In Between Blight and Historic Preservation: Urban Renewal in Providence, Rhode Island[1]

Table of Contents

Abstract:

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This paper seeks to analyze two inter-related developments in contributing to the legal history of urban renewal in American cities and the city of Providence. First, I study the development of the legal standard of blight in state courts in the pre-*Berman v. Parker* era of American jurisprudence. Focusing on a set of advisory opinions, early state court-cases and state constitutional convention documents in Rhode Island, I aim to show how blight as the legal standard for a taking was debated, contested, and ultimately, enshrined into state constitutional and statutory law.

Next, I take a critical lens to the formation of the Providence Preservation Society (PPS), one of the early, and most powerful historic preservation society groups in the country, which formed in the immediate wake of federal urban renewal. I study early documents from the historic preservation movement and critique the narrow understanding of urban preservation that predominated groups like PPS at the time. I contrast the groups' focus on preserving building fabric and structures in the College Hill neighborhood with the destruction of numerous areas of the city under the legal pretext of blight. In doing so, I focus on the complex figure of Antoinette Downing, a leading preservationist in the city.

I. Introduction

In 1960, the city of Providence received laudatory praise from the American Institute of Architects ("AIA"), the pre-eminent architectural organization in the country at the time, who cited the city's successful historic preservation efforts in the College Hill neighborhood, home of Brown University.[2]

> "No other city in the United States has presented its historic conservation and rehabilitation problems as clearly, as succinctly, or as beautifully."[3]

In the January 1960 issue of "America Rebuilding," Providence received more national attention, praised under the flattering, if slightly condescending headline, "New Life for Yesterday's City."[4] This surprising acknowledgment by the nation's leading architectural organization was almost unimaginable five years earlier. The city of Providence directed much of the credit towards the efforts of the Providence Preservation Society ("PPS" or "Society"), a non-profit formed in 1956 by a group of politically powerful, wealthy, and dissatisfied College Hill residents who were concerned by the urban renewal trends sweeping the country and the state.[5] PPS has long been celebrated in the urban planning community as one of, if not the first major nonprofit group to incorporate preservation first, rather than demolition first, as its organizing principle in the mid-20th century.[6] During an era in which modernist assumptions about city planning and urban development dominated, PPS was well ahead of its time. The Society was formed over five years *before* Jane Jacobs landmark critique of urban renewal and the modernist planning assumptions in *The Death and Life of Great American Cities*.[7] The Society's charter statement at its 1956 incorporation read as follows.

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[2] "Providence Preservation Society, Part IV: Progress Since 1959," Providence Preservation Society, 216.
[3] "Providence Preservation Society, Part IV: Progress Since 1959," 216.
[4] "Providence Preservation Society, Part IV: Progress Since 1959," 216.
[5] Gene Bunnell, *Transforming Providence: Rebirth of a Post-Industrial City* (Troy Bookmakers, 2016), 17-30.
[6] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[7] Jane Jacobs, *The Death and Life of Great American Cities* (Random House, 1961).

> "We realize that in order to protect our significant architectural legacy, we must accept the responsibilities as well as privileges that come with living in an old city. This Society is therefore organized for the *encouragement of protecting, improving, and making proper use of our historic sites and buildings*."[8] (emphasis added).

The Providence that the Society encountered was radically different from the city today, now a darling of the urban revitalization efforts of the late-20th century.[9] Providence's "Renaissance" and the remaking of downtown space has become folklore in urban planning and policy literature as an exemplary success of public-private partnerships in revitalizing downtrodden areas.[10] By the 1990s, thanks to these efforts, in part led by the lovably bellicose and wildly corrupt Mayor Buddy Cianci, Providence was back on the map. An August 1999 *USA Today* article described the city of Providence as "an arts capital, entertainment center, tourist destination and a trendy place to live."[11] Numerous cities sent municipal delegations to Providence in the late 1990s to examine the revitalization of the riverfront, and the efforts undertaken to remake physical space downtown.[12]

However, in the 1950s, the city's population had begun a precipitous decline due to industry flight and the trends of suburbanization sweeping the country.[13] What was once one of the richest cities in the United States in the 19th century (due to its major industries of jewelry, textile production, and steam engine assemblage) had become a shell of its former self, as suburban sprawl and the rise of the automobile decimated the city's housing market and eroded

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[8] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[9] Bunnell, *Transforming Providence*, 7-17.
[10] Susan Henderson, "From Plan to Place: Providence's Downtown Renaissance," February 11, 2025, *Congress for the New Urbanism*, https://www.cnu.org/publicsquare/2025/02/11/plan-place-providences-downtown-renaissance/ ("Like most historic US cities, Providence declined in the 20th century but has since become a model for urban revitalization through investment and good planning.") I wrote my undergraduate thesis on this revitalization period in the 1990s, the "return to the downtown" and innovative urban planning and public-private partnership strategies undertaken by the city. (on file with the author).
[11] Haya El Nasser, "Smaller is Better in New Urban Revival," *USA Today*, August 16, 1999.
[12] Steven Litt, "Providence Pins Hope on the Arts," *The Cleveland Plain Dealer*, (Cleveland, OH), August 30, 1998.
[13] Bunnell, *Transforming Providence*, 43-46.

its property tax base.[14] Its fate mirrored many of its New England industrial counterparts (New Haven, Worcester, Fall River, for example), as once-thriving downtowns were replaced by boarded up factories and abandoned buildings. As homeowners left the city, the physical deterioration of the city's building stock accelerated due to the city's declining tax revenues and limited capability of addressing urban needs.[15] The infamous "Suicide Circle," which connected downtown Providence to the Ivy-League prestigious College Hill was perhaps the best symbol of the city's urban and spatial dysfunction. The poorly designed circle, surrounded by a World War I memorial, indicated an era that had come and gone for the city. Car crashes, pedestrian fatalities, and confusion at the center of the crumbling urban core was the new norm.[16]

Despite these alarming trends in the city, two institutions that remained largely insulated from this urban decline were the city's prestigious universities, Brown University and the Rhode Island School of Design (RISD), located in the College Hill neighborhood.[17] The growth of the physical footprint of these universities actually compounded the city's budgetary problems, since their property, like all universities, was tax-exempt.[18] Cities like Providence thus faced the paradox of celebrating the cultural capital of their universities while lamenting the growth of their physical footprint. As public services contracted and urban development generally slowed in mid-20th century- Providence, universities faced the opposite pressure to increase their

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[14] John S. Gilkeson, *Middle-Class Providence, 1820-1940* (Princeton University Press, 1986).
[15] Scholars like Jon Teaford have written extensively about this phenomenon, particularly in older Northeast cities in the mid-20th century. *See* Jon Teaford, *The Rough Road to Renaissance: Urban Revitalization in America, 1940-1985* (Johns Hopkins University Press, 1990).
[16] Francis Leazes, *Providence: The Renaissance City* (Northeastern University Press, 2004), 105.
[17] Bunnell, *Transforming Providence*, 18.
[18] For a further discussion of the tenuous relationship between universities and municipal governments over real estate development, *see* Davarian Baldwin, *In The Shadow of the Ivory Tower: How Universities are Plundering Our Cities* (Bold Type Books, 2021).

physical foot print amidst the surge of World War II veterans attending college on the GI Bill.[19] From the fall of 1945 to the fall of 1948, Brown's student population grew from 1021 to 4624.[20] In contrast, the city's population as a whole during this decade fell by 2%, and by a stunning 16% at the end of the 1960s.[21] Amidst this surge in attendance in college, Barnaby Keeney, the newly inaugurated president of Brown University, set off on a mission to expand the university's footprint by demolishing historic buildings on the edge of campus.[22] He sought to acquire vacant or depreciating lots and buildings in the College Hill neighborhood that the university would use to build and house the increased number of students. RISD began to conduct a similar strategy of property acquisition and demolition during this period.[23] The university's proposed expansions were the primary catalyst for the creation of the influential Providence Preservation Society. The transformative years of the late-1950s saw the incorporation and creation of the Providence Preservation Society (1956), the city's first historic district zoning ordinance (1960), and historic preservation protections implemented state-wide by the legislature.[24]

At the same time the historic preservation movement organized and gained legal wins in cities like Providence, federal urban renewal and the statutory classification of *blight* as the basis for a takings became widespread. The desire to eliminate *"*blighted areas*"* from urban landscapes like Providence became rationalized and codified through state-wide urban renewal

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[19] "75 Years of the GI Bill: How Transformative It's Been," January 9, 2019, https://www.defense.gov/News/Feature-Stories/story/Article/1727086/75-years-of-the-gi-bill-how-transformative-its-been.
[20] "Historical Student Enrollment," Brown University, https://oir.brown.edu/institutional-data/factbooks/historical-student-enrollment.
[21] "United States Census Bureau: Providence City, Rhode Island," Census Bureau, https://www.census.gov/quickfacts/fact/table/providencecityrhodeisland/PST045224.
[22] Bunnell, *Transforming Providence*, 17-18.
[23] Bunnell, *Transforming Providence*, 17-18. At the time, the President of RISD, John Frazier, said that he could see no alternative to bulldozing dilapidated buildings that the university owned or sought to acquire.
[24] Bunnell, *Transforming Providence*, 24-25.

legislation.[25] Empowering newly created municipal redevelopment agencies to use the power of eminent domain to assemble parcels of land was done through the identification and classification of areas and properties that were deemed to be beyond repair.[26] The theory of urban renewal advocates can be most charitably described as follows. Cities would seek to stem the tide of suburbanization by bringing people and business back into cities to rebuild their tax base and grow the economy.[27] Neighborhoods and structures that were perceived to be blighted had become drags on the tax rolls of a city.[28] Therefore, it was necessary to acquire these properties and redevelop them, while compensating existing residents where necessary.[29] The actual statutory timeline mandated a relatively quick process from the identification of a blighted area to condemnation, giving short periods of time for affected owners to challenge the condemnation through administrative proceedings.[30]

As urban historian Colin Gordon points out in his analysis of the astonishing rise in the legal category of blight in the 1950s, "most states, in fact, stopped short of defining blight and instead offered a descriptive catalog of blighted conditions—often pasted verbatim from Progressive-era health and safety statutes."[31] Blighted areas and conditions were to be liberally construed, giving redevelopment agencies significant leeway to show as many (or as few)

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[25] R.I. Code §§ 45-32-1-45-32-50.
[26] R.I. Code §§ 45-32-3 ("It is further found: that the existence of blighted and substandard areas constitutes a serious and growing menace which is injurious and inimical to the public health, safety, morals, and welfare of the people of the communities in which they exist and of the people of the state generally.").
[27] Arnold Hirsch, *Making the Second Ghetto Race and Housing in Chicago, 1940-1960* (University of Chicago Press, 1983) (discussing the decline of property tax revenue and its impact on municipal budgets).
[28] Hirsch, *Making the Second Ghetto: Race and Housing in Chicago*.
[29] Jonathan Purver, "What Constitutes "Blighted Area" Within Urban Renewal and Redevelopment Statutes," 45 American Law Reports 3d 10986 § 2(a) (1972).
[30] Purver, "What Constitutes 'Blighted Area,'" § 2(a).
[31] Colin Gordon, "Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight," *Fordham Urban Law Journal* 31, no. 2 (2004): 312.

conditions of blight, and commence the condemnation process.[32] This permissiveness was key in facilitating unequal applications of the standard.

