

The general rule in the United States is that while the government may regulate the use of privately owned real property to a certain extent, if the regulation goes too far it will be recognized as a taking.⁶⁹² In the United States land use regulations or decisions to use the eminent domain (condemnation) power must be supported by a valid public purpose.⁶⁹³ This power is typically used to obtain land for various public facilities - roads, schools, parks, monuments and public amenities, among others.⁶⁹⁴ Pursuant to the 5th Amendment to the U.S. Constitution, condemnees receive compensation based on the value of the asset in the market, not including money for relocation costs, business losses, or psychological disruption.⁶⁹⁵ Courts seldom nullify such a taking provided the landowner is compensated.⁶⁹⁶

The various levels of government have come to dominate land use control, particularly in urban and suburban areas.⁶⁹⁷ Measures that severely limit an owner's use of his/her land, but fall short of a taking, are numerous indeed. In the words of Professor Justin Sweet, author of the preeminent casebook on engineering and construction law:

The scope of land use regulation by federal, state and local governments is enormous. The federal government actually owns one-third of the land in the mainland United States, mostly in the western half of the country. In addition, Congress has adopted legislation on water pollution, flood controls, interstate land sales, real estate settlements, race and gender discrimination, mining, grazing, and timbering on federal lands, national parks, wildlife zones, Native American lands and a host of other problems. State and local governments have passed an even longer list of land use measures, including zoning statutes, building codes,

⁶⁸⁹ American Public Health Association-[U.S.] Public Health Service, Recommended Housing Maintenance and Occupancy Ordinance, sec. 16.02.01 (Review ed., 1967).

⁶⁹⁰ International Conference of Building Officials, Uniform Building Code, Vol. IV, DANGEROUS BUILDINGS (1967).

⁶⁹¹ International Conference of Building Officials, CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1997).

⁶⁹² JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 937 (6th ed., 2000). Implementation of this rule has proven to be very difficult indeed. Frank I. Michelman, *Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARVARD LAW REVIEW 1165 (1967).

⁶⁹³ Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 899 (6th ed., 2000). The blight of vacant buildings in a slum can be condemned under eminent domain. Note, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. LAW REVIEW 1139 (1999).

⁶⁹⁴ JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 909 (6th ed., 2000).

⁶⁹⁵ JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 909, 937 (6th ed., 2000).

⁶⁹⁶ See *Berman v. Parker*, 348 U.S. 26, 32-33 (1954); see *Amen v. City of Dearborn*, 718 F. 2d 789 (6th Cir. 1983).

⁶⁹⁷ See RICHARD H. CHUSED, CASES MATERIALS AND PROBLEMS IN PROPERTY (2d ed.) 94-111 (1999). In the United States land use control is regulated by state enabling acts. These acts express goals in general terms and authorize the local authorities to make specific rules (ordinances) and to administer them. The enabling acts allow two agencies to be created to deal with these matters: a planning commission to draft a master plan and detailed ordinances and a board of adjustment to deal with appeals from the decisions by the local administrator or officials. The Model Land Development Code, approved by the American Law Institute, a group of scholars, lawyers and judges, is one example of such a legal structure. RICHARD H. CHUSED, CASES MATERIALS AND PROBLEMS IN PROPERTY (2d ed.) 96 (1999). The first efforts to impose order in this area arose out of the Standard State Zoning Enabling Act of 1926 (Standard State Zoning Enabling Act (U.S. Dept. of Commerce Review, ed., 1926) and the Standard City Planning Enabling Act of 1928 (Standard City Planning Enabling Act (U.S. Dept. of Commerce 1928). In recent decades a leading source has been the Model Code prepared by the American Law Institute. American Law Institute, Model Land Development Code (1975). Planning, however, is not universally appreciated. See, e.g., Richard E. Klosterman, *Arguments for and Against Planning*, READINGS IN PLANNING THEORY (Scott Campbell and Susan S. Fainstein 1996), pp. 150-69; A. DAHL & C. E. LINDBLOOM, POLITICS, ECONOMICS AND WELFARE (1953); Ruth Glass, *The Evaluation of Planning: Some Sociological Considerations*, in A READER IN PLANNING THEORY (Andreas Faludi, ed., 1973), pp. 45-68.

