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'Changeful times': Preservation, Planning, and
Permanence in the Urban Environment, Boston, 1870-1930

by

Michael Holleran

M.C.P., Massachusetts Institute of Technology (1985)

A.B., Brown University (1979)

submitted to the Department of Urban Studies and Planning
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signature of author _____
Department of Urban Studies and Planning

certified by _____
Robert M. Fogelson
Professor of Urban Studies and Planning
Thesis supervisor

accepted by _____
Lawrence E. Susskind
Professor of Urban Studies and Planning
Chair, Ph.D. Committee

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Michael Holleran
M.I.T. Department of Urban Studies & Planning

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Abstract

Mid-nineteenth century Americans' treatment of their urban environment was governed by a pervasive culture of change. Change in buildings and land uses was thought both inevitable and good. This study examines Boston as a case study of reactions to and ultimate abandonment of this culture of change.

Starting in the 1860s, Americans responded with increasing dismay to the pace of environmental change. Some associated it with unwelcome social changes. A growing ideology of home and family increased sensitivity to neighborhood change. The beginnings of city planning theory questioned the economic waste of frequent changes in buildings and land use. The parks movement suggested an alternative, government action to make at least some parts of the urban environment permanent.

Private deed restrictions addressed change in the domestic environment. The Massachusetts Supreme Judicial Court's 1863 *Parker v. Nightingale* decision made restrictions available as a legal tool for long-term enforcement of land use controls. Developers responded by marketing the permanence of new neighborhoods. By the early twentieth century both law and restrictions themselves emphasized flexibility in order to achieve continuing control rather than permanence.

The historic preservation movement addressed change in certain pieces of the existing environment. Early preservationists concentrated on structures such as the Old South Church and the Old State House which they saw as monuments of historic events. Efforts to protect historic public spaces such as Boston Common helped shift the movement's concerns from the historical to the visual. By the end of the century, a continuing series of ad hoc preservation campaigns emphasized landmarks valued for their aesthetic contribution to the urban landscape, such as the Bulfinch State House and Park Street Church. Preservationists paid attention to ever larger swaths of urban landscape until they were restoring whole neighborhoods, beginning with Beacon Hill. When the preservation movement was institutionalized by the 1910 foundation of the Society for the Preservation of New England Antiquities, it retreated from these broad environmental concerns to instead take an archaeological approach to old buildings as individual artifacts.

The shortcomings of private efforts to protect neighborhoods and landmarks led to the use of government powers to supplement deed restrictions and preservation efforts. Bostonians used first eminent domain and then the police power to set building lines and height limits in Boston's Back Bay and Beacon Hill districts, setting national precedents that culminated in comprehensive zoning. These government actions focused less on environmental permanence than on control of continuing development. While zoning was enacted with an explicitly preservationist rationale, by the time it was in practice the control it offered could be used to speed as well as to retard the pace of change.

By the end of the 1920s these reforms fundamentally altered the city-building process. Certain features of the environment were thought of as permanent and in practice were mainly made exempt from change. Development of the rest of the city took place within a framework of public policies controlling environmental change.

thesis supervisor: Robert M. Fogelson
Professor of Urban Studies and Planning

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Introduction

Any Boston man who had come of age in time for the Civil War, looking around himself at the turn of the century, would have seen a city almost completely altered since his youth. Not a single original building stood in whole swaths of the city; indeed, much of the ground beneath the city had not existed. As great as these physical changes were, he would find even greater changes in the ways Bostonians went about building and inhabiting their city.

His parents, no matter how wealthy and no matter where they lived, almost certainly moved to a new neighborhood; if not, they watched their old one change so much that, in effect, a new neighborhood came to them. He, on the other hand, could have raised his children in, and still live in the same neighborhood, essentially unchanged except for the satisfying growth of its trees. If like most mobile Americans he did move, it could be with the satisfaction of knowing that he did so by choice, and not because the changing city had forced him to. If he had the money, he had his pick of neighborhoods in any of which he might remain for the rest of his days without worrying about encroachments from businesses or tenements.

When such encroachments had appeared on his boyhood street, his parents, no matter what their feelings about it, probably reacted by trying to cash in on the changing land uses as profitably as they could, in order once again to secure a suitable home. The

cycle from fashionable new residential area to slum or commercial use could take as little as ten or fifteen years.¹

If such unwelcome changes intruded onto his own street, he would probably react differently, and a different response was usually available: he and his neighbors could sue to enforce deed restrictions prohibiting non-residential uses or multi-family occupancy. While real estate wisdom had once held that such restrictions diminished land value, he was more likely to consider them essential to it.

When he worked or shopped downtown, he would be aware of the tremendous changes there. His generation had watched approvingly as row after row of eighteenth-century houses were pulled down to make way for mercantile 'palaces,' which they cheerfully expected to see replaced in their time by still more wonderful buildings. Yet many of the landmarks pointed out in his childhood - the Old South Church, Old State House, Kings Chapel and its burial ground - were still there for him to pass every day. As a young man he would reasonably have expected every one of these to disappear during his lifetime. Now as he approached his old age he would be equally confident that they would all remain for his grandchildren to show to their own grandchildren.

Similarly, he would have expected to see the townhouses of Beacon Hill and then the Back Bay fall before the expansion of elevator apartments and office buildings, and if he were a man of ordinary sensibilities he would applaud the city's successful growth and give thanks for its increasing tax base. Yet now the city, responding to a great popular outcry, if not from him then from his wife and daughters, was spending rather than collecting, in order to prohibit these tall buildings and save the old neighborhoods where they were rising. If our Bostonian lived to a ripe old age, he would have seen these trends continue to their culmination in comprehensive zoning, a degree of public control unthinkable when he was young, and for the equally unthinkable end of preventing, rather than encouraging, change in the city.

¹Homer Hoyt, *One Hundred Years of Land Values in Chicago: The Relationship of the Growth of Chicago to the Rise of Its Land Values, 1830-1933* (Chicago, 1933), 189-192; Walter Firey, *Land Use in Central Boston* (Cambridge, Mass., 1947), 61-68.

The questions

Today Americans take for granted the shared value of continuity in the built environment. Neighborhood stability and historic preservation are universally approved as principles, and in practice become controversial only when they conflict with one another or with other interests.

In the mid-nineteenth century things were profoundly different. The whole culture of planning and building was based on continual change. Real estate investors anticipated ever-denser use, and residential property was valued and developed with an eye to its eventual conversion for commercial purposes. Subdivisions were often re-platted during the development process to allow denser building. Neighborhood deterioration, if unwelcome, was accepted as inevitable.

Old buildings were regarded with distaste. They were 'firetraps,' 'eyesores,' often converted to unintended uses with unsightly results. Historically significant buildings were not exempt from this perception; while Bostonians took great pride in them, their appreciation was not aesthetic. In North America as in Europe, such buildings might be saved as 'ancient monuments,' but they were symbols to be adorned rather than artifacts to be preserved, and in retrospect their treatment often has been called vandalism.

Around the end of the nineteenth century, all these things changed:

Increasingly complex infrastructure, more elaborate and expensive building types, and the considerable social and economic costs of continual reconstruction and relocation lent increasing attractiveness to what planner Charles H. Cheney later called "building for permanency."² If the city could begin to take a permanent shape, then

²Charles H. Cheney, 'Building for Permanency: The Esthetic Considerations in a Master or City Plan,' in *Planning Problems of Town, City, and Region: Papers and Discussions at the Twentieth National Conference on City Planning* (Philadelphia, 1928), 32. See discussion in Marc A. Weiss, *The Rise of*

durable infrastructure such as streets, lots, utilities and transit lines could be configured for particular land uses rather than for generalized speculative potential. The late nineteenth century produced Romantic suburbs notable not just for their quality as residential designs, but for the very idea that a subdivision could be designed to remain residential, not merely ill-equipped for but actively designed to resist conversion to other uses. Deed restrictions imposed legally what subdivisions attempted spatially - establishing a permanent form and use for the urban fabric. Real estate thinking, the main normative theory of urban form during this period, underwent a subtle but fundamental shift from a speculative outlook to one focused on stability of investment and permanence of value. Beginning in the 1890s, land use and building height regulations - the predecessors of modern zoning - imposed on existing areas the same kinds of restrictions being put into deeds in new subdivisions. For the first time, American cities explicitly sought to avert change in their patterns of land use and built form. The impulse received its clearest expression in the preservation movement, which began, as an urban phenomenon, in this period.

Other examples of the search for permanence can be drawn from fields further removed from urban planning. In architecture, the Colonial Revival style emerged in the 1880s, reinforcing preservationism and at the same time creating the potential for a permanently established community architectural identity. The same period saw the first movement to forever set aside wilderness areas as national and state parks, and the beginning of efforts to preserve archaeological remains of pre-Columbian settlement.³ 'Perpetual care' cemeteries aimed to secure an earthly durability corresponding to spiritual eternity.⁴

Attitudes about environmental stability, and approaches to achieving it, changed so thoroughly and along so many parallel lines that the changes appear in retrospect as a single phenomenon. Some of these changes have received attention from historians;

the Community Builders: The American Real Estate Industry and Urban Land Planning (New York, 1987), 61.

³Norman T. Newton, *Design on the Land: The Development of Landscape Architecture* (Cambridge, Mass., 1971), 517-527.

⁴James J. Farrell, *Inventing the American Way of Death, 1830-1920* (Philadelphia, 1980), 137.

some have received little. Even when they have been studied, they have seldom been studied in relationship to one another. The attempt to secure environmental permanence was not a single coordinated 'movement,' because its participants did not identify it as one. Nonetheless, people in diverse fields were saying the same things; often they were the same people, responding to threats the connections between which they might be only dimly aware of.

How did attitudes toward environmental continuity change at the end of the nineteenth century? Why did permanence become a goal for people dealing with so many different parts of the built environment? How did they try to achieve it? What kind of groundwork did their efforts lay for twentieth century planning, preservation, and perception of American cities?

The inquiry

This study examines the culture of city-building, a branch of material culture. It is a history of what people *thought*, but only insofar as it affected what people *did*.

Lots of people were involved in making cities, and so this study examines culture not in any elite sense, but rather culture as the working suppositions of a wide range of different kinds of people: real estate speculators; legislators and ward politicians; lawyers, surveyors, civil engineers, architects, and their emerging professional kin, landscape architects and city planners; and, in general, the well-to-do third of the population who made up these other groups' customers, clients, and activist constituencies.

The inquiry inevitably focuses on the upper and substantial middle classes. Part of its subject is perception, and these are the classes who left written records of their perceptions. The rest of its subject is the processes of decision making about urban change, and the upper and upper middle classes controlled those processes (in other words, they left the built record as well as the written record). Finally, sociologists often claim that cultural changes begin at the upper strata of society and diffuse through the rest. I believe that is the case here, but there is little in the historical record to answer

the question. Studies of residential mobility indicate that only the upper classes were likely to stay in one place long enough even to know about the pace of environmental change. Working-class and lower middle-class people presumably had more immediate and tangible worries than the pace of change in their surroundings; on the other hand there is no *prima facie* reason to suppose they found environmental change any less disruptive than did their upper-class contemporaries. Labor unions as well as millionaires protested encroachments on Boston Common.

Whether or not classes actually agreed, not much of this story is about class conflict. In a few of the issues I explore, the upper or middle classes clearly perceived and acted against threats from lower classes. More often, all but the elite were implicitly excluded by issues involving ancestral mansions, Revolutionary forebears, or expensive neighborhoods. Most of the episodes pitted different elites against one another - wealthy householders against commercial developers, or factions within the congregations of upper-class churches. Even if the working classes were equally interested in neighborhood stability, their disputes were less likely to end up in the courts or before the legislature. Disputes of the upper classes, on the other hand, forged attitudes and legal tools later used by the rest of society.

While my focus on upper classes is inherent, my focus on the city is deliberate. This is a study about the shaping of the urban environment, at the urban scale. The movement for national and state parks was related (especially as it was led by many of the same members of the urban elite), but beyond my scope, as its setting was not urban. Emergence of the Colonial Revival style for new buildings is also connected, as is re-use and museum curatorship of historic building pieces, but all these are smaller than the scale of the city. Within my scope is preservation of whole existing Colonial buildings, especially public buildings which served as landmarks around which perception of the whole city might take shape.

This study is organized around three important strands of the pursuit of permanence: deed restrictions, historic preservation, and public development regulations.

Deed restrictions, by which subdividers imposed long-term land use and design controls, addressed the stability of prospective environments, pieces of the city in the process of production. They are important because they contradicted and challenged the speculative heart of thinking about change in the urban environment. Previous studies of deed restrictions have emphasized their design and social intentions and consequences. I will emphasize instead the very idea of control and permanence and the radical departure this represented from prior real estate experience.