The Rhode Island statute codified by the legislature listed numerous conditions that could be construed as blighted, mostly physical conditions, but also, related to the social and economic conditions of the area too. A positive showing of any of these conditions was purported to be inimical and incompatible with the health, safety, and general welfare of the people.[33] Blighted areas could be places with deficient and dilapidated physical structures. They could also be places where there were "factors and characteristics…conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; injuriously affect the entire area and constitute a menace to the public health, safety, morals, and welfare of the inhabitants of the community and of the state generally."[34] As Martin Gold and Lynne Sagalyn persuasively argue, "The facilitating feature of "blight" was that it was hard to know precisely what it was and therefore hard to define, yet this very vagueness would make it easy to find."[35] As areas in cities were falling fate to the classification of blight, a symbiotic process was occurring in which other deteriorating areas or properties became subsumed under historic preservation legal protections,

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[32] Purver, "What Constitutes "'Blighted Area,'" §§ 3-4.

[33] R.I. Code § 45-31-8 (18) defines "slum blighted area." ("Any area in which there is a predominance of buildings or improvements, either used or intended to be used for living, commercial, industrial, or other purposes, or any combination of these uses, which by reason of: (i) Dilapidation, deterioration, age, or obsolescence; (ii) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; (iii) High density of population and overcrowding; (iv) Defective design or unsanitary or unsafe character or condition of physical construction; (v) Defective or inadequate street and lot layout; and (vi) Mixed character or shifting of uses to which they are put, or any combination of these factors and characteristics, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; injuriously affect the entire area and constitute a menace to the public health, safety, morals, and welfare of the inhabitants of the community and of the state generally. A slum blighted area need not be restricted to, or consist entirely of, lands, buildings, or improvements that of themselves are detrimental or inimical to the public health, safety, morals, or welfare, but may consist of an area in which these conditions predominate and injuriously affect the entire area.").

[34] R.I. Code § 45-31-8 (18).

[35] Gold and Sagalym, "Use and Abuse of Blight," 1122.

whether they be local ordinances or state law, or eventually, under the National Historic Preservation Act. This became a central tension in the politics and legal history of urban renewal.

What became clear were the disconnects between properties and neighborhoods that succumbed to blight classifications and the interests of preservation societies in cities across the United States. Established as non-profit organizations, often with significant manpower and political influence, preservation groups largely came from upper-class residents of cities, many whose interest in the urban environment came from elite educational backgrounds in architecture and art history.[36] As such, their primary concern was often based in the maintenance of architectural feats, such as Victorian buildings or colonial architecture.[37] Preservationists often had a set of rose-colored glasses on that narrowed their scope of deciphering value in an urban area, even if they didn't see it like that at the time.

The Providence Preservation Society was no different. Antoinette Downing, one of the original founders of the group, received her training as an architectural historian at the University of Chicago before moving to Providence (her husband was the chair of Brown University's art department).[38] Her 1937 publication, *Early Homes of Rhode Island*, established her as a leader in the field of New England architecture.[39] Prior to helping establish PPS, Downing was hired to perform a survey of historic architecture in Newport, Rhode Island, identifying the importance of

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[36] Randall Mason and Max Page, *Giving Preservation a History: Histories of Historic Preservation in the United States* (Routledge Press, 2003) (collection of articles. Chapter 6 is titled Marketing the Past: Historic Preservation in Providence).
[37] Mason and Page, *Giving Preservation a History*, Chapter 6.
[38] Judy Klemesrud, "Her Mission is Preserving Providence," *New York Times*, May 2, 1985, https://www.nytimes.com/1985/05/02/garden/her-mission-is-preserving-providence.html. ("A major reason is the preservation movement, begun by Mrs. Downing and others in the 1950's when Brown University and the Rhode Island School of Design threatened to tear down a group of 18th- and 19th-century houses in a slum area on the East Side, around Benefit Street, to make room for new dormitories. In those days, Mrs. Downing, an architectural historian, was often referred to as "crazy" and "a meddler." She was attacked at Brown University parties, which she attended with her late husband, George, head of the Brown art department, by people who thought she was "fighting education.")
[39] Antoinette Downing, *Early Homes of Rhode Island* (Literary Licensing, 2012) (re-published).

17th and 18th century architecture in the beach town.[40] This survey provided the intellectual pre-conditions to deem what was worthy of the legal protections of historic preservation in Newport, and would influence her approaches throughout her career. Downing's work in the state established her as an expert on the science of historic preservation classification and would play a major role in the shaping of Providence's landscape in the mid-20th century.[41]

This history seeks to locate a specific moment in time in which a contest over what was deemed worthy of the legal protections of historic preservation, and what would ultimately be discarded in cities was at its peak. To what extent did powerful preservation societies like PPS have their blind spots, directing their ire to university development in College Hill, rather than the work of re-development agencies across the city? How did preservation groups conceive of their relation to the urban landscape? And what were the legal pre-conditions and protections in flux that made this all possible? Understanding the history of Providence, a city with an incredibly powerful historic preservation wing coupled with an unfortunately common story of urban demolition under the guise of blight is key to telling an honest story of urban renewal.

II. The Development of the Blight Framework in American Law

State blight statutes around the country developed through the lens of cooperative federalism. As urban historian Jon Teaford describes in *The Rough Road to Renaissance: Urban Revitalization in America, 1940-1985*, federal urban renewal legislation empowered states to gain access to federal dollars in order to cover the cost of purchasing and clearing areas through what were known as land write-downs.[42] States soon followed by enabling municipalities to

[40] Downing, *Early Homes of Rhode Island*.
[41] Downing, *Early Homes of Rhode Island*.
[42] Teaford, *The Rough Road to Renaissance*, 107.

utilize the power of eminent domain to identify and clear so-called blighted areas.[43] As populations and property values in cities plummeted amidst the rise of the automobile and the migration into new federally-subsidized suburban developments, urban historians like John Rennie Short in *Alabaster Cities: Urban United States since 1950* have described the slow embrace by cities of the "modernist solution" to urban renewal, beginning in the late 1940s. Much of this responsibility fell on individual states, who began to pass a series of state re-development laws in the 1940s to initiate what were known as slum redevelopment programs.[44] The perception of cities, particularly older, Northeastern cities was dire. Initiated by President Dwight Eisenhower, the President's Advisory Committee on Governmental Housing Policies and Programs in 1953 described the predicament as follows.[45]

> "The fact is that our cities are caught in a descending spiral which leads to widespread municipal insolvency. *The accumulated and continuing spread of blight eats away at the accessible base of the cities*. As the blight spreads, it is inevitably followed by crime, fire, disease, and delinquency. Thus, does the need for city services increase. But the city's ability to meet the increased budget is automatically impaired by the very blight that creates the demand. *More blight, more demand for services, less revenues to meet the demand—that is the downward spiral in American cities.* Most often the cities with the greatest slum problems have the least capacity to deal with it."[46] (emphasis added).

The perception of the lack of municipal capacity partially inspired federal urban renewal legislation, which devolved significant new incentives for states to pursue. State-enabling legislation often pursued two main goals. First, it devised new types of municipal agencies to facilitate clearance and renewal. Second, legislation granted statutory powers to these municipal agencies to condemn neighborhoods and structures that were deemed blighted.[47] The Providence

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[43] Teaford, *The Rough Road to Renaissance*, 107.
[44] John Rennie Short, *Alabaster Cities: Urban U.S. Since 1950* (Syracuse University Press, 2006).
[45] Today, urban historians and planners might refer to this as the "urban doom loop." *See* Robert Steuteville, "How to Reverse the Urban Doom Loop," *Public Square: A CNU Journal*, https://www.cnu.org/publicsquare/2024/09/26/how-reverse-urban-doom-loop.
[46] Purver, "What Constitutes 'Blighted Area,'" (footnotes, citing J. Marshall Miller, *New Life for Cities Around the World: International Handbook on Urban Renewal* (Books International, 1959)).
[47] Purver, "What Constitutes 'Blighted Area,'" § 2(a).

Redevelopment Agency was born out of these series of laws, and was statutorily authorized in the late 1940s.[48] In *Understanding Urban Renewal: History Forgotten*, legal scholar Daniel Mandelker traces the devolution of this federal power to the states, highlighting the federal Urban Renewal Administration's model legislation that the agency's Office of General Counsel drafted.[49] The federal urban renewal law did *not* require a finding of blight to initiate the approval of an urban renewal project under state law, but it was in the model legislation in which potential statutory language for states was included.[50] In order to offset the costs for states and municipalities in clearing land, the federal government entered into a sort of cooperative effort with the states to facilitate this urban renewal.[51]

The role of blight as the statutory basis for approving urban renewal projects and other forms of condemnation soon became a site of contestation in mid-20th century state courts, who were often called upon to review a redevelopment agency's finding of blight.[52] However, its linguistic origins, as legal scholar Patricia Hureston Lee traces in *Shattering 'Blight' and the Hidden Narratives that Condemn*, goes back to sixteenth-century English agricultural lexicon (the word was used to describe the advancement of a disease in plants).[53] Its origins in the

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[48] R.I. Code. § 45-31-9 (a) ("There is created in each community a redevelopment agency to be known as the redevelopment agency of the community.").