environmental regulations, consumer protection statutes, anti-discrimination laws, and historic preservation programs.⁶⁹⁸

In Europe and North America, planning originated in the early part of the 20th century as a response to widespread dissatisfaction with the results of the existing market and political processes as reflected in the physical squalor and political corruption of the emerging industrial cities.⁶⁹⁹ Local authorities typically furnish fire and police protection, educational facilities, parks, public transportation, a network of roads, water, and sewage facilities.⁷⁰⁰ They may also consider aesthetics, social justice, employment opportunities, healthcare needs, entertainment preferences, economic growth, phased housing growth, conservation of energy resources, protection of the natural environment,⁷⁰¹ and preservation of historical sites.⁷⁰² They are also responsible for the overall quality of life.⁷⁰³

Those who complain that many Arabs cannot afford housing in Jerusalem ought to be reminded of the economic facts of life. Whether one likes them - or not - is irrelevant. They are considered axiomatic everywhere but in the Arab sector of Jerusalem. That is, urban residents who cannot afford the high cost of housing, including many large families, find it necessary to move to the periphery where housing is more affordable. Thus in recent years tens of thousands of Jews have been 'driven' from Jerusalem to its suburbs including Mevesaret Zion and Ma'aleh Adumim. Even the ultra-Orthodox, despite their deep religious attachment to the City, have left Jerusalem in droves for communities like Beitar and Ramat Bet Shemesh, because they cannot afford to house their large families in Jerusalem. Indeed, the pattern repeats itself in urban areas worldwide. In New York they move from Manhattan to Queens, northern New Jersey or Staten Island. Whatever their attachment to Manhattan, however large their family, nobody would excuse or tolerate their building illegally in Central Park.

3. Demolitions by the Palestinian Authority

Another thought-provoking instance of demolition occurred in Gaza, under the rule of the same Palestinian Authority that attempts to turn every instance of demolition in the Arab areas of Jerusalem, regardless of its factual and legal justification, into an international incident. According to one report in *The Washington Post*, Palestinian Authority bulldozers "flattened" Fatima Abu Suayed's house, with all her possessions inside, because it was allegedly constructed illegally on "Palestinian State Property." According to the account, "a bulldozer plowed down more than 20 homes."⁷⁰⁴ No mention was made of any legal process or safeguards. Mayor On A-Shawa explained, "In the recent period there is an increase in the number of illegal structures that damage the urban planning of the city."⁷⁰⁵ Other than one small organization based in Gaza,⁷⁰⁶ none of the NGOs that regularly attack the Jerusalem Municipality and the State of Israel uttered a word of protest.

⁶⁹⁸ JUSTIN SWEET, *LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS* 899 (6th ed., 2000).

⁶⁹⁹ Richard E. Klosterman, *Arguments for and Against Planning*, READINGS IN PLANNING THEORY (Scott Campbell and Susan S. Fainstein eds. 1996), pp. 150, 159.

⁷⁰⁰ See RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 98 (1999). Sewage and water crises have led to moratoria on construction in some areas in the United States. See, e.g., *Charles v. Diamond*, 41 N.Y.2d 318, 392 N.Y.S.2d 594, 360 N.E.2d 1295 (1977). See RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 98 (1999).

⁷⁰¹ See, generally, GORGE ENRIQUE HARDOY, DIANA MITLIN & DAVID SATTERTHWAITE, *ENVIRONMENTAL PROBLEMS IN AN URBANIZING WORLD: FINDING SOLUTIONS IN AFRICA, ASIA AND LATIN AMERICA* (2001).

⁷⁰² RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 94 (1999).

⁷⁰³ RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 94 (1999).

⁷⁰⁴ Barton Gellman, *Palestinians Vent Their Ire Over Arafat: Gaza's Jubilation on Achieving Self-Rule Turns to Frustration, Anger*, WASHINGTON POST, Feb. 27, 1995, p. A1.

⁷⁰⁵ AL QUIDS, June 9, 2001.