Historic preservation addressed the stability of extant environments. It emerged in two generations from being an extreme form of antiquarianism, seemingly out of place in the New World, to first, an accepted approach for extraordinary features of the environment, and, by the end of the period, an institutionalized public policy and in some cases a way of thinking about whole urban environments. Popular conflict between change and permanence often appeared as historically informed opposition to change in public spaces and landscapes, although these are not traditionally defined as the mainstream of historic preservation.

Public regulation of urban growth and change expanded the private tools of restrictions and preservation. It shows a late nineteenth century shift from viewing government as an agency for promoting environmental change, to seeing government as the only entity able to control change and secure environmental stability. While the origins of this public control lie in sanitation, safety, and regulating private use of public space, by the early twentieth century some public powers had evolved specifically for controlling visible change in the environment. The first of these was building height restrictions, and then building setbacks and use districts; these were all brought together finally as comprehensive zoning.

Boston was in the forefront of all these changes. It was the source of critical caselaw establishing deed restrictions as a tool for private planning. It was one of the earliest centers of urban preservationism. Its building height restrictions, the first in the country, provided one of the most important national precedents for zoning. Reactions to change were stronger, earlier, and more successful in Boston than elsewhere. The

reasons for this were many, and they point to Boston as not an anomaly but a prototype.

Interest in permanence soon took hold in other cities across the country, including cities strongly identified with change. Chicago enacted building height restrictions only a year after Boston did, and they were later adopted or urged with preservationist rationales in Baltimore and on Fifth Avenue in New York.⁵ Land developers across the country adopted deed restrictions as an essential part of their craft, and historic preservation similarly became a nationwide movement with adherents in such unlikely places as Chicago and the west coast. By the early 1880s, westerners were already working to save some of their heritage of Spanish colonial settlement, and by the end of the decade their interest had expanded to include the remnants of Anglo-American arrival only forty years before.⁶

While Bostonians often invoked their Revolutionary past as a heritage distinguishing their city from others, and an established elite did its best to reinforce the city's image as an intellectual center, it was first of all a big commercial and industrial city, and it was growing fast. Boston was fully a part of the prevailing nineteenth century culture of change.

⁵Garrett Power, 'High Society: The Building Height Limitation on Baltimore's Mt. Vernon Place,' *Maryland Historical Magazine* 79 (1984): 197-219; Seymour I. Toll, *Zoned American* (New York, 1969).

⁶Charles B. Hosmer, Jr., *Presence of the Past: A History of the Preservation Movement in the United States Before Williamsburg* (New York, 1965), 124-126.

CHAPTER ONE:

The culture of change

Let us welcome whatever change may come.

- Nathaniel Hawthorne, 1863¹

"Changeful times"²

At 7:24 PM, on Saturday, November 9, 1872, the Boston fire department logged a report from alarm box 52 at Summer and Kingston Streets in downtown Boston. An epidemic had idled most horses in the city, so a team of men pulled a single pumping engine to the scene. When they got there, they found that the fire had already spread up an elevator shaft and completely consumed the four-story building. They discovered to their horror that water mains laid when this was a residential area carried only enough water to reach two or three stories, and as more engines arrived and connected their hoses the pressure dropped lower. The fire easily jumped the narrow streets, aided by fashionable new Mansard roofs which jutted their wooden cornices toward one another out of reach of the firefighters' streams. The combination of dangerous buildings and inadequate protection had recently led London and Liverpool insurance underwriters to conclude that downtown Boston was a disaster waiting to happen.³ It was happening.

¹Nathaniel Hawthorne, *Our Old Home: A Series of English Sketches* (Columbus, 1970), 5:60.

²Chandler Robbins, *Two sermons, delivered before the Second Church and Society, Sunday, March 10, 1844, on the occasion of taking down their ancient place of worship* (Boston, 1844), 41.

³*Boston Globe*, August 9, 1873: 8.

During the night Chief Engineer John S. Damrell ordered his men to begin dynamiting buildings to clear firebreaks, but their untrained efforts often spread the flames. The fire stopped at the walls of the Old South Church only through some combination of divine intervention and the heroic efforts of firefighters. By the time the Great Fire was brought under control on Monday, fourteen people had died and 65 acres of the heart of the city were smoking rubble and surreal heat-sculpted granite.⁴



fig. 1.1. Boston after the Fire, 1872. The spire of the Old South Church, far right, marks one edge of the burnt district. At far left, the burnt-out shell of Trinity Church breaks the horizon like a sooty castle.

In spite of the fire's immense destruction, and the magnificence of the buildings it consumed,⁵ the city was strangely free of mourning for them. Bostonians hardly knew the place. The 'burnt district' had already changed out of all recognition when it became a downtown business area. If the public felt any sentimental attachments here, they were to the residences and gardens which had only recently been displaced. The fire spared Old South Church, "almost the only building of historic significance within the burnt district..."⁶ Yet the Old South, like burned-out Trinity Church, had already

⁴Christine Meisner Rosen, *The limits of power: Great fires and the process of city growth in America* (New York, 1986), 177-79.

⁵*Boston Globe*, November 21, 1872: 4.

⁶Editorial: 'Historical aspect of the fire,' *Boston Globe*, November 15, 1872: 4.

decided to move elsewhere; they were lost in plans if not yet in fact. Perhaps the fire was not traumatic because the city had sustained its trauma here piecemeal as the area was transformed. The burnt district was already scar tissue. The fire was only a more dramatic instance of what Bostonians were doing for themselves.

For most Bostonians the area's recent reconstruction operated in another way to preclude nostalgia. Memories of building it were so fresh, and the result was considered so successful, that it seemed no real problem to do it again. In this widely-held view, rebuilding Boston was an opportunity. Crooked and narrow old streets could be made wide and straight, and buildings more fire-resistant; in the end the Great Fire would leave Boston bigger and better.

To support this view Boston had only to look to Chicago, which had suffered a vastly more damaging fire just a year earlier. Despite fears (or in some quarters hopes) that the disaster would set Chicago back permanently, by the time Boston burned Chicago's ambitious reconstruction had already made it "beautified, stronger, more successful than ever."⁷ The fire only enhanced Chicago's legend.

Chicago was the prodigy of nineteenth century urbanization, but cities throughout the western world grew at prodigious rates, especially in North America. Many, founded in or just before the century, would grow to hundreds of thousands. As Homer Hoyt wrote in 1933, with a mixture of awe and pride:

The growth of Chicago in the nineteenth century has been paralleled by that of no other great city of a million population or over in either ancient or modern times It compressed within a single century the population growth of Paris for twenty centuries. From 1840 to 1890, the rapidity of its development outstripped that of every other city in the world. An insignificant town in 1840, ... by 1890 it was the second city in point of numbers in the United States. In 1930 only London, New York and Berlin - all much older - contained more people.⁸

The growth of established seaport cities like Boston and Philadelphia was less impressive only by comparison. In fact before Chicago took its place as the emblem of

⁷Editorial: 'The Bright Side,' *Boston Globe*, November 15, 1872: 4.

American urban growth, its symbol was Boston's own industrial satellite of Lowell, the nation's fourteenth largest city in 1840,⁹ 'the American Manchester,' where nineteen years earlier stood only a few farms.

Bostonians were no less aggressive in developing their own city and its suburbs. By any objective standard - population, wealth, building - the city grew fast. When the Town of Boston became a municipality in 1822, its real estate was assessed at \$23 million. By the decade after the Civil War, the city added that much to its valuation each year.¹⁰ Up to 1880, Boston's population grew by a third to a half each decade. While this percentage growth eventually slowed, Boston on the average added almost 10,000 inhabitants each year in the 50 years after 1860. Only New York, Chicago, Philadelphia, Cleveland, and St. Louis equalled this absolute increase.

These new residents had to live somewhere. Boston in 1840 was a city of 93,000 crammed into substantially the same square-mile peninsula as the colonial town of two hundred years earlier. This circumstance had already resulted in complete abandonment of detached houses, even for the rich, and extreme overcrowding for the poor. Those who were in between increasingly left for the suburbs - the working classes walking across bridges to Charlestown, Cambridgeport, or South Boston, the middle classes settling the nation's first commuter suburbs along railroads leading out of the city. Boston had no room for more people, yet it continued to grow. Even though its suburbs consistently grew faster than the city, Boston added, on average, its entire 1840 population each decade from 1860 to 1920.

In order to accomplish this growth, Bostonians completely remade their whole environment, over and over, working "such a transformation as no other great city of the world has ever undergone at the hands of man," as a contemporary historian

⁸Hoyt, *One Hundred Years of Land Values*, 279.

⁹Lowell was also the third largest city in New England. *Seventh Census of the United States: 1850* (1853), table XXXIV.

¹⁰Charles S. Damrell, *A Half Century of Boston's Building* (Boston, 1895), 356, 358. For the years 1871-74 (the first for which building statistics are available), the increase came about two-thirds through appreciation and one-third through new construction; see John F. Fitzgerald, *Annual Address of ... Mayor of Boston, to the City Council* (City doc. 1, 1907), app. 9.

described it.¹¹ They shovelled hills into bays to more than double the peninsula's area. They turned to housing innovations, such as buildings intentionally designed as tenements, and the American premiere of 'French flats,' or apartments. Boston also annexed adjacent suburbs, though with less success than other American big cities. Whether annexed or not, the once-rural landscapes near the city soon sprouted densely-built houses and streets as far as the eye could see.

While these new areas spread, Boston was also reworking the old city plan at its center. Mayor Alexander H. Rice, in his 1856 annual review of the city's finances, reminded citizens that

Boston is subjected to one item of expense which is almost unknown in cities of modern origin ... the numerous narrow and crooked streets which well enough answered the convenience of a provincial town, are found to be totally inadequate to the wants of a great city, daily becoming more and more crowded with business and population.¹²

So Boston widened and cut through new arteries. The pace increased when the legislature in 1868 finally granted the city the right to recover some of the costs from property-owners who benefitted.¹³ "... [I]t seems inevitable," said Mayor Rice, "that these improvements must continue, until a considerable portion of our original territory has been rebuilt."¹⁴

What was life like in such a changing environment? Mid-nineteenth century city dwellers' lives were so unsettled as to make this question unimportant for many of them. Peter R. Knights' research on residential persistence and mobility in Boston before the Civil War reaches the startling conclusion that "one-half of Boston's population would disappear and be replaced every one or two years."¹⁵ Those who remained moved around within the city, and the rate at which they moved was

¹¹Edward Stanwood, 'Topography and Landmarks of the Last Hundred Years,' in Justin Winsor, ed., *The Memorial History of Boston, including Suffolk County, Massachusetts. 1630-1880* (Boston, 1881), 3:25.

¹²Alexander H. Rice, *Inaugural Address of ... Mayor of the City of Boston, to the City Council* (City doc. 1, 1856), 12.

¹³Rosen, *The limits of power*, 185.

¹⁴Rice, *Inaugural Address* (1856), 13.

¹⁵Peter R. Knights, *The Plain People of Boston, 1830-1860: A Study in City Growth* (New York, 1971), 59.

increasing. If Knights' samples are representative, then Boston's 1860 population of 178,000 included fewer than 4,000 household heads who had lived in the city in 1830.¹⁶ Since this stable minority consisted disproportionately of the well-to-do, it was mainly these classes who had the chance to see environmental change affecting their own lives. We can begin to understand those effects by looking at changes in elite neighborhoods.

Before the end of the eighteenth century, the city had no real elite sections. Merchants and the wealthy lived in many parts of colonial Boston, especially the center of town, the pleasant high grounds overlooking it, and the North End, which was if anyplace the preferred neighborhood. When the North End's royalists left with evacuating British troops, the area began a slow decline in fortunes, eventually to become an immigrant tenement district. The center of the city, around State Street, also lost its residential attractiveness with the growth of business after the war. Movement from these two areas, together with growth of the city's upper classes, made fashionable neighborhoods expand in every other direction. In 1795 the Mount Vernon Proprietors began developing Beacon Hill from a ragged wasteland into a homogeneous upper-class district. South of State Street, pleasant houses and gardens grew up in the old 'South End' of Summer, Franklin, and Pearl Streets and Fort Hill, and after 1810 this district spread westward to Tremont Street and Park Street, facing Beacon Hill across the Common. Increasing segregation of land uses yielded a growing turf for the well-to-do, but even where it was shrinking, as in the North End, the process was reassuringly gradual.

As the peninsula filled in to urban densities, elite residential areas maintained stable locations, but changed in form, as when Patrick T. Jackson in the early 1830s levelled almost-rural Pemberton Hill and its mansions to create Pemberton Square and its fine rowhouses.¹⁷

¹⁶11.4% of 1860 sample members "present in Boston at start of" 1830, multiplied by 33,633 households in 1860 (Knights, *Plain People*, Tables IV-6, IV-5, 57, 56).