[49] Daniel R. Mandelker, "Understanding Urban Renewal: History Forgotten," *Washington University in St. Louis Legal Studies Research Papers* (2022): 5-6. Mandelker cites the Draft Bill Prepared by the Office of General Counsel, Department of Housing and Urban Development for the Assistance of Local Counsel and Officials in Drafting State Urban Renewal Legislation, or Amendments of Existing State Urban Renewal Laws, §§ 19(h), 19(i) (Nov. 15, 1965).

[50] Mandelker, "Understanding Urban Renewal," 5-6. Mandelker also notes that only physical blight was contemplated in the model state urban renewal law drafted by the Department of Housing and Urban Development. State legislation went on to include an extended definition of blight to include social and economic factors.

[51] Mandelker, "Understanding Urban Renewal," 6.

[52] Purver, "What Constitutes 'Blighted Area,'" §§6-10. For example, Purver cites *Jersey City Chapter of Property Owner's Protective Asso. v City Council*, 55 N.J. 86 (1969), where the New Jersey Supreme Court upheld a determination that airspace above a railroad track was sufficient to meet the standard of blight articulated in the state statute.

[53] Patricia Hureston Lee, "Shattering 'Blight' and the Hidden Narratives that Condemn," *Seton Hall Legislative Journal* 42, issue 1 (2017): 44.

American legal context came from the principles of public nuisance law.[54] In *The Basics of Blight*, Joseph Schilling and Jimena Pinzon trace blight's legal and policy foundations to the principles of public nuisance, identifying property conditions that interfered with the general public use of their properties. In other words, a blighted property or area at its worst devolved into a nuisance that needed to be abated to prevent its spread to other areas, much like a diseased plant. At its core, blight "is a stage of depreciation, not an objective condition, which conveys the idea that blight is created over time through neglect or damaging actions."[55] Legal scholars like George Lefcoe argue that blight definitions served four interrelated goals in the urban renewal era: to justify for planning intervention in city building, to delineate boundaries of the areas requiring redevelopment, to convince conservative-minded judges that urban renewal programs were extensions of the common law of nuisance abatement, and to justify the taking of private property for re-sale to private developers.[56] Hureston Lee connects the 1920s Progressive-era ideas of urban space as intimately connected to the public health and moral well-being of a city, a desire of public reformers like Jacob Riis at the time.[57] She links this to the rise of citywide zoning and sanitation codes that sought to clean up the degraded city space by regulating uses of property (confining industrial uses away from residential and commercial uses), while seeking to maintain minimum sanitation standards in the so-called slums (through various building code requirements).[58] By the 1940s, Hureston Lee argues that this viewpoint among planners and city politicians started to shift from a public health lens to an economic lens in the conception of

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[54] Paul J. Wahlbeck, "The Development of a Legal Rule: The Federal Common Law of Public Nuisance," *Law & Society Review* 32 no.3 (1998): 613-638.
[55] Jimena Pinzón and Joseph Schilling, "The Basics of Blight: Recent Research on its Drivers, Impacts, and Interventions," *Vacant Property Research Network*, (March 2016): 2.
[56] George Lefcoe, "Redevelopment Takings After Kelo: What's Blight Got To Do With It?" *Southern California Review of Law & Social Justice* 17 no. 3 (2008): 803-851.
[57] Hureston Lee, "Shattering 'Blight' and the Hidden Narratives that Condemn," 43-44.
[58] Hureston Lee, "Shattering 'Blight' and the Hidden Narratives that Condemn," 43-44.

degradation of the city, as "reformers expressed their concerns in terms of decline and economic stagnation."[59] In light of this historical framework, blight takings soon became a legal and policy reality: "a state government establishes the legal parameters within which a local government derives its authority to enact and implement ordinances and policies designed to prevent, mitigate and remove blighted properties."[60] It is in this backdrop in which states and cities confronted how to develop an administrable legal rule that gave enough leeway to public development agencies to proceed with condemnation.[61]

III. 1949-1955: Codifying Blight in Rhode Island

i. Advisory Opinion to the Governor, 76 R.I. 249 (1949)

The State of Rhode Island's legal foundations in the urban renewal context were radically transformed in a matter of six short years. By 1949, Governor John A. Pastore, a member of the state's powerful Democratic Party, had significant doubts over the constitutionality of recently passed 1946 state-enabling legislation that provided for the redevelopment of "so-called blighted purposes."[62] Pastore himself had recently become the first elected Italian American governor in the United States, and took over the state in the immediate post World War II years. During this time, Pastore was focused largely on issues related to returning World War II veterans. A major policy focus related to the sprouting suburban developments popping up all over the state, as returning veterans were able to take advantage of these favorable VA loans to buy homes. As suburban development became intertwined with the policy priorities of re-adjusting returning veterans to the state, public redevelopment agencies simultaneously had become authorized by

[59] Hureston Lee, "Shattering 'Blight' and the Hidden Narratives that Condemn," 44.
[60] Hureston Lee, "Shattering 'Blight' and the Hidden Narratives that Condemn," 49.
[61] Purver, "What Constitutes 'Blighted Area,'" §§6-16.
[62] Opinion to the Governor, 76 R.I. 249 (1949).

statute to begin their work. Before the municipal redevelopment agencies got off the ground all over the state, the Governor sought clarification over whether the state legislation (the Community Redevelopment Act of 1946) violated the Takings Clause in Rhode Island's state constitution.[63] Pastore and other legal actors were watching how other states began to confront the question. What became settled just six years later was largely an open legal question for the state courts to grapple with at the time, as *Berman* had yet to be decided by the United States Supreme Court.[64]

In a divided court, the Rhode Island Supreme Court handed down an advisory opinion on November 14, 1949, three years after the Community Redevelopment Act of 1946 was passed by the legislature.[65] Governor Pastore sought to clarify one major question from the Justices. Did the redevelopment of so-called blighted areas for "eliminating conditions inimical to public health, safety, and welfare" constitute a "public use" for which the power of eminent domain could be utilized?[66] With little guidance from the United States Supreme Court at the time, the Rhode Island Supreme Court was forced to consult its Takings Clause jurisprudence and the direction of other state courts who had dealt with this thorny issue of the constitutionality of blight statutes.[67] Its opinion would have major implications as to whether the state could proceed with the creation and staffing of redevelopment agencies in the state and the following exercise of their statutory powers to condemn and assemble parcels of land.

The opinions of the different Justices differed sharply on the matter and revealed fundamental political disagreements over their understanding of Takings Clause jurisprudence

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[63] R.I. Const. art. I sec. 16 ("Private property shall not be taken for public uses, without just compensation.").
[64] Berman v. Parker, 348 U.S. 26 (1954).
[65] Opinion to the Governor, 76 R.I. 249 (1949).
[66] Opinion to the Governor, 76 R.I. 249, 250 (1949).
[67] Opinion to the Governor, 76 R.I. 249, 259-62 (1949).

and the goals of the state urban renewal legislation more broadly.[68] More broadly, the opinion is worth parsing through in the pre-*Berman* era in which state courts were attempting to understand this question without guidance from the United States Supreme Court. Three Justices wrote opinions suggesting that the legislation was constitutional, while two Justices dissented. Justice Capotosto highlighted the "collective action" problem of rehabilitation in purported blighted areas. Given this issue of coordinating large groups of individuals to remedy their properties, he concluded that this was a sufficient public use for the government by which a taking could be justified.[69] Capotosto also focused on the legislature's stated purpose in passing the statute to "eradicate sources of disease, juvenile delinquency, and crime.[70] The invocation of public health and safety being the primary concern of the legislature became a sticking point for Justice Capotosto. The opinion ascertained that the primary purpose of the legislature, while seemingly local in scope, had broad implications for Rhode Islanders as a whole, and not only in the pure curing of individual physical property or parcels.

> "Although the injurious effect from the continued existence of palpably deplorable conditions in such areas may appear to be local, nevertheless there is at least the threat, if not the probability, that *the pernicious influences of disease, juvenile delinquency and crime engendered therein may spread to and manifest themselves in other localities to the detriment of the public generally*."[71] (emphasis added).

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[68] Opinion to the Governor, 76 R.I. 249 (1949) (Flynn, C.J. and Condon, J., dissenting).
[69] Opinion to the Governor, 76 R.I. 249, 250 (1949).
[70] Opinion to the Governor, 76 R.I. 249, 262 (1949). Most of the Justices also rejected the argument that the statute was an improper delegation of legislative power to municipalities. Justice Capotosto wrote that, "The nature and extent of a blighted area must necessarily vary not only in the different cities and towns but also within the same community…All that the legislature can reasonably do in the circumstances is to prescribe a fixed standard and rules of general application adapted to accomplish the purpose of the act, leaving to the respective local authorities the responsibility of ascertaining as a matter of fact whether there exists in the community a blighted area within the meaning of the act as herein construed that requires redevelopment in the public interests. The determination of that factual question by the municipality is an administrative act and not the exercise of legislative power."
[71] Opinion to the Governor, 76 R.I. 249, 259 (1949).

By concluding that the problem of blight could not be maintained in jurisdictional boundaries, the Court initially narrowly advised Governor Pastore that the statute was constitutional and served a public use.[72]

Two dissents in the advisory opinion highlighted the tensions among jurists in the early days of urban renewal in attempting to address the thorny question of blight. Justice Edmund Flynn, the chief justice of the Court at the time, and the longest serving chief justice in Rhode Island history, penned the first dissent.[73] Flynn had been appointed to the Court in 1935 in what became known as the "Bloodless Revolution," where party control decidedly shifted towards the Democrats in the state. The newly elected state legislature proceeded to appoint an entirely new state supreme court, and appointed Flynn as the chief.[74] Flynn concluded that the justification of the exercise of the power of eminent domain for blighted purposes was unwarranted and overly encompassing.[75] He challenged the nature of the inherently expansive definition of public use, and noted that, "many things of a general and indirect benefit to the public through their substantial relation to health and safety of individuals, such as food, fuel, clothing and other things equally necessary to maintain life, generally speaking, were not the subject of a public use or purpose so as to justify the use of the power of eminent domain."[76] Flynn noted his reluctance

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[72] Opinion to the Governor, 76 R.I. 249 (1949).
[73] Opinion to the Governor, 76 R.I. 267-280 (1949) (Flynn, C.J., dissenting).
[74] Ted Nesi, "New Year's Day Marks 78 Years Since Rhode Island's 'Bloodless Revolution,'" January 1, 2013, https://www.wpri.com/news/local-news/ted-nesi/new-years-day-marks-78-years-since-ri-bloodless-revolution/ ("It was perhaps the most dramatic session in Rhode Island's legislative history as Democrats yesterday overthrew what they characterized a 'Republican feudal system,'" the Associated Press declared in newspapers nationwide the next morning… the party immediately passed laws transferring appointment power to the governor by repealing the Brayton Act, eliminating boards and offices that controlled Providence, replacing more than 80 state commissions with a small number of departments, and unseating the Republican-controlled Supreme Court.").
[75] Opinion to the Governor, 76 R.I. 267-280 (1949) (Flynn, C.J., dissenting).
[76] Opinion to the Governor, 76 R.I. 249, 276 (1949) (Flynn, C.J., dissenting).

to disturb the work of the legislature, but concluded that the act went too far and impinged on Rhode Islander's constitutional rights.[77]

In the second dissent, Justice Francis Condon, a former state legislator and United States Congressman, also concluded that the statute likely violated the state's Takings Clause.[78] Condon argued that if the taking was intended to remain in the public for the purposes of "providing parks, playgrounds, widened or straightened public highways for traffic relief," he would have found the intended use to be public, and not violative of the Takings Clause.[79] Here however, the legislation authorized the taking of private property to be transferred to another private owner (the developer that would subsequently acquire the cleared land from the redevelopment agency for the urban renewal project).[80] Condon's final point stressed that if the people sought to yield this right, they could do so through voting on a state constitutional amendment.[81] With, he concluded that neither the legislature nor the courts had the authority to abrogate this fundamental right of the people.