⁷⁰⁶ The Palestinian Center for Human Rights is, to the best of this author's knowledge, the only one of these numerous rights groups that protested the Palestinian Authority's demolition of several homes in Gaza City. Palestine Center for Human Rights Internet Website, *In Breach of a Ruling by the Palestinian High Court of Justice, the Gaza Municipality has Demolished Several Homes in Gaza City* (visited May 30, 2002) <<http://www.pchrgaza.org/files/PressR/English/1997/munic-h.htm>>.

Some Arab leaders recognize that whatever its political utility, illegal construction has deleterious effects on the daily life of the residents, especially in the Arab neighborhoods. For example, Azam Abu Saud, the Director General of the Office of Arab Commerce in Jerusalem, spoke to this issue in the newspaper *Al Quds*. Abu Saud reasoned that ignoring the planning law encourages violence and injures the rights of others, as failing to leave the proper space between buildings and by building on roadbeds. At the risk of deviating publicly from the Palestinian Authority's position,⁷⁰⁷ he recommended pulling down illegal structures.⁷⁰⁸

Conclusions

Modern cities have a right, indeed a need, to plan. They must do this for their residents, present and future. They must do this to make delivery of public services manageable and affordable. They must do this to protect the environment. In some parts of the world, including Jerusalem, they must do this to preserve their historical, architectural, and archeological heritage. Certainly every effort should be made to secure input from the different sectors of the population. Nevertheless, professional planners have no choice but to continue their work, even where such input is extremely limited from the minority sector.

The tipping point has been crossed. Illegal construction is fast becoming the norm throughout Jerusalem. Without knowing the exact number, it is fair to estimate that a thousand illegal living units are built each year in the Arab neighborhoods of the City. As Hatem Abed El-Khader Eid, member of the Palestinian Legislative Council representing the Jerusalem district proudly announced, the municipal enforcement is totally ineffective. To reiterate, he stated that over a four-year period the Palestinians have erected 6,000 homes without building permits, out of which only 198 were demolished.⁷⁰⁹ Eid declared, "we in the Palestinian Authority are willing to build ten homes for every house demolished by Israel."⁷¹⁰ Clearly, there is almost no deterrence in the current enforcement policy. The magnitude of the problem is most pronounced in the Arab neighborhoods where thousands of illegal units, many of them substantial structures, are scattered across the landscape, frequently on land that does not even belong to the builder. Common wisdom blames it all on poverty, cultural factors, historical circumstances, and discrimination and manipulation by the City of Jerusalem and the State of Israel. Overlooked are factors that, in recent years, have grown to become the two cardinal reasons for today's illegal building epidemic. First, illegal construction enjoys widespread economic and political support of the Palestinian Authority and various foreign entities including Arab states and, indirectly, the European Union. Second, substantial illicit profits accrue to those who build illegally.⁷¹¹

The conventional wisdom, in bold below, deserves a through review. Taking a fresh look at the matrix of issues surrounding illegal building, of which demolitions are merely the most visible aspect, this author believes that a more complex, and quite dissimilar, reality emerges.

⁷⁰⁷ Apparently to protect himself, Abu Saud directed his criticism at illegal building in Area B, where there is joint Israeli-Palestinian authority. However, the real problem of illegal construction, as Abu Saud well knows, is in the Arab neighborhoods of Jerusalem. He also knows well which political forces and whose money supports those who build illegally.

⁷⁰⁸ Azam Abu Saud, *AL-QUDS*, May 13, 2001.

⁷⁰⁹ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

⁷¹⁰ Khaled Abu Tuwama, *A Representative of the Jerusalem District in the Palestinian Legislative Council: "We Built 6,000 Houses Without Permits,"* JERUSALEM (weekly Hebrew newspaper), May 25, 2001. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001). See also Nadav Shragai, *PA Vows they Won't Stop Building in Jerusalem*, HA'ARETZ (English newspaper), Jan. 17, 2002.

⁷¹¹ Another factor that is often overlooked in the case of Jerusalem is the impact of limited resources, a nearly universal problem of cities.