¹⁷Walter Muir Whitehill, *Boston: A Topographical History* (Cambridge, Mass., 1959), 106-111.

By the next decade, however, intensifying competition for space had less benign effects on these neighborhoods. "The alterations here surpass all you can conceive," wrote Charles Bulfinch to his son in 1843.¹⁸ The business district expanded south into Franklin and Pearl Streets; from the other direction waterfront warehouses encroached on Fort Hill. Residents sold out to speculators, and this time neighborhood change was not gradual. While Fort Hill's new owners waited to build business blocks, they carried their investments by packing houses from cellar to attic with the Irish who were arriving at and working on the docks below.

The Fort Hill and Pearl Street aristocracy moved to Tremont Street, Temple Place, and Bedford Street, expanding the old South End below Summer Street. They found themselves almost immediately in the path of the newly-emerging retail district, which by 1847 had an outpost on Washington Street as far south as Summer Street.¹⁹ A horsecar line which opened on Washington Street in 1856 gave additional impetus to this retail invasion, but it also provided a residential alternative.

The streetcars ran to the new South End, a comparatively vast area of land being filled along the neck which connected Boston to the mainland. The city had been trying for decades to lure suburban-minded middle-class residents here, and starting in 1856 it succeeded. The South End, according to historian Walter Firey, was "the distinctly preferred residential district of the city"²⁰ during the 1860s, while business blocks quickly replaced Summer and Tremont Street houses. Upper-class preferences soon switched to the new Back Bay (see fig. 1.2.), and by 1873 the South End was already recognized as a declining area being converted to roominghouses. Of all the changing neighborhoods, the South End's rise and fall was the most traumatic. Not only was its fashionable life-span the shortest yet, but unlike Fort Hill and the Summer Street district, its departing residents generally sold not at a handsome gain but at a loss.

¹⁸June 12, 1843 letter to his son, in Bulfinch, Ellen Susan, ed., *The Life and Letters of Charles Bulfinch, Architect* (Boston and New York: Houghton Mifflin, 1896), 301.

¹⁹Firey, *Land Use in Central Boston*, 59.

²⁰Firey, *Land Use in Central Boston*, 61.

So long as fashionable neighborhoods moved around within the limits of the city's original peninsula, they were never out of easy walking distance of the shared environment of public spaces and buildings, particularly churches, which anchored the changes in people's individual environments. By the 1840s neighborhood changes were tearing these anchors loose. Churches began moving, pulled by wholesale migration of their congregations and pushed by the altered character of their old locations. Of the thirteen churches which in 1845 served the old Summer Street district east of Washington Street, deacon Frederick D. Allen of the Old South Church reported in 1872 that one had closed its doors and eleven had moved elsewhere. Only the Old South remained, and its leaders, said Allen, "have long regarded the ultimate removal of our place of worship as inevitable."²¹

One of the departures on Allens' list was the Second Church. When Chandler Robbins succeeded Ralph Waldo Emerson to its pulpit in 1833, the congregation occupied the oldest church structure in the city, on Hanover Street in the North End.²² Before Robbins retired in 1874, the church would make its home in five different buildings, not counting temporary accommodations.

Even before Robbins' ministry, the Second Church's members had begun agitating to move from the North End. The hundred-year-old building was increasingly difficult to maintain, and its location increasingly unattractive to the congregation. During Emerson's tenure their dissatisfaction was already sufficiently public that the Roman Catholic Diocese in 1832 expressed interest in buying the building, an offer which was itself a significant indicator of neighborhood change. By 1840 the majority of the congregation, including its most well-to-do members, had moved away from the neighborhood, and they bought a site on Beacon Hill where they proposed to build a new church. Robbins sought a compromise to keep the congregation intact, but he too was convinced that the church would have to move. The North End faction still

²¹Frederick D. Allen, discussing the area bounded by Washington, State, and Essex Streets, and the harbor; Mass. Supreme Judicial Court, *Old South Society, petitioners, vs. Uriel Crocker et als. Report of evidence taken at the hearing ... before Mr. Justice Colt* (Boston, 1876), 56. See also 'Old Landmarks Removed,' *Christian Register*, 5 Aug. 1871, quoted in Samuel Kirkland Lothrop, *A Discourse preached in the Church in Brattle Square, on the last Sunday of its use for public worship, July 30, 1871. ... and an account of laying the corner-stone of the new church* (Boston, 1871), 42.

resisted, and hoped that the church had “put at rest this long agitated question” when it voted in 1843 to demolish and rebuild on the same site.²³ During the year of construction, the congregation worshipped in the Old South Church, and the South End majority could not have failed to appreciate its convenience as compared with Hanover Street. The new building saddled the church with debt, while members continued to drift away, and in 1849, by necessity rather than by choice, the congregation sold it and left their historic neighborhood. Wealthy parishioners had offered to save the building, Robbins afterward claimed, but he felt the church would fail if it remained in the changing North End. Instead it was set adrift. For a while Robbins preached to his flock in the Masonic Temple, until the congregation bought a small chapel at almost the same spot on Beacon Hill to which they had refused to move ten years earlier. In 1854, they absorbed another congregation in order to take over its church south of Summer Street on pleasant, tree-lined Bedford Street, just the sort of home the Second Church had been looking for. But even as Robbins moved his flock into their new quarters, businesses were moving in around them. In only eighteen years, the congregation dispersed even more thoroughly than they had done from the North End, and once more its members decided to move on. This time, they packed up to bring with them the pulpit, pews, stained glass, and the very stones of their building. When they did so - early in 1872 - they were not yet sure where they would go. They bought a lot in the South End, but this time sensed impending neighborhood change even before they moved in. They rebuilt instead at Copley Square, in the Back Bay.²⁴

²²Robbins, *Two Sermons ... March 10, 1844*, 3.

²³Chandler Robbins, *Sermon, delivered before the proprietors of the Second Church, Wednesday, September 17, 1845, at the dedication of their new house of worship* (Boston, 1845), quoting from the October 19, 1843 vote of the congregation; Chandler Robbins, *History of the Second Church, or Old North, in Boston, to which is added, a history of the New Brick Church* (Boston, 1852), 146-48, 159.

²⁴George H. Eager, comp., *Historical sketch of the Second Church in Boston* (Boston, 1894), 35-36; Chandler Robbins, *History of the Second Church*, 155-57. Even this church, though dedicated in 1874 to stand for “years, even through centuries, to come” (Chandler Robbins, *A Sermon preached at the dedication of the Second Church, Boylston Street, November 4th, 1874* [Boston, 1875], 4), only lasted until 1912, when the Second Church, again finding its fashionable residential location overtaken by business, once again moved, this time to a more-or-less suburban location at the Brookline border, where they remain. The building was once again dismantled, this time to be re-used elsewhere in the city by a different congregation. (John Nicholls Booth, *The Story of the Second Church in Boston [The Original Old North] including the Old North Church Mystery* [Boston, 1959], 44-47).

The Second Church's move was part of a stampede to the Back Bay. Federal Street (thereafter Arlington Street) Church in 1859 bought one of the first lots filled (fig. 1.2.), helping to establish the area's aristocratic character, and three more churches followed in the 1860s. In 1871 and 1872, Brattle Square and Old South Churches laid cornerstones in the Back Bay, and Trinity Church, which had hesitated momentarily about venturing out "upon the new land," acquired a site there.²⁵ These were three of Boston's most prestigious congregations, and their decisions to move to the Back Bay, coming in quick succession, must have deflated in the South End any lingering hopes of social preeminence.

The move to the Back Bay was a tide of ostentatious fashion. The Old South Church's building committee betrayed this impulse when it requested contractors' estimates for a new building "in every respect equal in finish" to the First Church, the Back Bay's most recently completed arrival.²⁶

The very idea of 'fashion' in objects as durable as buildings and urban districts underscores the era's increasing assumptions of mutability. During the eighteenth century, the simple Georgian style served as enough of an architectural constant that Charles Bulfinch, enlarging Faneuil Hall in 1805, could copy its 1747 exterior details without any sense of anachronism.²⁷ The great majority of structures were designed in an architectural vernacular which evolved slowly enough that new buildings looked not too different from the old buildings they replaced, so the city remained familiar even as its components changed. By the middle of the nineteenth century, this continuity had broken down with the advent of widespread self-conscious architecture, as a bewildering succession of styles clothed buildings which previously would not have pretended to any style at all, and even humble cottages became subjects for pattern books promoting the latest architectural fashions. As each new building sought to

²⁵Trinity considered one site at the foot of Beacon Hill, instead; Trinity Church. *Report of Committee. January 12, 1871* (Boston, 1871), 3. See also [Bishop] William Lawrence, *Address...delivered in Trinity Church, Boston ... the fiftieth anniversary of its consecration* (Boston, 1927), 8.

²⁶Old South Society, *Report of Committee to consider building on Boylston Street* (Boston, June 24, 1870), 6.

²⁷Whitehill, *Topographical History*, 42.

differentiate itself from its surroundings, environmental change, no matter what its objective rate, became subjectively more noticeable.

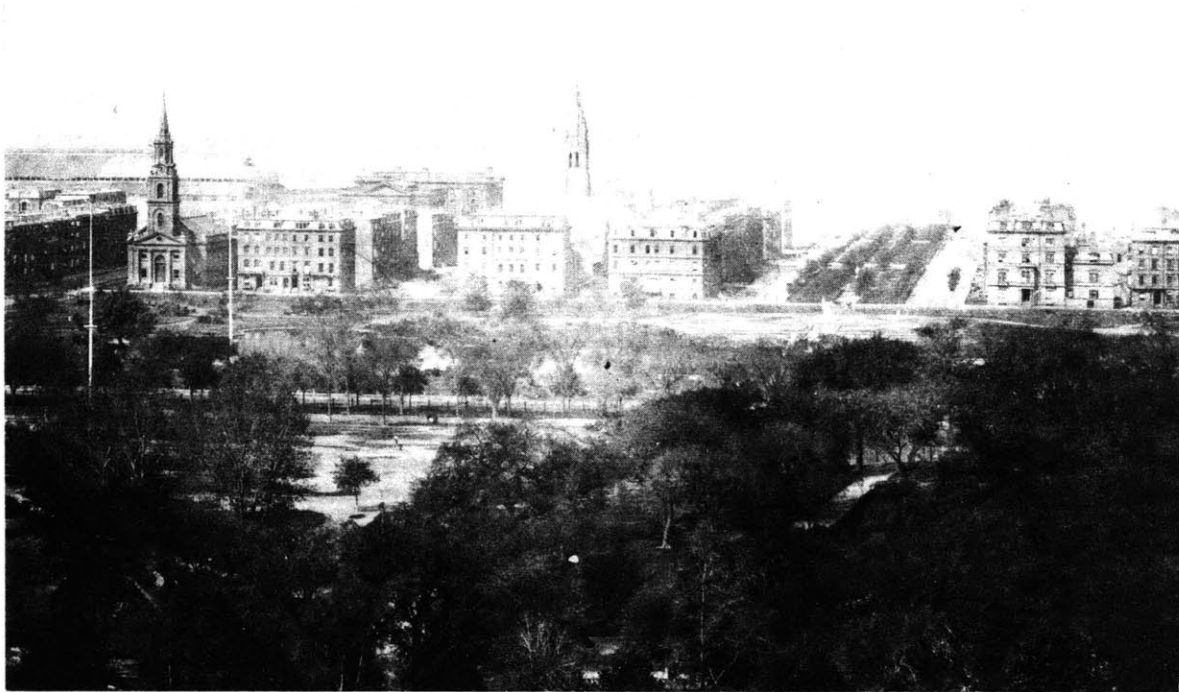


fig. 1.2. The Back Bay, c. 1870, viewed over the Common and the Public Garden from the State House dome. At left is the 1861 Arlington Street (formerly Federal Street) Church; At right the beginning of Commonwealth Avenue. The vast expanse of the as-yet unfilled Back Bay extends behind them.