Governor Pastore received this advisory opinion on November 14, 1949, and the Slum Clearance and Redevelopment Act of 1950 shortly followed, which officially gave municipal redevelopment agencies the right to identify and acquire blighted areas through the eminent domain process.[82] The Act first declared redevelopment agencies to be a public body that exercised public governmental functions. It gave these newly created agencies in cities and towns the broad statutory power to "to clear, demolish, or remove any and all buildings,

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[77] Opinion to the Governor, 76 R.I. 249, 277 (1949) (Flynn, C.J., dissenting).
[78] Opinion to the Governor, 76 R.I. 249, 281-291 (1949) (Condon, J., dissenting).
[79] Opinion to the Governor, 76 R.I. 249, 264 (1949) (Condon, J., dissenting).
[80] Opinion to the Governor, 76 R.I. 249, 288 (1949) (Condon, J., dissenting).
[81] Opinion to the Governor, 76 R.I. 249, 289 (1949) (Condon, J., dissenting) ("The people in their sovereign capacity of course may yield this right guaranteed to them under the constitution, if they so choose. But neither the legislature nor this court may directly or indirectly do so.").
[82] R.I. Code. §§ 45-32-1-45-32-50.

structures, or other improvements from any real property so acquired; to rehabilitate or otherwise improve any or all substandard buildings, structures, or other improvements."[83] The statute mirrored others being passed in states around the country, which created similar public redevelopment agencies, who would soon go on to wield enormous power around cities in pursuit of their goals of eradicating blight.[84]

ii. Ajootian v. Providence Redevelopment Agency of the City of Providence, 80 R.I. 73 (1952)

The first legal challenge to the Slum Clearance and Redevelopment Act of 1950 came in 1952 from a Providence homeowner named George Ajootian.[85] Ajootian owned a two-family house and two lots of land that were located in an area that was deemed blighted by the Providence Redevelopment Agency and subject to seizure for an urban renewal project.[86] In the proposed urban renewal project, the state sought to clear all structures in the neighborhood except for five, widen certain streets in the proposed area, and then sell the land to a developer for commercial or industrial purposes.[87] Ajootian immediately filed suit to enjoin the city, and the case eventually made its way up to the Rhode Island Supreme Court, in which the Court was able to officially rule on whether the property had been adequately identified as blighted as defined by the 1950 Act. Throughout the proceedings, Ajootian represented himself pro-se, against the powerful city attorneys of Providence and the state attorney general's office. In doing

[83] R.I. Code § 45-32-5 ("Each redevelopment agency constitutes a public body, corporate and politic, exercising public and essential governmental functions, and has all the powers necessary and convenient to carry out and effectuate the purposes and provisions of chapters 31 — 33 of this title.").
[84] Purver, "What Constitutes 'Blighted Area,'" § 2(a).
[85] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73 (1952).
[86] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 74 (1952).
[87] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 75 (1952).

so, the Court would provide a template for its analysis of statutory challenges to blight designations.

The Court identified the following aspects of Ajootian's neighborhood that met the statutory definition of *slum blighted area* as laid out within the meaning of §§ 2(a) and 7(a) of the Slum Clearance and Redevelopment Act. The Court notably identified both physical and social conditions in the area that the Providence Redevelopment Agency had identified as blighted in their findings.

> "In this area [of the 125 dwelling units], 84% were built before 1900, 71% have no central heating, 63% no inside hot water, 97% are inadequate because of hazardous and unsanitary conditions, 85% have serious deterioration (125 dwelling units)...*Incidence of juvenile delinquency, aid to dependent children, tuberculosis, and other diseases are disproportionately high*." (emphasis added).[88]

The findings of the agency touch on both the physical aspect of the definition of blight while also addressing the broader, more controversial definition of blight that was incorporated into statute by many states, one that includes social problems and people themselves. In this case, the Court referred to the high propensity of juvenile delinquency and a reliance on welfare programs like AFDC. Enshrined in the statute was a moral judgment of impoverished areas, and the Court did not hesitate to invoke it. Since these agency findings generally lined up with the legislative definition of a "slum blighted area," the Court upheld the taking as a valid public use as construed by the Act.[89] Even though Ajootian's house was in fine condition, as all parties conceded, its location in a blighted area proved to be fatal. The Court further held that that the constitutional questions raised by Ajootian were largely settled by the Court's advisory opinion on the 1946 Act three years earlier.[90] Writing the following, the Court held that the trend towards

[88] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 75 (1952).
[89] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 83 (1952).
[90] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 81-82 (1952).

a liberal construction of public use in other jurisdictions justified the court's opinion in these cases.[91] This enshrined in state law a holding that gave redevelopment agencies the broad power to identify blighted areas by meeting at least one of the conditions of the agency's findings.

iii. **Berman v. Parker, 348 U.S. 26 (1954)**

November of 1954 was a landmark month in the federal courts in the context of urban renewal. Amidst a patchwork of state court decisions addressing early questions surrounding newly constructed blight statutes, the United States Supreme Court granted certiorari in a challenge to federal urban renewal legislation concerning the District of Columbia. In *Berman*, the Court upheld an expansive view of the public use clause in reviewing the constitutionality of federal urban renewal legislation pertaining to the District of Columbia.[92] The court held that the concept of public welfare as the basis for the utilization of eminent domain was broad and inclusive, famously referring to it as "representing values that are spiritual as well as physical, aesthetic as well as monetary."[93] In deferring to the findings of Congress, the Court noted that "it is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[94] Thus, a blighted area in Washington D.C. constituted a public use (even if the litigants' specific property in question was not blighted), and subject to eminent domain. As Amy Levine highlights in a fascinating legal history surrounding the backdrop of the case, the ruling's implication that followed severely restricted federal and state courts powers to police legislative excesses in the

[91] Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 81-82 (1952) (citing state court opinions from Illinois, Alabama, Tennessee, Michigan, and Pennsylvania interpreting their state blight statutes similarly).
[92] Berman v. Parker, 348 U.S. 26 (1954).
[93] Berman v. Parker, 348 U.S. 26, 33 (1954).
[94] Berman v. Parker, 348 U.S. 26, 33 (1954).

realm of blight takings.[95] In other words, states could proceed to broadly define blight in a statute, and courts under the *Berman* framework had little power on the backend to police those excesses.[96] Eradicating blight was deemed sound public policy and constitutional.

> "The governmental goals of blight removal and redevelopment were not inherently bad, indeed, many slums, including those involved in Berman v. Parker, were rid of true public nuisances as a result of urban renewal projects. But the Supreme Court's extreme deference allowed urban renewal projects to go forward across the country with an astonishing lack of attention to the welfare of the people that the programs were supposed to benefit."[97]

The Court's guidance in the wake of *Berman* can best be described as one of extreme deference to how the legislature sought to define blight and an added judicial deference to the procedural safeguards in place to do so.[98] If the state sought condemnation for a renewal project, and had gone through the necessary steps to classify areas as blighted, federal and state courts had little role to play after that. Even if blight was the central underpinning of the taking at issue, Justice Douglas' majority opinion only mentioned blight once, in a passage that referenced the "miserable and disreputable housing conditions" that could be a "blight on the community."[99] Blight would now have the further credibility of a majority Supreme Court opinion, blessing its all-encompassing framework.[100]

iv. Rhode Island State Constitutional Convention: (1955)

Just a few months later, the state of Rhode Island convened a limited constitutional convention in the capital of Providence. The convention was called to order on June 20, 1955, following two recent conventions in 1944 and 1950. However, the *Providence Journal*, the

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[95] Amy Lavine, "Urban Renewal and the Story of Berman v. Parker," *The Urban Lawyer* 42, no. 2 (Spring 2010).
[96] Lavine, "Urban Renewal and the Story of Berman," 459.
[97] Lavine, "Urban Renewal and the Story of Berman," 425.
[98] Lavine, "Urban Renewal and the Story of Berman," 459.
[99] Berman v. Parker, 348 U.S. 26, 33 (1954).
[100] Berman v. Parker, 348 U.S. 26, 33 (1954).

dominant newspaper in the city, was concerned with something else. Just a few days earlier on June 15, the city of Providence had been through a bit of a shock. Operation Alert, a practice-hydrogen bomb urban evacuation initiated by the Department of Transportation took place in 55 cities around the country, many without their knowledge.[101] While this dominated the local and national news, another important political event was taking place just down the street from the *Journal's* headquarters. Its outcomes would shape urban development trends in the city and around the state for years to come.