Change is good

A month before the 1872 fire, the *Globe* cheerfully described just how noticeable change had become:

Bostonians who have been absent from their native city for a few years, return to express astonishment as they regard the rapid growth of the city Extended avenues, squares, and elegant blocks of buildings are springing up every twelvemonth, and the town is increasing in its number of inhabitants with unprecedented rapidity Old landmarks and localities have almost completely disappeared, and about one-half of Boston to-day is built upon made ground, reclaimed from the tide waters. The Back Bay - scene of past skatings, and

boatings, and smeltings, and snipe shootings, has vanished, giving place to palatial residences, elegant parks, superb avenues, and scores of stone churches whose architectural beauty cannot be excelled.²⁸

Like the *Globe's* editor, most nineteenth century Americans sensed the acceleration of change, and by and large they agreed it was good. Their approval exhibited two strains of thought. The *Globe's* comments belonged to the first one, optimistic and imbued with rationality, which viewed change as *improvement*, emphasizing material progress, gradual and continual. The older strain thought of change as *renewal*, emphasizing less the good to come than the corruption of what was old, and thus the necessity of starting anew. No sharp line divided these two views; they reinforced one another, as Nathaniel Hawthorne showed a few years earlier in recounting an American's reflections on a perfectly preserved English village:

his delight at finding something permanent begins to yield to his Western love of change, Better than this is the lot of our restless countrymen, whose modern instinct bids them tend always towards 'fresh woods and pastures new.' Rather than the monotony of sluggish ages, loitering on a village-green, toiling in hereditary fields, listening to the parson's drone lengthening through centuries in the gray Norman church, let us welcome whatever change may come - change of place, social customs, political institutions, modes of worship - trusting that, if all present things shall vanish, they will but make room for better systems, and for a higher type of man to clothe his life in them, and fling them off in turn.²⁹

The older strain of thought, viewing change as renewal, was a remnant of American revolutionary ideology. Bostonians evoked even earlier roots in the Puritan founders' search for a new beginning. The view is akin to the Millennial tradition which anticipated the ultimate end of a corrupt world and the beginning of a good one. Americans in each generation saw theirs as the time which marked this divide. In the enlightenment's secularized version renewal was cyclical: each generation had not only the right but the responsibility to make its world anew. Thomas Jefferson stated the principle most starkly: "the dead have no rights."³⁰

²⁸*Boston Globe*, October 8, 1872: 4.

²⁹Hawthorne, *Our Old Home*, 5:59-60.

³⁰Jefferson to Samuel Kerscheval, July 12, 1816, *The Writings of Thomas Jefferson*, ed. Albert Ellery Bergh (Washington, D.C., 1903) 15:42-43; David Lowenthal, *The Past is a Foreign Country* (Cambridge, England, 1985), 108.

While both Puritan and Republican thought dealt mainly with institutions and society, they were easily translated into principles for the environment. Puritans rejected the notion of hallowed ground and thus, in theory, the stabilizing influence of consecrated houses of worship. As for Americans of the early nineteenth century, while their architecture sought to validate the Republic through timeless Greek Revival buildings in durable granite, Hawthorne suggested in *House of Seven Gables* that state-houses ought to crumble every twenty years as a hint to re-examine the institutions within them. Legal theorists of the early Republic argued along similar lines that the law, instead of following ancient precedent, should expire to be rewritten every nineteen years.³¹

American land law during the first two-thirds of the nineteenth century evolved along lines generally following this principle, if not so dramatic. Legislatures and courts consistently ignored expectations of continuity, favoring instead productive use and change. Past generations' legal edifices, like their physical ones, would be torn down and built over to suit the living. For example, American states systematically abandoned the English common-law doctrine of 'ancient lights,' the right to prevent a new structure from blocking an existing window. It was incompatible with "the rapidly growing cities in this country," explained a legal commentator in 1832.³² Similarly, nuisance doctrine was progressively relaxed to avoid fettering the growth of industries and railroads. Even ownership itself became subject to changing circumstances, through the doctrine of adverse possession, under which a person openly using another's land as if it were his own would, after a period of years, gain title to it. While this doctrine originated in English common law, nineteenth-century Americans made it easier to invoke. Adverse possession made sense to them because it rewarded action and reflected their impatience with often absentee or hereditary paper ownership.³³

The most direct legal interference by past generations brought the most severe reactions: while bequests often explicitly expressed their donors' wishes, courts were

³¹Jefferson to Kercheval, *Writings*, 15:42; Daniel Boorstin, *The Lost World of Thomas Jefferson* (Boston, 1960), 208-10; Lowenthal, *Foreign Country*, 108.

³²James Kent, *Commentaries on American Law*, 2d ed. (1832), quoted in Lawrence M. Friedman, *A History of American Law*, 2d ed. (New York, 1985), 413.

reluctant to let the dead bind the living. "A perpetual entail of real estate for special uses, in a town destined to grow and expand, was likely in the end to become a public nuisance," complained one clergyman who, through such an entail, had to live in his predecessors' eighteenth-century parsonage on what by 1851 had become a noisy downtown street.³⁴ The Massachusetts Supreme Judicial Court agreed with him and overturned the restriction four years later.³⁵ Courts routinely read such stipulations not as specific requirements but as general intentions subject to reinterpretation in light of changing circumstances. A more radical view rejected the legitimacy of even general intentions of the dead. In this view, for example, churches should be taxed so that they would continue in existence only if they remained vital institutions commanding continuing support; if they existed solely through endowment by earlier generations, their endowment should be returned to the use of the living.

While this older strain of thought favored change because it viewed lack of change as stagnation or ossification, the newer strain simply believed change was generally for the better. Unlike the older thinking which looked for renewal mainly in society and institutions, the improvement strain concerned itself primarily with progress in the material world. Even people who were more interested in social or spiritual progress could not help but be impressed at the nineteenth century's tangible accomplishments. Rev. Chandler Robbins of the Second Church, for example, turned his eyes downward from heaven to earth as the congregation in 1844 prepared to leave its 123-year-old building:

what progress has society made since the corner-stone of this edifice was laid! ... And we and our children, if we are but faithful to the mighty trust of the most glorious present which the world has yet seen, may turn our faces forward with a still more hopeful gaze, and expect, that ere the new temple which we are about to

³³Friedman, *History of American Law*, 413-14.

³⁴Samuel Kirkland Lothrop, *A History of the Church in Brattle Street, Boston* (Boston, 1851), 112.

³⁵*Proprietors of the Church in Brattle Square v. Moses Grant & others*, 69 Mass. 142 (1855). The case was decided not on the facts of change in the neighborhood, but on the 'rule against perpetuities,' the general principle of not allowing permanent legal instruments beyond the reach of modification by the living.

rear shall crumble with age, or be exchanged for a more spacious and beautiful house, ... its worshipers [shall] rejoice in a yet more perfect manifestation of the kingdom of Heaven on earth.³⁶

A nation which was then building the Brooklyn Bridge and entertaining projects to harness Niagara thought its own powers as sublime as Nature's, and its material progress potentially limitless. Indeed, the most insidious check on progress was inability to imagine the future's still greater improvements. As Rev. Dr. Jacob H. Manning prayed at the dedication of the new Old South in 1875, "Spare it only so long as it shall serve Thy loving purpose When its noble walls must crumble, teach thy people to bow in the faith of something better to come ..."³⁷

Faith in material progress was easy in the nineteenth century. In every department of domestic and urban technology, radical improvements became almost the norm. Candles gave way to oil lamps and gaslight and then to the miraculous electric light. Omnibuses appeared and then gave way to horsecars and electric streetcars and rapid transit. Water systems, and the sewage and drainage systems they enabled and required, rearranged both houses and streets. In the process many technological dead ends - pneumatic transit, for example, or the many waste disposal methods which competed with flush toilets - were explored and then abandoned, making the march of improvement all the more bewildering. "They invent everything all over again about every five years," explained Arthur Townsend in Henry James's 1881 *Washington Square*, "and it's a great thing to keep up with the new things."³⁸

Even apart from technological change, the country's increasing wealth brought evident improvements in its standard of living, at least for the classes then visible to polite society. "In ten years," predicted one Gothamite in 1855, "the finest buildings now in New York will be far surpassed by the growing taste and wealth of builders."³⁹ Prosperity in turn spurred technological innovation, and the advent of mass marketing brought these innovations to more people faster than ever before.

³⁶Robbins, *Two Sermons ... March 10, 1844*, 48.

³⁷Hamilton Andrews Hill, *History of the Old South Church, 1669-1884* (Boston, 1890), 548.

³⁸Henry James, *Washington Square* (London, 1949), 37.

³⁹*New York Tribune*, May 3, 1855, quoted in Edward K. Spann, *The New Metropolis: New York City, 1840-1857*, (New York, 1981), 101.

A special intersection of technology, prosperity, and marketing gave rise to the suburbanization which contemporaries found perhaps the most striking evidence of material progress. Railroads and then horsecars made vast new tracts available for urban housing, while growing middle classes had the resources to take advantage of them. Detached houses with sunlight on four sides and their own gardens, no matter how tiny, validated material progress through the moral and spiritual accomplishment of better homes for families. Businesses' invasion of downtown residential areas was by this thinking a positive force, since it pushed even the timid or nostalgic out to suburban Arcadia. Nor was the migration solely to the benefit of these former urbanites. Their arrival improved the suburbs themselves, as at the Roxbury Highlands outside Boston, once a "a rough, ragged tract of wilderness," according to an observer in 1872, "but now covered with elegant dwellings, embowered in trees and flowers, presenting, at every turn, density of population and charming residences."⁴⁰

Both strains of thought agreed, each by its own logic, that old things were bad and new things good. The first assumed the point in its premise that renewal was needed. "Whatever is old is corrupt," said Emerson, "and the past turns to snakes."⁴¹ In the progress strain, the superiority of the new followed more benignly from faith in improvement. Henry James's Arthur Townsend expressed this faith in reflecting on his new home:

"It doesn't matter, ... it's only for three or four years. At the end of three or four years, we'll move. That's the way to live in New York - to move every three or four years. Then you always get the last thing. It's because the city's growing so quick - you've got to keep up with it when we get tired of one street we'll go higher."⁴²

Historian Sam Bass Warner explains the implications of streetcar suburbs' "omnipresent newness":

⁴⁰*Boston Globe*, August 26, 1872: 4.

⁴¹Ralph Waldo Emerson, 'Works and Days' (1870), quoted in Lowenthal, *Foreign Country*, 105.

⁴²James, *Washington Square*, 37.

Whether a man lived in a lower middle class quarter of cheap triple-deckers, or on a fashionable street of expensive singles, the latest styles, the freshly painted houses, the neat streets, the well-kept lawns, and the new schools and parks gave him a sense of confidence in the success of his society and a satisfaction at his participation in it.⁴³

The new suburban environment, with its emphasis on landscape and nature, was an implicit rejection of the old neighborhoods of the city, built up to the street with houses in past generations' styles.

If historic buildings were important or worthwhile, it was in spite of their age, not because of it. Historical significance resided in sites rather than structures; tearing down the oldest church in Boston made sense to the Second Church congregation in 1844 because it allowed them to build anew at their traditional location. Some of Boston's historically-minded citizens in 1826 proposed demolishing the Old State House because its site would be an appropriate location for a statue honoring George Washington. It was without any reluctance that they recommended "the removal of such an encumbrance":

If no statue of Washington had been procured, the committee thought that the City could do no act more worthy of its reputation ... than to raze the present edifice, and to erect a column, or obelisk, as a memorial of the important use, to which that spot had been devoted, and by which it had been consecrated [sic]...⁴⁴

Over the next half century this philosophy retained its force. Franklin Haven, president of the Merchants' Bank, in 1881 led another attempt to get rid of the Old State House, where "a shaft or other monument" could "best commemorate the spot and cherish its patriotic associations."⁴⁵ The same argument was applied also to other historic structures. The Old South was "a hideous structure, offensive to taste," testified Addison Davis in 1877, and "a handsome building could be erected there,

⁴³Sam Bass Warner, *Streetcar Suburbs: The Process of Growth in Boston, 1870-1900* (Cambridge, Mass., 1962), 156.

⁴⁴Records of the Board of Trustees of the Washington Monument Association [July 19, 1826], MS, Bostonian Society Library.

⁴⁵Boston City Council, Joint Standing Committee on Public Buildings, *The Old State House. Report of a hearing ...on the petitions for and against the removal of the Old State House* (City doc. 71B, 1881), 4; editorial, *Boston Globe*, May 31, 1872: 4.

upon the front of which might be placed an attractive model of the old church, which would answer every purpose of the present structure as a monument."⁴⁶

Old buildings without such historic associations were subject to even clearer negative feelings. They were eyesores and firetraps, and any project which eliminated them was to be encouraged. The anonymously ancient structures of Italian hill towns inspired revulsion in Americans, according to Hawthorne, and "gazing at them, we recognize how undesirable it is to build the tabernacle of our brief lifetime out of permanent materials"⁴⁷. A decade before Boston's conflagration, they led him to reflect that

All towns should be made capable of purification by fire, or of decay within each half-century. Otherwise, they become the hereditary haunts of vermin and noisomeness, besides standing apart from the possibility of such improvements as are constantly introduced into the rest of man's contrivances and accommodations.⁴⁸

Americans had an interest in deciding that a continually changing environment was good, because they believed it was their natural condition.

Change is inevitable

Change is the order of Divine Providence; nothing is permanent or enduring upon earth...

- Rev. S. K. Lothrop (Brattle Square Church), 1871⁴⁹

everything must yield to the immediate wants and will of the living. The command of present USE is in our day incontrovertible and supreme. Its sceptre sways

⁴⁶Massachusetts General Court, Committee on Federal Relations, *Hearing ... March 4, 1878* (Boston, 1878), 36.