The convention's morning agenda on June 20 was mundane, in which relatively uncontroversial resolutions on rules of procedure were proposed and adopted. But by the time the afternoon hit, the two most consequential items were set to be discussed: 1) a resolution on life tenure for state judges and an increase in pay for state legislators, and 2) the top of the agenda for the day, the so-called "blight-amendment."[102] If the amendment was voted on favorably by the convention delegates, the proposed constitutional language would be added to the upcoming special election ballot in July to be approved by the voters of the state.[103]

The transcript[104] from the day's events revealed the deep disagreement among the delegates on the soundness of the blight amendment, particularly from those representing more

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[101] "Civil Defense, 1955," Department of Transportation, Federal Highway Administration, https://highways.dot.gov/highway-history/interstate-system/civil-defense-1955 (The article notes that the Cold-War era operation "was met with "indifference and confusion in some cities to well-disciplined drills and even evacuations." In New York City, according to the *New York Times*, most people went indoors for 10 minutes when sirens signaled the start of the drill. However, the all-clear siren rang prematurely, sending the public back into the streets 4 minutes early. A baseball game at Yankee Stadium was delayed 23 minutes, but the 17,000 spectators remained in their seats throughout. Wall Street suspended trading for the drill.").

[102] The proposed amendment read as follows. "The clearance, replanning, redevelopment, rehabilitation and improvement of blighted and substandard areas shall be a public use and purpose for which the power of eminent domain may be exercised."

[103] "Resolution on Municipal Redevelopment: Proceedings of the Limited Constitution Convention of the State of Rhode Island," Department of State, Office of the Secretary of State of Providence, RI. (1955): 84-106.

[104] For a discussion of the use of state constitutional conventions' documents as interpretative sources, *see* Molly Brady, "Use of Convention History in State Constitutional Law," Wisconsin Law Review vol. 2022 (2022) ("This Essay begins to examine the records that surrounded the creation of state constitutions, considering their reliability as sources, their emergence as interpretive aids, and their widespread use by judges. It focuses in particular on

rural parts of the state. In proposing the constitutional amendment for ratification, Delegate John Moakler of Providence sought to effectuate five legislative outcomes: 1) ratify the Rhode Island 1949 Supreme Court advisory opinion, 2) extend the decision to areas subject to future redevelopment, 3) guarantee the constitutionality of redevelopment, 4) establish the constitutionality of slum elimination, and 5) establish the constitutionality of redevelopment in arrested areas.[105] Moakler was an influential legislator who represented parts of Providence that were most seen to be in disrepair, and was a member of the convention's Committee on Municipal Development.

Moakler first noted the progress in courts by the summer of 1955: 19 state supreme courts and the United States Supreme Court had held that slum clearance and redevelopment was a public use and purpose sufficient to satisfy the Takings Clause.[106] Thus, he saw his proposal of the amendment as merely following the authority of the highest court in the country and the progress of other neighboring jurisdictions. He further noted the limitations on these takings to exclusively "property which is demonstrated to be in slum, substandard, or unsanitary conditions,"[107] and by which standards and classifications had been carefully prescribed by the legislature. Moakler rested his amendment at the convention on the following invocation: "For progressive cities and towns, redevelopment means local community betterment."[108] Delegate Gurney Edwards of Providence also chimed in to second the motion, having also served on the Committee on Municipal Development at the convention. Specifically, he argued that the

material from state constitutional conventions: the published journals, debates, and proceedings that purport to chronicle the day-to-day activities of a state constitution's drafters. Although hardly the most frequent way that state constitutions are changed, state convention evidence can be helpfully viewed through the critical lens that has already been applied to records of the federal Constitutional Convention.").

[105] Moakler, "Resolution on Municipal Redevelopment," 86.
[106] Moakler, "Resolution on Municipal Redevelopment," 87.
[107] Moakler, "Resolution on Municipal Redevelopment," 87.
[108] Moakler, "Resolution on Municipal Redevelopment," 89.

safeguard of a constitutional amendment would enable cities and towns to carry out these redevelopment projects that will not be subject to the "whims and votes of this or that court."[109]

After numerous more seconding's of Moakler's motion, Norman LaSalle, a delegate from the smaller town of Warwick interjected. Warwick was a burgeoning suburb at the time, whose population had grown by a stunning 50% in the 1940s, and would grow by another 60% by the end of 1960. LaSalle expressed his concerns and proposed an amendment to the constitutional language that would subject any redevelopment project in a municipality to be submitted to the voters of a city for their approval first.[110] John Moakler of Providence scoffed at these ideas, and argued that residents of any municipality assent to these projects when cities go to the voters to get bond financing for any proposed redevelopment.[111] In effect, Moakler argued that LaSalle's amendment would stymie cities and towns who want to pursue urban redevelopment from pursuing it, giving an undue power to the people to prevent urban development in their communities. Moakler's formulation of LaSalle's proposed amendment was one that yielded too much democratic power to voters themselves to have a double veto of an urban renewal project. LaSalle's response centered on the desire of the community to be able to define blight in their cities and towns in order to control decisions about condemnation.[112]

> "I can't for the life of me follow the argument that this is going to hurt the people…to give them a choice as to whether or not they want to declare a certain area in their city or town a blighted area, if that is not democracy, then I just don't understand the simple English language…If a redevelopment project is good for the City of Providence or any other city or town, then the people themselves are the best judges of whether or not it is good for them."[113]

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[109] Gurney, "Resolution on Municipal Development," 91.
[110] LaSalle, "Resolution on Municipal Development," 92-93.
[111] Moakler, "Resolution on Municipal Redevelopment," 95-96.
[112] LaSalle, "Resolution on Municipal Development," 99.
[113] LaSalle, "Resolution on Municipal Development," 99.

This revealing exchange showed the central opposition to a proposed blight amendment. LaSalle worried that the amendment would concentrate too much power in the hands of municipal redevelopment agencies at the expense of the residents they serve. Ultimately, LaSalle's amendment was struck down 130 to 55, and Moakler's proposed "blight amendment" was adopted by 154 to 31, thus sending the amendment to the voters to decide in a constitutional referendum the following month.[114] Votes at the constitutional convention were overwhelming in favor of the "blight amendment," with the most dissenters coming from the more suburban and rural parts of the small state, perhaps with less of a perceived need for the expansive powers of redevelopment agencies, and seemingly with a more libertine conception of the governmental power of eminent domain. Those delegates from the city of Providence, with the most active redevelopment agency and the most to gain from the ability of redevelopment agencies to demolish under the guise of blight, overwhelmingly voted to send the amendment to the voters.[115]

On July 12, 1955, Rhode Island voters approved Amendment XXXIII by an almost 2-1 margin: 29,383 to 14,698.[116] The voters also overwhelmingly rejected life tenure for state judges and an increase in pay for members of the legislature. In many ways, the blight amendment was seen as an essential public necessity and progressive goal, while the other amendments were perhaps construed as more corrupt legislative self-dealing by self-interested politicians. In a mere six years, blight as the standard for condemnation and redevelopment agencies' powers had been codified in statute, opined on by the state supreme court, and eventually upheld by that same

[114] "Resolution on Municipal Development," 100-106.
[115] "Resolution on Municipal Development," 104.
[116] Miguel Youngs, "Urban Renewal and Rhode Island: A Complicated History," *Rhode Island Historical Society*, accessed March 25, 2024.

court in *Ajootian*.[117] The quick succession of *Berman* at the United States Supreme Court and the resulting constitutional amendment to the Rhode Island state constitution in 1955 gave a further arsenal of legal authority to municipalities to define their condemnation powers in an expansive, all-encompassing way. In a Rhode Island Supreme Court case in 1969, the Court recounted this legal history in holding that an "arrested blighted area" was a permissible public use for a taking.[118] In particular, it cited the 1955 state constitutional amendment as a positive grant of express authority from the people.

> "It is our considered judgment that those who went to the polls in July 1955 and approved Article XXXIII had two things in mind. It was their desire that the traditional concept of a public use not be applied by the judiciary when it reviewed any renewal or redevelopment project which might be undertaken in this state. *Secondly, the citizens intended that a broad mandate be given to the various redevelopment agencies in their efforts to renew, revitalize and rehabilitate many of the municipalities in Rhode Island*."[119]

The court held that the traditional conception of the public use clause as advocated for by the appellants was completely unrealistic "when juxtaposed against present-day urban needs."[120] In other words, present-day urban challenges of redeveloping deteriorating areas of cities necessitated the governmental exercise of eminent domain of blighted areas. The type of "rigid, unbending, absolute definition," in which the public must have a right to a definitive and fixed use in the property taken, was an unrealistic proposition in the case of slum and blighted areas in American cities.[121] The Court concluded that the people's assent in this constitutional amendment had given them the broad license and approval to uphold blight takings, which had "signified a desire that all the tools which are contained in an urban renewal kit should be made

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[117] Balsamo v. Providence Redevelopment Agency, 84 R.I. 323 (1956) held that the statute that provided for the creation of redevelopment agencies themselves was constitutional.
[118] Romeo v. Cranston Redevelopment Agency, 105 R.I. 651 (1969).
[119] Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 661 (1969).
[120] Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 661 (1969).
[121] Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 658 (1969).

available for the refurbishing of all the blighted areas described by the legislature."[122] By construing the public use question to be a judicial one, but the necessity and expediency of a taking to be a legislative one, the Court properly delineated its boundaries by which it gave extreme deference to the legislature for establishing the parameters by which a taking could be initiated.

From the early Rhode Island Supreme Court advisory opinion in 1949 to the eventual constitutional amendment ratified by the people in 1955, these six years saw state courts and legislators grapple with the intersection between recently passed urban renewal legislation and potential challenges to its constitutionality. The overwhelming consensus that urban renewal was a necessity in American cities informed how legislators and judges thought about legally justifiable takings and the conditions that underpinned them. Further state court rulings established a strict 30-day period to contest the validity of redevelopment proceedings, after which there was to be an express certainty and finality over the redevelopment plans themselves.[123] There's no doubt that specific neighborhoods and structures in cities were in disrepair and deterioration. Providence alone suffered from a spiraling tax base and suburban flight that harmed the ability of the city to advance true conditions of revitalization. Thus, with the broad ability to assemble property for renewal projects, cities like Providence were able to vastly expand their legal toolkit to try and save areas that they deemed in disrepair. By 1956, the legal authority in the Providence Redevelopment Agency and redevelopment around the state to pursue urban renewal and classify blight had been all but settled and immune from constitutional challenges. It was in this context that groups like the Providence Preservation Society began to organize.

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[122] Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 662 (1969).
[123] Corrado v. Providence Redevelopment Agency, 105 R.I. 470 (1969).

IV. The Rise of the Providence Preservation Society (1956)

Tina Reagan officially joined the efforts of the Providence Preservation Society in the mid-20th century and became an influential member of the group in the later-20th century.[124] Observing the early days of the politics of urban renewal in the city, Ms. Reagan articulated the following.

> "The main impression I got was that the people who were administering urban renewal in Providence back then had no training or background in planning a city, and really didn't know what to do with all the urban renewal money they were getting."[125]

Indeed, the city in those early years had a citizen-member planning commission with little technical expertise that one associates with planning commissions in cities today.[126] While the planning commission largely took a backseat in the early days of urban renewal, the politically powerful and emboldened Providence Redevelopment Agency began to grow in influence, and the clearance-first model began to take force.[127]

The Providence Preservation Society was founded in 1956 by long-time College Hill residents, many wealthy and connected, all extremely concerned with the development trends in their beloved neighborhood of College Hill.[128] The Society ended up holding their first meeting in May of 1956, just a year after the "blight amendment" was approved by Rhode Island voters.[129] Three major founding members wielded the most financial and political influence on the direction of the group in the early years, all with deep ties to the city and early backers of the historic preservation movement.[130] John Nicholas Brown was a descendant of the Brown family

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[124] Bunnell, *Transforming Providence*, 18.
[125] Bunnell, *Transforming Providence,* 18.
[126] Bunnell, *Transforming Providence,* 18.
[127] "Providence Redevelopment Agency," Providence Redevelopment Agency, https://www.providenceri.gov/planning/providence-redevelopment-agency-pra-2/.
[128] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[129] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[130] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.

(namesake of Brown University), the former Assistant Secretary to the Navy, and also served as a Special Cultural Advisor for the Monuments, Fine Arts, and Archives Program at the end of World War II. Brown supervised the return of art treasures that were taken by Nazis at the end of the war, and eventually served in multiple capacities at Brown University in the post-war years. Having an inside view as to how universities flexed their muscles in the politics of urban development, Brown became keenly interested in the birth of the historic preservation movement in Providence. Second, Beatrice "Happy" Chace was a descendant of a prominent Rhode Island family, and ultimately founded the Burnside Company that would go on to buy and restore houses on College Hill. Finally, Antoinette Downing, an architectural historian, led much of the intellectual framing and research that the organization conducted in the early years. The organization was officially chartered in 1956 and began to fundraise in the city to support their preservation efforts.[131] While the group very much posited themselves as a disrupting, outsider force, they benefitted greatly from coming from the proverbial urban-insider class, holding key positions in cultural and political institutions around the city. In an interview in 1981, Antoinette Downing viewed the creation of PPS a bit differently, as one "like [a] spontaneous combustion…Hundreds of people came right away and said, we've always loved Providence, we've always loved the houses, we didn't know what to do, and now we've got a society."[132] Downing would note her affinity with other cities, who were also "struggling against university development," like Savannah, Georgia.

[131] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[132] "Antoinette Downing oral history interview conducted by Patrice O'Donoghue in Providence, Rhode Island, 1981-04-09." From the Rhode Island Historical Society, Transcript. https://www.rihs.org/mssinv/Mss098.htm (accessed August 21, 2024).

The first step the organization took was to hire an outside consultant, Lachlan Blair, to help the group write an application for a grant from the U.S. Urban Renewal Administration.[133] Blair was a famous urban planning scholar who had been brought on as a consultant for other cities seeking to address their development trends. The grant would serve to help and fund a landmark study of the importance of the architecture in the city.[134] Ironically, by seeking the support of the federal Urban Renewal Administration, the Society sought not to demolish, but rather, establish the intellectual parameters by which certain structures in the city would be deemed preservable.

After successfully receiving the grant, the Providence Preservation Society published the now-revered *College Hill Study* in 1958. Over 200 pages long and a now-seminal report in the historic preservation textbooks, the Study identified novel survey tools and methods used to categorize and classify properties in terms of their historical significance. The study described the "various architectural styles associated with different periods in the area's development."[135] Crucially, it identified criteria to be used in judging the significance of buildings and structures in a city.[136] By establishing a tiered system of architectural significance for local city officials and planners to utilize, the report also called for the selective demolition of buildings that it ranked lower on its scale of significance.[137]

The final part of the report put forth a few policy recommendations for the city and the state. The recommendations varied from developing a national historic park and trail to more localized protective efforts that the city could undertake. The report most notably called for

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[133] Bunnell, *Transforming Providence*, 21.
[134] Bunnell, *Transforming Providence*, 21.
[135] "The College Hill Study: A Demonstration of Historic Area Renewal," Providence City Plan in cooperation with the Providence Preservation Society and the Department of Housing and Urban Development. Edition 1. (1959).
[136] "The College Hill Study."
[137] "The College Hill Study."

adopting a historic district zoning ordinance to protect College Hill specifically, and proposed state-enabling legislation that would authorize historic districts and historic district zoning across the state.[138] In recounting the success of the *College Hill Study*, Lachlan Blair attributed it to a "structured methodology for inventorying and evaluating historic properties."[139] Indeed, the methodology used in the *College Hill Study* would be adopted and refined by the National Trust for Historic Preservation, and has since been used all across the country as the basis for historic district designation.[140] It became clear that this process and the focus on College Hill as a neighborhood fundamentally necessitated a sliding scale of properties that were deemed historic and thus worthy of rehabilitation and preservation, and those less so.

How were historic sites and buildings to be identified and evaluated as such around the country in cities where urban renewal was taking force? In *A Report by the Committee on Standards and Surveys*, the National Trust for Historic Preservation outlined much of this broad criterion. Historic and cultural significance was to be found in "structures or areas that embody the distinguishing characteristics of an architectural type-specimen, inherently valuable for a study of a period-style or method of construction; or a notable work of a master builder, designer or architect whose individual genius influenced his age."[141] The report outlined that preference should be given to structures and sites where there is a preponderance of original material or other physical remains.[142] The national report drew from the influences of the *College Hill Study* in a few manners. First, it identified methodology, even a "checklist of criteria" that was to be undertaken in order to properly classify a property or neighborhood as historic.[143] The checklist

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[138] "The College Hill Study."
[139] Bunnell, *Transforming Providence*, 23.
[140] Bunnell, *Transforming Providence*, 24-25.
[141] "Criteria for Evaluating Historic Sites and Buildings," From Rhode Island Historical Society, *Antoinette Downing Papers*, https://www.rihs.org/mssinv/Mss098.htm.
[142] "Criteria for Evaluating Historic Sites and Buildings."
[143] "Criteria for Evaluating Historic Sites and Buildings."

included everything from historical and cultural significance, suitability issues like the extent of surviving original material, educational values, and the cost of financing restoration or reconstruction.[144] The focus on building structure and fabric largely came at the expense of other factors. The definition of historic structures and sites had an inherent bias towards certain groups' histories and helped to accelerate the forces of urban renewal at the expense of disadvantaged groups.[145]

The legislative result of the local and national attention of the *College Hill Study* was the first "Historic District Zoning Ordinance" in the city of Providence.[146] The municipal ordinance passed by the city council created the College Hill Historic District, and established a commission tasked to safeguard the historic buildings in the district. Crucially, the zoning ordinance gave the newly created commission the immense power to approve or deny any building's proposed demolition falling within the district's boundaries.[147] The seven-member committee was sworn-in in September of 1960, with Antoinette Downing of the Society herself taking the role as the Chairman.[148] Once the State authorized historical zoning ordinances, the city of Providence proceeded to adopt the municipal ordinance that indicated the "purpose, scope, and means of historic district implementation," which concentrated power in the hands of the historic district commission specifically.[149] Further, no exterior remodeling or alteration on buildings could be done without the commission's approval. These powers gave the commission significant authority to exercise control over properties that fell within the district, from their

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[144] "Criteria for Evaluating Historic Sites and Buildings."
[145] "Criteria for Evaluating Historic Sites and Buildings."
[146] "Providence Historic District Commission," City of Providence, https://www.providenceri.gov/planning/providence-historic-district-commission-phdc//.
[147] "Providence Historic District Commission," City of Providence, https://www.providenceri.gov/planning/providence-historic-district-commission-phdc/.
[148] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[149] Bunnell, *Transforming Providence*, 24.

outward appearance to decisions about their proposed land use changes.[150] In a city of 18.7 square miles, the commission's extreme powers to make decisions over urban development were confined to the .77 square miles of College Hill.

What served as the intellectual underpinnings of historic district zoning ordinances? In *Land Use Controls in Historic Areas*, legal scholar Thomas Reed details the options available for protecting historic structures like those in Providence.[151] The most successful public controls include municipal historic district zoning ordinances, which "allow public authorities, under the rubric of legislating for the general welfare of the citizenry, to frustrate the outright destruction or alteration of important early buildings."[152]

One of the first major fights of the commission arose with the Rhode Island School of Design.[153] RISD sought to tear down an 1860s' era mansion that they owned that fell within the historic district.[154] The Commission first tried to negotiate a compromise with RISD, in which they found someone willing to repair the house and live in it if the university would authorize a 20-year rental lease.[155] The university rejected the idea and the proposed demolition went to a vote before the historic district commission, which unanimously rejected the demolition application.[156] It was one of the first instances in which the private powers and goals of universities came into direct conflict with the newly created commission and the public controls of historic preservation. By all intents and purposes, the property had fallen in disrepair, and likely constituted a blighted property by the definitions of the state blight statute. A finding of blight by a redevelopment agency almost certainly would have been upheld by Rhode Island

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[150] Bunnell, *Transforming Providence*, 24.
[151] Thomas Reed, "Land Use Controls in Historic Areas," *Notre Dame Law Review* 44, no. 3 (January 1969): 383.
[152] Reed, "Land Use Controls in Historic Areas," 383.
[153] Bunnell, *Transforming Providence,* 25.
[154] Bunnell, *Transforming Providence,* 25.
[155] Bunnell, *Transforming Providence,* 25.
[156] Bunnell, *Transforming Providence,* 25.

courts, which practiced an extreme level of deference under the *Ajootian/ Berman* regime. The historic significance (and unique location within the historic district) outweighed those concerns, and the commission flexed their powers to save the mansion, overriding a private owner's desire to demolish it.