⁴⁷Nathaniel Hawthorne, *The Marble Faun* (Columbus, 1968), 4:301.

⁴⁸Hawthorne, *Marble Faun*, 4:301-02.

⁴⁹Lothrop, *A Discourse ... July 30, 1871*, 27.

everywhere. The marks of its empire are all around us. It takes down, and builds up, and knows no veneration. The sacred and the beautiful are continually bowing before it. It has often pointed ominously at this old edifice. It has touched it now, and to-morrow it falls.

- Rev. Chandler Robbins (Second Church), 1844⁵⁰

Pervasive faith in progress led to a certain resignation on the part of anyone who doubted any of its benefits (and such people did exist, as we will see in the next chapter). Change was inevitable, Americans thought, so even if change was *not* good, there was no point in resisting it. This was, of course, a self-fulfilling prophesy: historic structures would come down if no one would take measures to save them; threatened neighborhoods would deteriorate if their residents' instinctive first response to undesirable change was to move rather than to resist.

Belief in the inevitability of change did not lead merely to passive resignation; nineteenth century city people actively anticipated, planned for, and depended on change. All planning - financial and personal as well as topographical - incorporated the expectation of rapid and continual change. According to historian Edward K. Spann, New Yorkers before the Civil War thought "nothing was permanent and nothing more valuable than the money needed to take advantage of changing times."⁵¹ Financial practice, even in Boston where family trusts might hold their property for generations, emphasized *liquidity* of assets: short-term leases and short-term balloon mortgages. For all but the most established tenants and borrowers, these practices implied an instability of tenancy which became painfully evident with each financial crisis. At other times it loomed as a possibility which would have seemed more disturbing except that so many people moved so often anyway.

Making change part of the calculus of all decisions about the urban environment helped bring about that change. In anticipation of redevelopment, New Yorkers built their city as "an irregular collection of temporary buildings," as one English visitor

⁵⁰Robbins, *Two Sermons ... March 10, 1844*, 4.

⁵¹Spann, *New Metropolis*, 102.

described it, "not meant to endure for any length of time."⁵² Naturally such buildings deteriorated quickly, and their owners replaced them frequently. "Build better, build something immortal?" asks Spann. "Why, when a new and, one hoped, better world would soon appear in some new and better uptown?"⁵³

The assumption of change encouraged change also by buffering people - some people, the ones making decisions - from the effects of change, and thus forestalling their resistance to it. New Yorkers with a choice settled the central spine of Manhattan island because they assumed its waterfronts would eventually become tenement and warehouse districts, and so they were neither affected by nor much interested in the neighborhood succession which in fact took place there.⁵⁴ Bostonians, like residents of other American cities, increasingly buffered themselves from urban change by leaving the city altogether, for outlying towns which they believed would remain more stable.

The pervasiveness of the assumption of change can be seen in its infiltration even of subjects traditionally assumed permanent. The most dramatic example was the treatment of graveyards. "It is often said by poor people," said Mrs. Harriet H. Robinson, from the Boston suburb of Malden, "that the time will come when they will own six feet of earth, and occupy it until the last trump sounds."⁵⁵ Mrs. Robinson spoke in 1884 as the Boston Common Council considered selling for a building site part of the South Burying Ground, where her father was buried.

In spite of the popular expectation of permanence which she expressed, actual usage in most urban graveyards was in every way the opposite. From the South Burial Ground alone, the City in previous years had given up sections for a piano factory addition, an alley to service neighboring residential development, a street, a hotel, and even a music hall. Not only did abutting landowners treat the burial ground as available

⁵²Fanny Kemble, *Journal of a Residence in America* (1835), quoted in Lowenthal, *Foreign Country*, 126.

⁵³Spann, *New Metropolis*, 116.

⁵⁴Spann, *New Metropolis*, 106-108.

⁵⁵Boston City Council, Special Committee on the South Burying-Ground, *Report* (City doc. 153, 1884), 36.

space for their own continuing expansion, but the city itself did not consider it a permanent use of the land: it was a place for *putting* bodies, not for *keeping* them. Tombs were built there not to mark permanent resting places, but to allow removal of bodies without the inconvenience of digging them up. As for the 3,000 or so bodies buried in the ordinary manner in the ground, the city had no apparent intention of maintaining their graves indefinitely. Shortly after active burials ceased, the city closed the graveyard's gates and stopped taking care of it. Nor were these attitudes directed only toward the paupers' graves of the South Burial Ground. The aristocratic Granary and King's Chapel burial grounds downtown received better landscape care, but they too held 'speculative tombs' owned by undertakers who regularly removed bodies from them in order to free up space for new interments.⁵⁶ The Board of Health in 1877 pointed out that the combined value of the land occupied by these two graveyards was over a million dollars, and stated approvingly that "Sooner or later ... the remains of those buried in these cemeteries will be removed, and the ground used for other purposes."⁵⁷ Trinity Church, having sold tombs in a basement crypt, later insisted that the sales were revokable in order to re-use the property as a business block.⁵⁸

Relatives of the dead tacitly acquiesced in this treatment of burial as a potentially temporary land use. They reserved and frequently exercised the right to move the remains of their relatives, usually to some place like Mount Auburn Cemetery in Cambridge. As the prototype for the Rural Cemetery movement, Mount Auburn was meant to locate the departed far enough outside the city that they could indeed rest in peace forever. But the ancestors brought there by their nineteenth century descendants might well have expected the same from their original resting places, and even within rural cemeteries, families moved their loved ones' remains from place to place.⁵⁹ At the hearing where Mrs. Robinson objected to disturbing the South Burying Ground, she was far outnumbered by speakers who raised no objections to respectfully executed relocation of bodies, and in some cases welcomed it for the potential to improve their

⁵⁶See *Massachusetts Acts & Resolves*, 1885, Acts ch. 278, § 1: "Boards of Health of cities and towns may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial ..."

⁵⁷Boston Board of Health, *Fifth Annual Report* (City doc. 67, 1877), 19.

⁵⁸Trinity Church, *Report ... January 12, 1871*, 2.

⁵⁹James J. Farrell, *Inventing the American Way of Death*, 125.

loved ones' posthumous neighborhoods. In a revealing paradox, the City Registrar testified that the graveyard was ripe for discontinuation, giving as his evidence the fact that he had ceased receiving requests for the removal of bodies from it.

Churches, like graveyards, were popularly considered permanent. Catholics expressed these expectations formally through the ceremony of consecration, after which "the church is set apart from all secular uses. It cannot be sold, and can only be destroyed by the hand of God."⁶⁰ Because they took these promises seriously, Catholics did not consecrate any of their churches in Boston until 1875, recognizing the difficulties in honoring such a commitment there. While seventeenth-century Puritans rejected consecration as a worldly distraction, in practice their descendents shared Catholics' belief that places of worship should be permanent, even in the absence of any formal ritual affirming it. Chandler Robbins expressed these popular expectations when he said of the old Second Church that "a hundred and thirty years of occupancy by a Christian church make it a consecrated spot."⁶¹ As with graveyards, actual practice revealed these expectations to be confused, and subservient to the demands of a changing city.

While Robbins' rhetoric paid homage to continuity and tradition, these often took insubstantial or token form: the congregation's name, for example, or its communion vessels, which "have survived the burning of one house of worship, and the demolition of three. They have accompanied this church in all its vicissitudes and wanderings."⁶² Robbins in 1874 applied the image of this silverware like a salve on the sore spot of yet another move to yet another building: "How immediately they transfer to it the hallowed associations which our hearts have twined about them in other temples! How they impart to it at once the air of home!"⁶³

Even this contrived and tenuous continuity allowed Robbins and his followers a high tolerance for environmental instability, which they did not merely passively accept, but actively initiated. In the 1840s, both halves of the congregation sought radical change.

⁶⁰*Boston Globe*, August 16, 1875: 1.

⁶¹Robbins, *Sermon ... September 17, 1845*, 15.

⁶²Robbins, *Sermon ... November 4th, 1874*, 23.

⁶³Robbins, *Sermon ... November 4th, 1874*, 22.

The ostensibly conservative North End faction did not seek to preserve the oldest church in the city, nor even to construct a new building replicating or reminiscent of it; like their South End counterparts they wanted a new building of new design. A generation later, packing and numbering like an archaeological treasure the stones of a 28-year-old church built for another congregation smacked of desperation for continuity (relics from the old Hanover Street meetinghouse, by contrast, had been scattered among other churches). But the congregation began its move before fixing on a destination, and they did not follow through with the fetishistic process of bringing their Bedford Street building with them; instead they re-used the carefully renumbered stones in a building improved so far as to make them unrecognizable. Another minister moving his flock to the Back Bay at the same time articulated the principle which underlay all this apparent confusion: "As we cannot annul, we should cheerfully submit to that law of change which is a necessary condition of our being on earth."⁶⁴

While change itself might be a law, the direction of change was by no means certain. Bostonians did not know where their city was going, as they demonstrated during a decade of arguing about where to put a new courthouse which was first proposed in the early 1870s. One writer urged the city to build "such a Court House as will suffice for the next twenty years," since "twenty years from now we may require a house in another part of the city."⁶⁵ Another suggested letting the courts take over the Beacon Hill State House, so that a new one could be built on the Back Bay.⁶⁶

The Back Bay complicated any understanding of the city's future growth. Downtown had been expanding to the south, but the new land opened a westward direction which had not existed before. Would the business district, like residences and institutions, change its course? If it did turn toward the Back Bay, would it engulf intervening

⁶⁴Samuel Kirkland Lothrop, *A Sermon Preached at the Dedication of the Church of Brattle Square Society, on the corner of Clarendon Street and Commonwealth Avenue, Dec. 22, 1873* (Boston, 1874), 3.

⁶⁵'H.H.A.' letter, *Boston Globe*, January 31, 1874: 3.

⁶⁶*Boston Evening Transcript*, May 14, 1878: 4.

Beacon Hill, as some people expected?⁶⁷ All American cities faced similar uncertainties, none more than Chicago, where the Fire in 1871 suddenly turned all the contingencies of evolving urban form into a single immediate question. "Some do not [re]build," reported the *Globe's* Chicago correspondent,

because they do not know what to build. There is great uncertainty as to where business centres are to be, as to which streets will be plebian and which aristocratic. The sweeping fire abolished all distinctions, ... and men are waiting until causes over which they have little control have decided whether they are to put up shanties or palaces.⁶⁸

Projecting the answers to such questions was the stock-in-trade of real estate speculators. Real estate thinking was important not merely because it produced most of the built environment, but because it also provided the contemporary terms for understanding that environment. Before the emergence of the city planning movement at the turn of the century, the implicit rules of real estate were the main available body of theory for explaining urban growth and form.

Real estate development was a more fragmented process in the nineteenth century than it is today. Rather than a single developer producing a finished piece of the environment by taking it from raw land through occupancy, each step of this process was undertaken separately, mostly by small-scale operators. The first actors in the process were the land developers, who made a minimum of tangible improvements, but simply packaged land for speculation by recording a 'plat' and staking lots. They often marketed aggressively; larger subdividers hired trains for free weekend excursions to their sites, where clambakes and brass bands were calculated to heighten auction fever. Their product was popular. Most people could flatter themselves that they understood it, and real estate looked like a safe investment at a time when banks sometimes were not. Even the working class could afford the cheapest lots when they were offered on

⁶⁷At a legislative hearing on the Old South Church, Avery Plumer "spoke of the rapid growth of the city, and the retirement of dwellings before the march of business. Within twenty years he prophesied that all Beacon Hill east of Charles street would be used for mercantile purposes, and that the entire peninsula would in time be swept of dwelling-houses and devoted to business purposes" (*Boston Globe*, January 28, 1874: 2).

⁶⁸*Boston Globe*, March 28, 1872: 2.

easy credit, and wealthier investors could gamble on land near the center which might or might not become part of downtown. Everyone could be a speculator.⁶⁹

The word 'speculation' had in the nineteenth century, as it does now, many shades of meaning. In a matter-of-fact sense it means gaining unearned increment from change. James E. Vance, using this definition, emphasizes the importance of anticipating and understanding change in order to profit by it. Richard Sennett on the other hand describes nineteenth century speculation as almost pure gambling. People anticipated change in the sense of expecting it to happen, but when and how was a matter of chance, largely beyond comprehension. Genteel opinion in general, and the Boston elite in particular, was appalled by 'speculation,' but their definition focused not on gain but on gamble. A latent Puritanism rebelled at truly unearned profit; investors properly earned their gain by understanding their investments, by correctly predicting change.⁷⁰

Investors were aided in their understanding by the pervasive anticipation of change which probably made for easier insights into the directions of urban growth. Our late-twentieth-century sensibilities can be disturbed when we look at a nineteenth-century city street map and realize that much of it shows paper streets which existed on the ground as nothing more than surveyors' stakes, if that. Such a map does not, in our view, correctly represent reality. But its contemporary users were less likely to be bothered by this distinction. Their view of reality was compounded of what was becoming as well as what had already come about. A view which is today found mainly among those involved in real estate development was then the rule for average citizens, each of whom was at least potentially a speculative lot investor.