These local protections through the power of a municipal ordinance and historic district designation were key in stunting demolition and urban development in the College Hill area of the city. PPS sought additional protection for the district through an application to the newly created National Register of Historic Places, which was created by the landmark National Historic Preservation Act of 1966.[157] Congressman Fernand St. Germain's nomination of College Hill detailed the language that was used for the 381 acres of land as detailed by the *College Hill Study*. St-Germain was a longtime advocate and attendee of Society events, as all major politicians in the state slowly became to be. In the nomination, St. Germain described the area as follows. "The College Hill area has developed as distinct neighborhoods, distinguished by affluence, land use, and architectural styles."[158] The nomination went on to discuss the various architectural influences in the area, starting all the way with the city's early settlement in the 1700s. It identified all the properties that were outlined by the *College Hill Study* and concluded with the historical significance of the district.

> "As the site of the original settlement of Providence Plantations in 1636, College Hill has witnessed the transformation of the region's economy from agriculture to commerce to industry…A progression of architectural styles and intact historic neighborhoods reveals the physical growth of Providence from a colonial town to a modern city…*A new importance is added to the district by the outstanding work of preservation and restoration now being carried on. This last has been, with the sponsorship of the federal government, a pioneer project of its kind*."[159] (emphasis added).

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[157] "Nomination of College Hill District to National Register of Historic Places Inventory," United States Department of the Interior, National Park Service.
[158] "Nomination of College Hill District."
[159] "Nomination of College Hill District."

The district was ultimately designated a National Historic Landmark District by 1970, and the neighborhood's protective carveout in the city at the local, state, and national level was complete.[160] The hard work of Downing and others who founded the Providence Preservation Society had succeeded in their efforts to establish immense legal protections for the neighborhood they lived in and loved. By commissioning reports, advocating for legal protections, and by way of their overwhelming influence in the political apparatus in the city and state, PPS was able to largely blunt the forces of urban renewal in College Hill. The city ordinance repositioned the power in the first historic district towards the municipality's preservation wing. In many ways, it blunted the forces of the universities and other private owners to unilaterally condemn their own properties on College Hill, while strategically leaving un-touched the city's own redevelopment agencies power to exercise condemnation throughout other parts of the city. Blight was a designation for poor, underserved, Providence. Historic preservation was for the well-connected, perched both literally and figuratively atop the city's College Hill.

The scientific-like methodologies of historic preservation classification as undertaken by Antoinette Downing and the College Hill Study provided the intellectual framework of preservation and definitions of what was to be deemed historically significant for the city. In *Transforming Providence*, urban planning scholar Gene Bunnell provides a stirring defense of the Providence Preservation Society's work in the College Hill District. Rejecting the idea that all that was preserved were elegant homes for wealthy people, he argues that "even more widespread displacement would have occurred if the preservation plan had not been prepared and implemented."[161] The PPS's early role in the city left a complicated legacy of both

[160] Bunnell, *Transforming Providence*, 29.
[161] Bunnell, Transforming Providence: Rebirth of a Post-Industrial City, 31.

preservation and displacement. The Society focused their work on the areas of historic significance to their conceptions of urban history and architecture, and "saved" the ritziest and most elite neighborhood, home of two world-class universities and other artifacts of cultural and historical capital. Antoinette Downing was undoubtedly the key figure that marshaled these early years of the society. Her role remains ever complicated in the debates around preservation and urban renewal in the city.

V. Antoinette Downing, Providence's Jane Jacobs?

The political and cultural strength of the Providence Preservation Society by the mid-1960s was palpable.[162] Membership in the society had grown to around 800 people and the Society acquired its first property in College Hill to rehabilitate itself.[163] Spurred on by successful fundraising activities and political organizing, the Society moved to a larger headquartered office in the city.[164] By 1962, a new President of the organization had taken the helm, and the organization continued to focus heavily on the College Hill neighborhood while beginning their outreach and involvement activities in the broader city.[165] By the mid-1960s, the landmark National Historic Preservation Act had also been passed by Congress, which provided a further vested interest in the political class in PPS matters. The Society held annual awards dinners, which served as a space for the city's cultural and financial elite to hobknob. A look at these dinners revealed just the stature that the Society served in the city's elite class.[166] The annual PPS Ball at the State House hosted every single federally elected representative, along

[162] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[163] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[164] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[165] "Providence Preservation Society, 25th Anniversary Pamphlet, 1956-1981," Providence Preservation Society.
[166] "Providence Preservation Society Pamphlet: Rhode Island Heritage Ball," From Rhode Island Historical Society, *Antoinette Downing Papers*, https://www.rihs.org/mssinv/Mss098.htm.

with the Governor and his family. The most prominent state businesses at the time, including Gilbane Building Company, Citizens Saving Bank, among others, were sponsors of the annual ball. The organization had become deeply embedded in the city and the state's political and planning infrastructure.[167] As Downing reflected on this period of growth, "the [Society] played a huge role in sparking interest…the first president, Ms. Betty Allen did a magnificent job of bringing the political people, the social people, and the ordinary people together."[168] The result was a merging of PPS into the city's mainstream elite.

Ms. Antoinette Downing soon became the face of the organization. As the chair of Providence's Historic District Commission, Downing's role as both a public official and respected scholar elevated her into a key figure outside of the city and in the national historic preservation movement. Downing was soon consulted by residents of cities across the country to help advise on their specific historic preservation needs, as Providence became a model for those cities, particularly in older Northeast cities, seeking to stem the tide of urban renewal or simply asking for consultation on matters of historic preservation. For example, in a letter to Ms. Downing from 1965, a resident of nearby New Bedford, Massachusetts wrote to her to ask if she would advise a group of residents on the restoration of a historic house recently acquired by the city.[169] Other cities' public officials also consulted Downing on a matter of issues. In a letter from 1978, the Bangor Maine Historic Preservation Commission reached out for consultation on a specific matter of the intricacies of historic district zoning and special exceptions to the

[167] "Providence Preservation Society Pamphlet: Rhode Island Heritage Ball."
[168] "Antoinette Downing oral history interview conducted by Patrice O'Donoghue in Providence, Rhode Island, 1981-04-09." From the Rhode Island Historical Society, Transcript. https://www.rihs.org/mssinv/Mss098.htm (accessed August 21, 2024).
[169] Caroline Pollard to Antoinette Downing, 23 July, 1965, *Antoinette Downing Papers*, Rhode Island Historical Society.

ordinances in the district.[170] As one of the early advocates of College Hill's historic district zoning ordinance, Downing was seen as an expert on the matters of municipal zoning, even though she was not a lawyer. Her expertise in both urban architecture and the intricacies of local urban politics proved indispensable for other cities seeking to model Providence's historic preservation success. Downing not only left her legacy in College Hill but was consulted nationwide and by those at the federal level at the National Trust for Historic Preservation and members of Rhode Island's congressional delegation.[171]

At the same time the Society's institutional strength grew in cultural and legal stature in the neighborhood of College Hill, the city of Providence's wave of urban renewal continued on in other neighborhoods, largely unabated.[172] By the late 1960s, the city had approved the commencement of at least eleven urban renewal projects, all which required the assemblage of parcels and the demolition of existing structures.[173] By the late 1960s, an estimated 2440 families were displaced by approved urban renewal projects in the city, receiving compensation that largely undervalued the properties taken.[174]

The East Side Urban Renewal Project largely focused on a sliver of the College Hill and the broader Fox Point neighborhood in Providence.[175] Commenced in 1961, the project originated from recommendations made by the 1959 *College Hill Study*.[176] The project called for the large-scale demolition of homes in the neighborhood that were deemed dilapidated beyond

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[170] Dr. Deborah Thompson to Antoinette Downing, 20 April 1978, *Antoinette Downing Papers*, Rhode Island Historical Society.
[171] Antoinette Downing to Frank Gilbert, 30 September 1976, *Antoinette Downing Papers*, Rhode Island Historical Society.
[172] Digital Scholarship Lab, "Renewing Inequality," American Panorama, ed. Robert K. Nelson and Edward L. Ayers, accessed March 25, 2024.
[173] "Renewing Inequality."
[174] "Renewing Inequality."
[175] Providence Preservation Society. "Preservation, Redevelopment, and Housing in Fox Point," May 31, 2022. accessed March 25, 2024. https://ppsri.org/unraveling-community/.
[176] "Providence Preservation Society, Part IV: Progress Since 1959."

repair.[177] The project included parts of a new highway to be expanded through the city. Lippitt Hill was a thirty-acre area located in the College Hill neighborhood, and one of the few historically black neighborhoods in the city.[178] The neighborhood's origin traced back to the early 1800s, in which Moses Brown, brother of John Brown, had sold land to one of his former slaves.[179] By the mid-1900s, Lippitt Hill housed a predominantly Black and Cape Verdean community, along with other early immigrants to Rhode Island. By all intents and purposes, the community was an integral part of the lifeblood of Providence's economy.[180] The Lippitt Hill Oral History Project's documented over 50 businesses in the neighborhood at the time. In April of 1959, a notice was left at houses that fell within the renewal project's boundaries.[181]

> "Because your home is located within one of the clearance sections of the Lippitt Hill Project Area, it is to be purchased by the Providence Redevelopment Agency. It will be torn down to make room for new private housing and other facilities to be built in the proposed Lippitt Hill Urban Renewal Area. This means at a later date you must find a new home."[182]

At the time, the head of Providence's Division of Public Assistance argued that "a community with slum areas and deteriorating neighborhoods suffers a *three-way loss* in the health and welfare of its citizens, its property values and in community morals."[183] In the arguments put forth to demolish Lippitt Hill, proponents seized on the definitional standards of blight as both a social and physical condition to make their case.[184] Residents of Lippitt Hill were forced to accept cash settlements for their properties, often under-valued in the market. This

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[177] "Providence Preservation Society, Part IV: Progress Since 1959."
[178] "The Lippitt Hill Oral History Project," Stages of Freedom, accessed March 25, 2024, https://www.stagesoffreedom.org/lippitt-hill-project.
[179] "Lippitt Hill Oral History Project."
[180] "Lippitt Hill Oral History Project."
[181] "Lippitt Hill Oral History Project."
[182] "Lippitt Hill Oral History Project."
[183] Shaun Latip, "On the East Side: "Lippitt Hill," 1-24. accessed March 25, 2024. https://www.latip.me/writing/OnTheEastSide.pdf
[184] Latip, "On the East Side: "Lippitt Hill."

represented a larger trend of large urban renewal projects requiring condemnation payouts targeting black areas in cities all across the United States: it was less expensive in both dollars and political capital to do so.

At the same time, other neighborhoods nearby were spared from demolition in the project, notably, some parts of the Fox Point neighborhood. Fox Point was a neighborhood of acres of shoreline that supported the ports and related industries in its early years. Irish immigrants were the first to arrive in the 1800s, and by the 1950s, the neighborhood had become predominantly Portuguese and Cape Verdean. These areas were prioritized as neighborhoods in which rehabilitation of properties through private investment was deemed possible.[185] The language used by the Providence Redevelopment Agency was striking and presents how alternative conceptions of revitalization were pursued.[186]

In a *Report on a Sample Survey of Home Improvements, 1950-1962*, John Kellam, the Chief of Renewal Services of the Providence Redevelopment Agency reported on a sample of residential properties in Fox Point in which rehabilitation through private investment, rather than demolition, became the preferred method of renewal. The report noted that "⅝ of the housing quality improvement effort has been unconnected with the historic preservation motive."[187] The report noted that as to the question of why improvements were undertaken by specific homeowners, they came from both aesthetic or economic necessity on the part of homeowners. In other words, improvement work did not take place until the "energy and money are available," along with the requisite protections from the locality to forego demolition.[188] Kellam's report

[185] "Report on a Sample Survey of Home Improvements, 1950-1962: in the Fox Point Section of the East Side Renewal Project Area." Providence Redevelopment Agency, March 15, 1963.
[186] "Report on a Sample Survey of Home Improvements," 15.
[187] "Report on a Sample Survey of Home Improvements," 21.
[188] "Report on a Sample Survey of Home Improvements," 21.

concluded by arguing that it was up to homeowners to undertake their own individual private investment if they chose not to leave neighborhoods like Fox Point. He stressed that public investment in the form of renewal projects would be much more limited.[189]

The Providence Redevelopment Agency's report showed that there was an alternative to demolition in arguing there was a "demonstrated rehabilitation ability on the part of the people" in Fox Point.[190] In other words, there did exist an alternative to clearance of supposed blight or the vast legal controls of historic preservation. The report highlights a few methodological tensions among those in the urban renewal community in cities during this period. It seems likely that Kellam's report represented a minority opinion and approach among redevelopment agencies at the time, given the scale of demolition occurring in the city at the time.[191] While many areas were deemed blighted beyond repair, the study indicates that there were certain areas of Providence that while struggling from disinvestment, were not to be slated for massive blight-clearances and demolition like others. The neighborhood of Lippitt Hill was not one of them, and the ensuing re-development on the cleared property showed the complications of historic preservationists' role in urban renewal debates. To many, there did not seem to be a problem with urban renewal projects in areas that were not deemed to be preservation-worthy.
While a thriving neighborhood in other terms, Lippitt Hill's lack of colonial architecture and other historic preservation worthy emblems would leave it vulnerable to a blight classification, and the ultimate disregard from the city's leading preservationists.

In a moment of deep irony, Antoinette Downing, the head of the Providence Preservation Society, would serve on the board of the redeveloped project that sat on the destroyed

[189] "Report on a Sample Survey of Home Improvements," 25.
[190] "Report on a Sample Survey of Home Improvements," 26.
[191] "Renewing Inequality."

neighborhood of Lippitt Hill. Many of the former tenants of Lippitt Hill were not able to gain housing in the redeveloped dwelling units. By the mid-1960s, around 80% of Providence's Black population was forced to move at least once because of new urban renewal projects.[192] As a result of blight clearances, and aided by the help of lead preservationists, a part of the city's community and neighborhoods on in Providence never recovered.

How did Downing, lead preservationist reflect on these contradictions in the scale of her work in the city? Did she think about these contradictions in the wake of urban renewal? In an interview in the late 1980s, she was asked specifically why the Providence Preservation Society neglected to focus on establishing preservation controls outside of the College Hill area. Her answer largely focused on institutional capacity.

> "We didn't have the capability… There are just limits to what people can undertake, and also what they know about…I think that maybe I would've worked harder to protect a lot more of the buildings. And I would certainly broaden my range of being interested in later buildings as well as the earlier buildings of the fabric of the state."[193]

As Downing would note, she would eventually become pleased that the Society would expand their work to the rest of the city, "sponsoring work in the Broadway-Federal Hill area and all the Elmwood area…so that the base has broadened now to think not only about the area that was mapped out in the *College Hill Study*…but it's encompassing all the buildings of the whole city."[194] Downing would go on to expand on her work outside of Providence and became the chair of the Rhode Island Historical Preservation Heritage Commission in 1968. The committee would identify 50,000 historic buildings around the state to submit for listing on the

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[192] "Renewing Inequality."
[193] "Antoinette Downing oral history interview conducted by Patrice O'Donoghue in Providence, Rhode Island, 1981-04-09." From the Rhode Island Historical Society, Transcript. https://www.rihs.org/mssinv/Mss098.htm (accessed August 21, 2024).
[194] "Antoinette Downing oral history interview conducted by Patrice O'Donoghue in Providence, Rhode Island, 1981-04-09." From the Rhode Island Historical Society, Transcript. https://www.rihs.org/mssinv/Mss098.htm (accessed August 21, 2024).

National Register of Historic Places. Her legacy in the city and state remains pristine. Still, it is vital to interrogate the limits of her and the Society's work, particularly during the fraught and destructive period of urban renewal in the city.

VI. Conclusion

Blight as a legal framework had devastating effects on the landscape of American cities. Urban renewal in the United States simply would not have been possible without the legal pretext to facilitate government takings in areas and structures that were deemed irreparable in the urban landscape. This legal framework lives on today, codified in state statutes and in many state constitutions like Rhode Island's. In all but five states, statutes base a positive determination of blight based on just one blighted factor listed in the statute, giving municipal redevelopment agencies broad leeway to identify only one factor in the statute before moving forward with a condemnation proceeding.[195] Most statutes across the country rely on unelected bodies like redevelopment agencies to make these determinations. The standard of review applied by state courts is most often an arbitrary and capricious analysis, which further limits a court's ability to second-guess a redevelopment agencies finding.[196] Professor Patricia Hureston Lee argues that after a blight designation, property owners are placed in a precarious situation, and must "balance the great risk of facing an ugly, contentious, and expensive eminent domain action with little reward, or accept what the owner may not believe is just compensation."[197] Hureston Lee discusses the efforts in the state of Ohio, where the highest court in the state placed

[195] Gold and Sagalyn, "The Use and Abuse of Blight," 1126.
[196] Purver, "What Constitutes 'Blighted Area,'" § 4.
[197] Hureston Lee, "Shattering 'Blight,'" 44.

state constitutional limits on a municipality's blight designation in the wake of *Kelo v. New London*.[198]

Providence was undoubtedly a declining "post-industrial" city in the period of federal urban renewal. It was perhaps the template of an ideal city that would be aided by the efforts of the Urban Renewal Administration and the purported necessity of the flexibility of blight takings. Equally and perhaps paradoxically so, the city had one of the earliest and most powerful historic preservationist groups, which contributed greatly to shaping local and national preservation debates, and legislation at all levels in the 1960s. The group can be credited with making immense strides in preserving the landscape of parts of the city, advocating for legal protections in the form of historic district zoning ordinances and successful preservation protections at the state level. Providence proved to be a model for national historic preservation efforts and other cities across the country, who modeled ordinances after the one protecting College Hill.[199] Today, these tensions between historic preservation and development still exist on College Hill, as residents have continually grown frustrated with the university's expansionist tendencies.[200]

This legal history has sought to reveal a few major tensions in the urban renewal historical literature. First, cities with strong historic preservation advocates still marched towards a legal and policy framework that consolidated blight as the organizing principle for takings in large swathes of urban areas. Second, the very structure and scientific-like framework of evaluating properties that historic preservation groups like the Society pursued necessarily

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[198] City of Norwood v. Horney, 853 N.E.2d 1115 (2006).
[199] Bunnell, *Transforming Providence*, 25-27 (citing the local and national influence of the College Hill Study).
[200] GoLocal Providence Editorial Board, "Brown's Demolition Strategy: Where is Antoinette Downing?," *GoLocalProv*, 20 December 2017 ("Brown University's love of the wrecking ball is taking its toll across the historic buildings of Providence's East Side…In the 1950s and 1960s, Brown attempted to tear down much of College Hill. It was the efforts of Antionette Downing — a fierce woman who relentlessly fought to protect and preserve the historic legacy of Providence. Her efforts have made Providence a wonder of the preservation world in America.").

created a scale of what was deemed worthy to the urban landscape. These efforts often ignored a "third way," which could encourage private investment into rehabilitation on the part of owners and tenants themselves through levers like Revolving Funds.[201] The broader legal history I have sought to uncover in Rhode Island also reveals some uneasiness with the growing consensus surrounding the expansive role given to redevelopment agencies in cities and towns to classify areas as blighted. Justice Francis Condon's stirring dissent in the 1949 Rhode Island Supreme Court advisory opinion highlighted the deeper philosophical questions as it related to takings like these and the rights of property owners.

> "If this guaranty of the right of private property against the arbitrary exactions of government is lost, then all is lost. No matter how beneficent legislation may at the moment appear to be it will be dear, indeed, if purchased at such a price."[202]

Indeed, the shrinking of the individual's ability to have any sort of meaningful say in the rehabilitation of their property or neighborhood became sharply curtailed during the period of urban renewal. In cities like Providence, redevelopment agencies were given widespread power to alter the landscape permanently by seizing properties in the name of an arguably hard framework to oppose: removing blight from the community. At this same time, historic preservationists instituted some of the strongest protective public controls that slowed down demolition and development. I contend that the existence of redevelopment agencies and preservation groups like PPS during the period of urban renewal were seemingly more complimentary than at odds and helped to facilitate each other's influence. PPS's role in the preservation of College Hill is nothing short of a phenomenal example of the power of an

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[201] "Revolving Fund Program," Preservation Virginia, https://preservationvirginia.org/our-work/revolving-fund-program ("Endangered historic properties are acquired and placed under protective easement with the Virginia Department of Historic Resources. The properties are then sold to new owners who agree to undertake the necessary rehabilitation.").

[202] Opinion to the Governor, 76 R.I. 249, 289 (1949) (Condon, J., dissenting).

organizing coalition to fight urban change. Still, their role must be placed in proper context, backdropped by the legal developments surrounding blight, with the ultimate consequences shaping our urban landscapes today.