The all-encompassing awareness of potential land use change extended to the domestic environment. Just as homeowners today seldom entirely lose sight of their

⁶⁹Michael J. Doucet, 'Urban Land Development in Nineteenth-Century North America: Themes in the Literature,' *Journal of Urban History* 8 (1982): 299-342; Hoyt, *One Hundred Years of Land Values*, 388-391.

⁷⁰James E. Vance, *This Scene of Man: The Role and Structure of the City in the Geography of Western Civilization* (New York, 1977), 34. Richard Sennett, *The Fall of Public Man: On the Social Psychology of Capitalism* (New York, 1974), 139-140. Paul Goodman, 'Ethics and Enterprise: The Values of the Boston Elite, 1800-1860,' *American Quarterly* 18 (Fall, 1966): 437-451.

property as accumulated equity - a consideration which ordinarily leads them to value neighborhood stability - so their counterparts in the mid nineteenth century were ever conscious of it as a speculation, always aware of its potential for conversion, perhaps at some distant future date, to something other than a house. Thus even those developers marketing a suburban residential environment, an escape from the city, often felt they had to promise an investment in what would later become a city.⁷¹

This attitude is explained by a sobering corollary of the axiom of inevitable change. When good neighborhoods changed they generally changed for the worse, and neighborhood decline was accepted as a rule of real estate. Nineteenth century Americans viewed their homes as speculative investments in part by necessity, a defensive adaptation to the changing city. Since they would eventually be forced to vacate their homes, they wanted to do so on favorable terms.

The spatial expression of this philosophy was the city of gridded streets of standard lots. "Since the growth of cities leads normally to the ultimate conversion of residence land into business land," explained real estate writer Richard Hurd, "a uniform system of platting suitable for business purposes throughout the entire city is generally preferable."⁷² No lot, no locality made any commitment as to its intended use; all were designed to accommodate the most intense uses they might later be called on to serve. In the ideal urban fabric every street was wide and straight enough to become a main business thoroughfare. The grandfather of the speculative grid was the 1811 plan for Manhattan, where "some two thousand blocks were provided," as Frederick Law Olmsted later explained,

each theoretically 200 feet wide, no more, no less; and ever since, if a building site is wanted, whether with a view to a church or a blast furnace, an opera house or a

⁷¹Spann, *New Metropolis*, 200: "Uniformly, the developers sold a residential environment, yet many could not resist adding the promise that their lands would rapidly increase in value and so were desirable investments. This was particularly so of some of the inner suburbs which were touted paradoxically not simply as refuges from the city but as incipient cities themselves. The developers of Laural [sic] Hill boasted both of the beautiful location of their village and of its omnibus, ferry, and railroad services which, combined with 'its river advantages,' guaranteed that it 'must become a large manufacturing and commercial place'; essentially the same promise was used to promote land sales at East New York and other places. Buy a home - buy a profitable investment..." See also *Boston Globe*, February 3, 1878: 2.

⁷²Richard M. Hurd, *Principles of City Land Values* (1903; reprint, New York, 1924), 52.

toy shop, there is, of intention, no better a place in one of these blocks than in another.⁷³

In Boston as in many eastern cities the grid was not such a transcendent Cartesian reality imposed by public authority, but a hypothetical norm interpreted by each developer within his own domain, so that the map of the city showed not one grid but a crazy quilt of little grids.

What developers could interpret they also could and did reinterpret, by replatting streets and lots. The practice of resubdivision grew naturally out of the uncertainties of real estate development. Of all residential land, fashionable upper-class building lots drew the highest prices, so subdividers with even the slimmest hopes of attracting such buyers laid out their plats for this market. Only a few of them could succeed.⁷⁴ But did the others really fail? When they re-drew their plats as more modest lots a fraction of their original size - often by cutting additional streets through - the cachet of the imaginary upper-class neighborhood could be used in subsequent marketing.⁷⁵ The potential for re-subdivision was thus a valuable tool in any land developer's kit. Plats might be re-subdivided while they were still raw land, or they might be re-drawn around those lots which already had been sold and perhaps built upon.

Resubdivision was also carried out at a smaller scale by individual lot-owners. In the literature of housing reform this process is familiar as the way back courts and rear tenements were created out of already small yards. But the practice was also common at the other end of the social scale, as the owners of great houses sold off their gardens as building lots, often remaining in the mansion and therefore taking an interest in the quality of the new development.⁷⁶ In at least some cases the potential for individual re-

⁷³Frederick Law Olmsted and J. James R. Croes, 'Preliminary Report of the Landscape Architect and the Civil and Topographical Engineer, upon the Laying Out of the Twenty-third and Twenty-fourth Wards ...' (1876), in Albert Fein, ed., *Landscape Into Cityscape: Frederick Law Olmsted's Plans for a Greater New York City* (Ithaca, N.Y., 1967), 352.

⁷⁴Spann, *New Metropolis*, 106. For a contemporary expression, see Spann, *New Metropolis*, 456 (note 33): "Samuel Halliday, something of an expert on housing, said in 1859 that 'the class of houses in a neighborhood has much more to do in fixing the price of building lots than the geographical position of the lots.'

⁷⁵*Real Estate Register and Rental Guide* (Providence), March 30, 1892: 6.

⁷⁶Advertisement, *Boston Globe*, March 10, 1874: 5: "Seashore residence at Cohasset The land will cut up to good advantage for building lots." This was presented as one option to pay for an estate which was otherwise marketed not for speculation but for occupation by the purchaser.

subdivision was anticipated in the original design of plats, as in the suburbs of another New England city where subdividers laid out large 100 by 100 foot lots, "for houses or dividing to sell again":

Our object is to WHOLESALE land rather than to retail, [said their advertisement,] giving the buyer the opportunity to sell a considerable portion at advanced prices, thereby securing his own home site at a practically nominal figure.⁷⁷

While re-subdivision of individual lots changed neighborhoods more gradually than wholesale re-platting, in the aggregate it was potentially even more disruptive because it was less orderly and predictable.⁷⁸ For homeowners, however, it was always in the lexicon of possibilities, a last resort to pull the full speculative value out of their property, if they felt forced to move.

In nineteenth-century Boston there was an intimate relationship between rapid growth and change which made the physical environment unstable, and a culture which approved and even celebrated such change. But people naturally enough did not like being forced from their homes. In spite of a prevailing ideology which taught that change was both inevitable and productive, for the greater good and for themselves as individuals, they expressed much the same feelings of regret, fear, and anger which we would expect under similar circumstances today. During the 1870s and '80s, Bostonians began to decide that these were not merely self-indulgent sentiments to be set aside, but valid objections to the culture of change.

⁷⁷*Real Estate Register and Rental Guide* (Providence) May 18, 1892: 2.

⁷⁸Spann quotes an advertisement for Fordham, New York, in 1852: "The object of the above restrictions ... is to endeavor to secure a good neighborhood, and prevent nuisances and little village lots from being laid out" (*New Metropolis*, 199).

CHAPTER TWO:

Problems with change

Progress is a terrible thing.

- William James¹

Unfamiliar society

Change was the norm in nineteenth-century America in other realms aside from the urban environment, and much of the change was not pleasant. A modern urban industrial society was emerging from an agrarian country, and it was a disturbing process. These larger social forces helped create the preconditions for a shift in the way Americans viewed environmental change.

From the 1840s onward Boston's in-migration from the New England countryside began to be overwhelmed by waves of migration from across the Atlantic, first from Ireland and then from southern and eastern Europe. Bostonians who were happy to see their city grow by assimilating the sons and daughters of Maine farmers were ambivalent about assimilating the children of Ireland. An anti-Irish and anti-Catholic mob in 1834 burned the Ursuline convent in Charlestown, an early and virulent

¹Quoted in Spann, *New Metropolis*, 158.

manifestation of ante-bellum xenophobia.² By the last third of the nineteenth century nativism had subsided from a political movement into a pervasive and uncomfortable consciousness that much of the urban population was not 'wholesome American stock' but something else, poor or transient or especially foreign, a population whose ways were at best strange, and a population which was growing at an alarming rate. One byproduct of this growth was the beginnings of ethnically-based machines of political power and patronage which seemed to make a mockery of America's republican principles, and encouraged a growing nostalgia for apparently simpler times.

At the other end of the social scale, old urban aristocracies such as Boston's Brahmins were being displaced from the apex of wealth by a numbingly rich kind of newcomer. Brahmin wealth, mostly inherited, was tied to position within a local community and to an ethic of responsibility to that community. The new larger fortunes of industrial America were embodied in impersonal and placeless corporations, or held by the flamboyant robber barons who could buy and sell businesses at this new scale. Boston remained one of the nation's centers of capital, but its conservative bankers and trustees frowned on excess and took a dim view of their new financial more-than-peers elsewhere. Bostonians ranging from the old-money elite to the native-born working classes thus saw new and unwelcome social extremes emerging both above and below them. "Two enemies, unknown before, have risen like spirits of darkness on our social and political horizon," wrote Boston historian Francis Parkman in 1878, "an ignorant proletariat and a half-taught plutocracy."³

A growing incidence of civil unrest seemed to come hand in hand with this stark class differentiation. Mob violence became steadily more common in American cities in the middle years of the nineteenth century, and then erupted at an unprecedented scale during the Civil War. When the Union imposed a military draft in July, 1863, rioting Irish immigrants lynched blacks in New York and plunged the city into virtual anarchy; by the time the army re-established control several days later rioters and troops together

²Oscar Handlin, *Boston's Immigrants: A Study in Acculturation* (Cambridge, 1941; New York, 1975), 187-89.

³Francis Parkman, 'The Failure of Universal Suffrage,' *North American Review*, July-August 1878: 4, quoted in Robert M. Fogelson, *America's Armories: Architecture, Society, and Public Order* (Cambridge, Mass., 1989), 24.

had killed more than a hundred people. In Boston's North End a mob attacked an armory which the militia defended by firing a cannon into the crowd, killing several people.⁴ While these riots could not compare in ferocity with the battles of the Civil War itself, to most Boston residents they were more disturbing. They brought the war's chaos home to otherwise secure northern territory, and undermined whatever ideas of common purpose people used to impose sense on the great national self-destruction.

After the war this sense of looming conflict did not abate, but arose increasingly from labor strife. In 1877, at the depth of the worst depression the nation had yet experienced, railroads cut wages, triggering a strike which turned violent when the companies tried to keep trains running with non-union labor backed by police and the militia. Federal troops killed scores of people to take control of cities from Baltimore to Chicago. In comparatively placid Boston, Harvard President Charles W. Eliot began drilling riflemen at the college. The violence in 1877, wrote an historian a generation later, "seemed to threaten the chief strongholds of society and came like a thunderbolt out of a clear sky, startling us rudely. For we had hugged the delusion that such social uprisings belonged to Europe and had no reason of being in a free republic."⁵

It now seemed possible that American cities could be engulfed in European-style class warfare. Commentators drew parallels between the 1877 disturbances and the Paris commune of six years earlier. The experience of pitched battles in the streets on this side of the Atlantic energized previously sluggish efforts to build fortress-like armories for the militia in American cities; in Boston the First Corps of Cadets began a fundraising campaign in 1878. "The skies may be clear today," they said of the city's restless classes, "... but no man knows when the storm may burst."⁶ Americans regularly invoked the metaphor of a volcano under the city; hidden social forces of untold power waited to erupt into unimaginable destruction.⁷ The whole fabric of

⁴Paul S. Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge, Mass. 1978), 69; Fogelson, *America's Armories*, 168-69.

⁵James Ford Rhodes, *History of the United States from Hayes to McKinley, 1877-1896* (New York, 1919), 46; the quoted passage was written in 1909. Fogelson, *America's Armories*, 27-28.

⁶Fogelson, *America's Armories*, 56.

⁷Fogelson, *America's Armories*, 24-25.

society threatened to fall apart; it was no longer clear that there were any limits to the potential disruption.

A watershed in the history of American cities was the 1873 decision by the town of Brookline to decline annexation to Boston. Annexation advocates held out promises of limitless pure water, street lighting, and other material improvements; for Brookline residents who identified themselves with the city's prosperity they painted a vision of a greater Boston growing to become the second city of the nation. But Brookline's comfortable suburbanites, by the resounding vote of 706 to 299, were not impressed with these incantations of the culture of change.⁸ They liked what they had. "It is better to keep the town pure," said one Brookline resident, "than to mix with the city affairs and attempt to purify them."⁹ Brookline became a new prototype in American metropolitan development: the independent commuter suburb, functionally a part of the city but socially and politically separate, taking its sustenance from the urban economy but insulating itself as much as possible from the urban population and problems. Other towns around Boston and other cities quickly saw Brookline's point, and backed away from the rim of the urban vortex.¹⁰

The metropolis grew bigger even if the municipal boundaries did not, and it also grew fundamentally different. Rapid changes in the physical environment expressed far-reaching changes in social structure. The revolution in urban transportation wrought by railroads and streetcars, says historian David Schuyler, "literally turned the city inside out," reversing the structure of the walking city by "enabling the rich to move to homes in the suburbs, while the poor huddled in increasingly congested downtown areas."¹¹ Boston, said one resident in 1873, had become "[t]wo cities - the city of warehouses

⁸*Boston Globe*, October 8, 1873. Boston voters, by contrast, approved annexing Brookline by a higher margin than they gave to any other town.

⁹Thomas Parsons, *Boston Globe*, October 1, 1873: 5.

¹⁰Boston remained with the smallest area of any major American city; Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York, 1985), Tables 8-1 and 8-2, 139-40.

¹¹David Schuyler, *The New Urban Landscape: The Redefinition of City Form in Nineteenth-Century America* (Baltimore, 1986), 150.

and the city of dwellings.”¹² Within the city of dwellings, spatial differentiation was carried further as increasingly fine distinctions of class and ethnicity were expressed in residential location. This increasing neighborhood segregation, Edward K. Spann notes of New York City, “was both imprecise and unstable; the expansion of commerce and the growth in the number of poor people was too rapid for either to be contained within an established zone.”¹³ Because the intimately mixed social classes and land uses of the old walking city were no longer acceptable, almost any land use change appeared threatening. The consequences of neighborhood change became potentially more drastic; no longer would neighborhoods merely become denser, they would change in type, and a person who once belonged there would no longer belong. People reacted to neighborhood change with a heightened sensitivity. In John P. Marquand’s novel *The Late George Apley*, Apley’s father sees opposite the family’s South End mansion a man wearing no dress coat. “The next day,” recalls Apley, “he sold his house for what he had paid for it and we moved to Beacon Street [in the Back Bay]. Father had sensed the approach of change; a man in his shirt sleeves had told him that the days of the South End were numbered.”¹⁴

When people became uneasy about the directions and pace of social change, then the city’s physical change no longer seemed reassuring. Suddenly change in general seemed perhaps negative rather than positive. This was not a reasoned conclusion but a cultural gestalt-switch, a shift in perception, like the silhouette of a vase which suddenly reveals itself as the space between two human profiles. People reinterpreted what they knew of the world, seeing it in a new light. The rapidly-changing face of the city could still be seen as a sign of material progress, but it could just as easily be seen as a symptom of the disturbing social changes it housed. It was the aggregate of these individual shifts in perception which was ultimately important; the particular times and catalytic events which changed individual minds varied. “The party of Memory for the first time began to outvote the party of Hope,” says David Lowenthal of the 1880s and

¹²Turner Sargent, in *Boston Globe*, May 6, 1873: 8.

¹³Spann, *New Metropolis*, 109.

¹⁴John P. Marquand, *The Late George Apley* (1936, New York, 1964), 19.

'90s.¹⁵ The culture of change was a matter of faith, and once questioned, that faith quickly evaporated.

As individual Americans lost their faith in change, they grew more keenly aware of its disadvantages - problems they already knew about, but had dismissed either as sentimentalism unbecoming a practical nation, or else as regrettable but inevitable side-effects of a necessary and healthy progress. As faith in change slipped away, awareness of these drawbacks remained and assumed a life of its own as a criticism of the culture of change. People began to acknowledge the disorientation that resulted from rapid change. They sought refuge from change in their own lives. Finally they began to formulate new theories of urban growth and form based not on change but on permanence.

Disappearing landmarks and the unfamiliar city

People regretted the loss of familiar scenes and landmarks, but their sadness often took them by surprise, because the culture of change had taught them to reject such sentimentality. The Second Church congregation felt unexpectedly bereft at the demolition of its old home in 1844. "We knew not how dear were its old walls, till they began to disappear," confessed Reverend Chandler Robbins. "We never realized how strong and tender were the associations that bound it to our hearts, till we saw it dismantled, desolate, and ruinous, whilst the work of its destruction was going on."¹⁶

¹⁵Lowenthal, *Foreign Country*, 122.

¹⁶Chandler Robbins, *Address delivered at the laying of the corner-stone of the Second Church ... May 30, 1844* (Boston, 1844), 3; "I believe," he continued, "that few buildings have ever been taken down in this city, whose demolition has excited such general interest, whose loss has been so universally felt."

Perhaps the first recorded preservation controversy in America was the unsuccessful opposition to demolishing Boston's 'Old Brick' First Church meeting-house in 1808, as the congregation moved from State Street to then-bucolic Chauncy Place.¹⁷ Sixty years later the expanding business district had overtaken that spot too. Reverend Rufus Ellis, in his 1868 farewell sermon at Chauncy Place, was less circumspect about his regrets than others in his position had been a decade or so earlier. "For myself," he said,

as the time for our departure has drawn nearer and nearer, I am less and less willing to go. I was sorry when I found that our stay must be shortened by only so much as a week. I am thankful that it is no part of my duty to disturb the headstone of the old building, as it was to aid in placing the corner-stone of the new. I am sorry that I ever assented when they called the church gloomy I shall try not to be near when the first axe falls upon the old timbers. ... the glory has not been lifted from this house, and our hearts are in the old places.¹⁸

"I sincerely hope that more abiding things are in store for the congregation;" said Ellis, "such changes are not good for us."¹⁹

The lost landmark which raised the most serious questions about the culture of change was Brattle Street Church, razed in the early 1870s. The peculiar power of its loss came from the relationship between two parts of its story. First, it was seen as perhaps the most historically significant structure to go since the Old Brick meetinghouse in 1808, and much of the community mourned it. Second, the subsequent fate of its congregation suggested new and disturbing lessons about the loss of the building, and about change in general.

¹⁷"After the demolition of the old brick," complained one of these preservationists, "there is scarcely a vestige of antiquity left in the town" (Hosmer, *Presence of the Past*, 29). See also William Hayden appendix in Rufus Ellis, *The Last Sermon preached in First Church, Chauncy Street, May 10, 1868* (Boston, 1868), 22-24.

¹⁸Ellis, *Last Sermon ... May 10, 1868*, 13-15. Similarly, Phillips Brooks had worked to get rid of old Trinity Church on Summer Street in order to have his friend H. H. Richardson build a magnificent new one on the Back Bay, but two days after the old one burned in the Great Fire, he wrote to a friend, "I did not know how much I liked the gloomy old thing, till I saw her windows bursting, and the flames running along the old high pews. I feel it was better for the Church to go so than to be torn down stone by stone" (Lawrence, *Address...delivered in Trinity Church*, 9).

¹⁹Ellis, *Last Sermon ... May 10, 1868*, 6.

Brattle Square was one of the great Brahmin churches, built in 1772-73 largely at the instigation of Governor and parishioner John Hancock; its proprietors included both Presidents Adams, as well as governors and chief justices of the Commonwealth, and some of its wealthiest merchants. The building, designed by Thomas Dawes, was among the earliest of Boston's churches that later generations would find architecturally respectable. The church's social and aesthetic prominence were further reinforced by ready-made historical interest when British troops took over the new building for a barracks and endeared themselves to nineteenth-century antiquarians by chiseling Hancock's name off the cornerstone. A patriot cannonball said to have struck the church was installed in the exterior wall in 1825, cementing the building's Revolutionary associations in the public mind.²⁰

Twenty years later Brattle Square, just off State Street, was at the very center of the business district, a too-worldly destination for churchgoers' Sunday tastes. The congregation considered and rejected moving in the 1840s, and discussed the question again and again during the next two decades. In the 1850s the church's lawyers, asking the Supreme Judicial Court to modify an eighteenth-century will by which the society held its nearby parsonage, argued that the area had changed so thoroughly since then that it was no longer reasonable to expect the minister to live there. The court agreed. Reverend Samuel K. Lothrop's farewell sermon conveys the sense that the neighborhood finally forced them, almost physically, to leave.²¹

Lothrop and his flock looked upon their relocation with foreboding because of the beloved structure they would be leaving. Of the many migrating churches, this move was the least hopeful yet. In his farewell to the old building, Lothrop mouthed mechanically the usual formulas about the importance of the church as an institution rather than as a tangible structure.

Are our religious feelings and associations so much more local and confined than those of every other part of our nature, that we cannot meet the changes that require

²⁰Lothrop, *A Discourse ... July 30, 1871*, 49. Frederic C. Detwiller, 'Thomas Dawes' Church in Brattle Square,' *Old-Time New England* 69 (1979): 1-17. Lothrop, *History*, 107-08.

us to transfer them to new scenes? Is our worship ... so dependent upon the influence of outward and accustomed surroundings ...?²²

He went on to deny this rhetorical premise, but the passion in his sermon reinforced what many of his parishioners must have felt: that Brattle Square Church really *was* a particular building in a particular place, and not a transportable institution.

The congregation forced itself to sacrifice its church because, faced with the altered neighborhood around it, the culture of change told them this was the appropriate response. Even though they would understandably feel regrets about the move, said Lothrop, to give in to their “attachment and reverence for this spot and this house” would be a self-indulgent “gratification of our personal feelings.”²³ When nostalgia became an impediment to change, it was in this view a “morbid” impulse.²⁴

The prospect of losing Brattle Square Church brought the greatest public outcry yet, from Boston’s “citizens generally, who feel that they have, as it were, some right of property in this old landmark of the past.”²⁵ These protests, however, were not yet channelled into any effective avenues of opposition. Old Brattle Square Church held its last service July 30, 1871. Elite churches were usually empty in the summer, as their congregations fled to the country and the shore, but this service was packed. The society sold the building, which then stood for many months as a forlorn shell. That fall they laid the cornerstone for their new building, designed by H. H. Richardson, on Commonwealth Avenue in the Back Bay.

The new building’s dedication on December 22, 1873, took place a few weeks after that year’s financial panic, which together with the fire reduced the congregation’s

²¹Lothrop, *A Discourse ... July 30, 1871*. See also account in *Boston Globe*, July 18, 1877: 2. *Proprietors of the Church in Brattle Square v. Moses Grant et al.*, 69 Mass. 142 (1855). The parsonage, on Court Street, was given by Lydia Hancock, John Hancock’s aunt.

²²Lothrop, *A Discourse ... July 30, 1871*, 30. Similarly, Lothrop, *Sermon at the Dedication ... Dec. 22, 1873*: “Bricks and mortar are not alive. It is the living organization that gives power to the memories and associations that gather around them, and these memories and associations go where the living organization goes.”

²³Lothrop, *A Discourse ... July 30, 1871*, 28.

²⁴Lothrop, *Sermon at the Dedication ... Dec. 22, 1873*, 3, 25.

²⁵Lothrop, *A Discourse ... July 30, 1871*, 29-30.

ability to subscribe the hefty pew sales needed to pay for it, even as budget overruns made them all the more imperative. The church opened under a mortgage, a common practice which ordinarily seemed prudent enough, when at Lothrop's dedication sermon all could hear yet another disaster. The new church had appalling acoustics.²⁶

Now Bostonians saw revealed a dark side to churches' hopeful Back Bay migration. If their leaders sincerely saw them as durable institutions carrying on continuing existences on new sites, the church-going public at large was willing to treat them in the same spirit of change and renewal as they had already shown for their neighborhoods. The Back Bay's oversupply of churches in a small area was convenient for a sort of religious comparison shopping; shades of doctrinal distinction proved less compelling than convenience and fashion. As each new church opened, it was thronged for a season with the curious. The new Brattle Square Church and its tower were a success as an architectural presence on Commonwealth Avenue, but its elderly minister and difficult acoustics made it fare badly once people ventured inside. Within a year, it was searching for a new pastor so that Lothrop could retire; with both financial and ministerial uncertainty, even those parishioners who were inclined to stay hesitated to make a financial commitment.

By 1875, Brattle Square Church was in crisis; in the deepening national depression, it was unable to raise money for its overdue mortgage. The congregation openly discussed selling its new building. The \$95,000 debt was easily within the reach of the society's wealthy members, but they had already given, and wanted to see more general support before they would give more. That support was not forthcoming. When the proprietors announced a meeting to consider ways of avoiding a sale, so few parishioners came that the meeting had to be re-scheduled. Lothrop, in failing health, took a leave of absence, and the church closed in the summer of 1875. The society disbanded and tried unsuccessfully to close its books by selling the building.

So the Brattle Square Church, after much talk about the necessity of moving to avoid a slow death in its old location, moved and instead died quickly. What killed it? Not

²⁶Samuel K. Lothrop, *Letters of Rev. S. K. Lothrop to the Proprietors of Brattle Street Church ...* (Boston, 1876), 7-9.

bad acoustics, nor debt. Both could be remedied, but the parishioners lacked the will, and instead fled in shame and embarrassment. There were two possible interpretations. One, in keeping with the culture of change, was that they had waited too long. In this view the congregation killed itself in the 1850s and 1860s, when they clung morbidly to the past. If the congregation had dwindled slowly in its old church, so that it could not be rebuilt in the new, this explanation would be compelling. But the congregation left for the Back Bay more-or-less intact, ample in both numbers and wealth, and fell away only after it arrived.

The other explanation is the one that Lothrop and his contemporaries were so eager to discount: that Brattle Square Church really was an irreplaceable building; that the parishioners' shame and embarrassment was not over their architect's acoustical miscalculation, but at the act of desecration they had allowed themselves to commit in selling the old church to be torn down for stores. This explanation led to dark conclusions, for it did not follow that the congregation could have continued its life permanently in its old meetinghouse. If it could not live apart from its Brattle Square building, and if the square itself was so inhospitable as to be lethal to the congregation, then Boston's growth had strangled this church dead, and other institutions' faith in progress was perhaps misplaced. Moving away was no guaranteed solution to the problems of change in their localities; they would at least have to ask whether they could be solved in place.

Brattle Square Church raised one further question which was at the heart of any ideas of permanence for architectural landmarks: was it the union of institution and structure which was consecrated, or the structure itself? Had the congregation committed its act of desecration when it moved from its Brattle Square Church, or when it allowed the building to be demolished? The idea of preserving landmarks independently of institutions seemed grotesque to Lothrop, who asked, "...would we leave these churches stranded and useless on their old spots, to be monuments then not simply of change, but of decay and death?"²⁷ His contemporaries were ill-equipped to ask these

²⁷Lothrop, *Sermon at the Dedication ... Dec. 22, 1873*, 4.

questions, let alone answer them, but in a few years they would have to do both for the Old South Church.

How were people to respond to the sadness they felt at these changes in the city around them? Those who had begun to lose their faith in change were able to treat such emotions as more than anomalies. The destruction of culturally significant buildings or sites could reverberate with the same jarring notes as the increasing disharmony of society at large. The destruction of visually prominent buildings could be disorienting, and this disorientation was itself yet another stimulus helping to re-form attitudes toward change.

One existing conceptual framework for questioning change was the nineteenth century Romantic tradition in the arts, but only in the second half of the century did Americans connect that tradition with the actual process of shaping the urban environment. By the 1840s, some Americans expressed an awareness of the dark side of progress, a growing sympathy with the wilderness that was being vanquished as settlement spread across the continent and across the new suburbs. But these were literary qualms; they had no place in the practical culture of city-building. Since they were framed as a conflict between civilization and nature, they made few distinctions within the city and so had little to say about any changes there other than its overall growth.

These qualms about lost nature were often expressed in the vicinity of cities, as they extended into and destroyed or transformed the countryside. The Hudson River school of landscape painting made people particularly sensitive to change in that region above New York City; painter Thomas Cole complained that "they are cutting down all the trees in the beautiful valley on which I have looked so often with a loving eye."²⁸ New York native Henry P. Tappan, chancellor of the University of Michigan, returned to the city in 1855 and bemoaned its expansion over an island once "remarkable for its natural

²⁸T. Cole letter to Luman Reed, Mar. 26, 1835, quoted in David Schuyler, 'The Sanctified Landscape: Scenic Values and Historic Preservation in the Mid-Hudson Valley, 1820-1850,' (American Studies Program, Franklin and Marshall College, Lancaster, Pa. Photocopy, 1989), 14.

beauty." Just across the rivers, "[t]he heights of Brooklyn, the shores of Hoboken, might have been preserved for enchanting public grounds. They, too, are lost forever."²⁹ After Boston annexed the town of Roxbury, one resident described its transformation:

Parker's Hill with its gray ledges, seamed by the frost of ages, but painted with the soft and parti-colored lichens, and decorated with ferns and nodding grasses, has yielded to the ravages of the drill and sledge hammer, to the pick and shovel The dog-tooth violets, the cowslips, the columbines, the anemones, the gentians have fled ... and blank, unadorned highways have taken their places, fringed no longer with beauty of any kind, but presenting rows and blocks of very inferior houses ...³⁰

With the growth of cities, their residents found increasing occasion to rue disruption not only of their sylvan settings but of streetscapes within the city itself, as familiar and pleasing scenes were lost. "New York is notoriously the largest and least loved of any of our great cities," said *Harper's Monthly* in 1856. "Why should it be loved as a city? It is never the same city for a dozen years together. A man born in New York forty years ago finds nothing, absolutely nothing, of the New York he knew."³¹

The cumulative effect of losing landmarks and whole swaths of the city was more than sadness; it was actual cognitive disorientation, the uncomfortable sensation of a reality not in accordance with internalized mental maps. When the environment changed so thoroughly that people could no longer tell where they were - literally, in the case of returning residents, but figuratively true for many others - then change in the environment alone could be enough to bring into question the idea of change as improvement.

The shift from vernacular to self-conscious architecture reinforced the disorienting effects of environmental change. Vernacular replacement of ordinary buildings by similar structures had hidden the pace of change; but the rapid succession of exotic

²⁹Henry Philip Tappan, *The Growth of Cities: A Discourse delivered before the New York Geographical Society, on the evening of March 15th, 1855*, quoted in Spann, *New Metropolis*, 115.

³⁰[Robert Morris Copeland] editorial, *Boston Daily Advertiser*, October 16, 1873, quoted in Cynthia Zaitzevsky, *Frederick Law Olmsted and the Boston Park System* (Cambridge, Mass., 1982), 18.

³¹Quoted in Spann, *New Metropolis*, 158.

styles and frenzied eclecticism exaggerated it.³² So long as change seemed good, this was encouraging. But as soon as change was potentially disturbing, then the urban environment was among the most disturbing phenomena around. Surviving old buildings, even ordinary ones, took on a reassuring aspect, not merely for the sentimental associations particular to each of them, but also for their general suggestion of continuity.

But as Americans looked around themselves they found little such reassurance. An awareness of the pervasive newness of their environment, its complete lack of remnants from antiquity, gave them a cultural inferiority complex. Bostonian Charles Eliot Norton, upon arriving in England in 1868, found that the patina of age gave scenes in that country "a deeper familiarity than the very things that have lain before our eyes since we were born."³³ Years later, as Professor of Art History at Harvard, Norton reflected on this in an article entitled 'The Lack of Old Homes in America.' He worried about the culture that was evolving in a nation of temporary abodes, "barren ... of historic objects that appeal to the imagination and arouse the poetic associations that give depth and charm to life."³⁴ Thanks to the culture of change, he said, "Boston is in its aspect as new as Chicago,"³⁵ and neither could offer anything to measure up to Norton's Old World standards.

The national centennial celebrations in 1876 reinforced a growing awareness of American history which helped residents of the eastern states recognize and value what continuity did exist in their environment. In the Boston area this awareness was especially immediate, as people marked a succession of centennials of particular battles, parading through Lexington and Concord and Bunker Hill's Charlestown and feeling the evocative power of surviving places which had witnessed momentous events. The

³²In the 1880s, distress at the possibility of losing the Bulfinch State House was compounded by the prospect that it would be replaced by "some architectural phantasy of the newest new school." Worcester *Spy*, quoted in Malcolm Sillars, *The State House, a comprehensive project of enlargement* (Boston, 1888), 32. See chapter 5.

³³Norton to James Russell Lowell, August 30, 1868, in Sara Norton and M. A. DeWolfe Howe, eds., *Letters of Charles Eliot Norton* (Boston, 1913), 1:306.

³⁴Charles Eliot Norton, 'The Lack of Old Homes in America,' *Scribner's Magazine* 5 (1889): 638.

³⁵Norton, 'Lack of Old Homes,' 639.

specifically architectural awareness promoted by exhibits at the Philadelphia Centennial Exhibition legitimized affection for remaining old buildings and helped spawn the Colonial Revival school of architecture.

As the Colonial Revival style grew in popularity, the loss of old buildings became all the more disturbing. Now they were not merely survivals with perhaps some sentimental value, but prototypes, their worth multiplied by all the offspring they might spawn in the future. For the first time since Americans became architecturally self-conscious, they could imagine the possibility of a permanent community architectural identity. "When we have an opportunity of designing a building to be erected on some ancient site," wrote one correspondent to *American Architect and Building News*,

why not recognize the fact that the germ of a vernacular style was planted here 200 years ago, and, instead of ruthlessly rooting it out and substituting a neo-Grec or Jacobean mansion, take the tender sapling from its withered trunk, and replant it in its parent soil ...?³⁶

In matters of taste, at least, old could be good.

One reason people were prepared to believe that old was good was the growing conviction that, in at least one important component of cities, change was indeed bad. That component was the private domestic environment, each family's home.

The threatened domestic environment

It is strange how contentedly men can go on year after year, living like Arabs a tent life, paying exorbitant rents, with no care or concern for a permanent home.

American Builder, 1869³⁷

³⁶H. Hudson Holly, an architectural pattern book publisher, quoted in Jean A. Follett, 'Colonial Revival Origins,' in Providence Preservation Society, *The Colonial Revival in Rhode Island (1890-1940)* (Providence, 1989), 2.

³⁷*American Builder*, September, 1869, quoted in Jackson, *Crabgrass Frontier*, 50.

Americans first acknowledged an exception from change in the urban environment in their vision of the ideal home, and notwithstanding the material progress on which the ideal relied, it eventually became an important challenge to the whole culture of change.

By the middle of the nineteenth century, residential development in and around American cities was being shaped by what Gwendolyn Wright has called 'the cult of domesticity.'³⁸ The main axiom of this domestic ideology was separation of the workplace from the home. Houses were to be located in exclusively residential districts from which men would leave each day for workplaces such as offices, warehouses, and factories; the household was no longer to be a unit of economic production. Women and children therefore would be separated from work. "The family," says Kenneth Jackson, "became isolated and feminized, and this 'women's sphere' came to be regarded as superior to the nondomestic institutions of the world."³⁹ The cult of domesticity taught that, in Jackson's words, "the home ought to be perfect and could be made so."⁴⁰ It needed to be perfect because the home and the nuclear family within it became more important as the basic building block of society, taking over moral, spiritual, and educational roles once filled by other community institutions. After the Civil War, says Wright, Americans set aside the quest for national salvation to seek instead "redemption for one's own family."⁴¹ Home life was considered the seat of all virtue; the stability of civilization rested upon the stability of the hearth.⁴²

³⁸The emergence of this set of ideas of home has been traced in a number of recent histories of housing and suburban development: Gwendolyn Wright, *Building the Dream: A Social History of Housing in America* (Cambridge, Mass., 1981); Gwendolyn Wright, *Moralism and the Model Home: Domestic Architecture and Cultural Conflict in Chicago, 1873-1913* (Chicago, 1980); David Handlin, *The American Home: Architecture and Society, 1815-1915* (Boston, 1979); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York, 1985); John Stilgoe, *Borderland: Origins of the American Suburb, 1820-1939* (New Haven, 1988); Robert Fishman, *Bourgeois Utopias: The Rise and Fall of Suburbia* (New York, 1987).

³⁹Jackson, *Crabgrass Frontier*, 48.

⁴⁰Jackson, *Crabgrass Frontier*, 49.

⁴¹Wright, *Building the Dream*, 96.

⁴²"The American Home" was the "Safeguard of American Liberties," according to the title of a painting commissioned in 1893 by the founder of the United States League of Building and Loan Societies; Wright, *Building the Dream*, 101.

The house symbolized the family and its place in the world. "[T]he good family and their suburban home became almost interchangeable concepts,"⁴³ says Wright. "The suburban home, how it was furnished, and the family life the housewife oversaw, contributed to the definition of 'middle class,' at least as much as did the husband's income."⁴⁴ Houses were set on their own grounds, separated from neighbors at the sides and rear and set back especially from the street, surrounded by an ornamental space not meant to be productive like fields or kitchen gardens, nor utilitarian like urban courts or 'yards' in the old meaning of the word. The new suburban yard re-created as a private retreat the nature that was being lost from the public landscape. It allowed the idealized domestic environment to extend outside the walls of the house, and served, says Jackson, as "a kind of verdant moat separating the household from the threats and temptations of the city."⁴⁵

Every part of this ideology isolated the home and family from cities and the change that went on there. The idealized domestic environment put a boundary around the realm where change was normal or acceptable. Segregating home from work separated it not only from industrial nuisances, but also from all the powerful economic engines of urban change. The domestic environment was instead a stable, permanent alternative to the city's tumult, "waiting like a refuge," says John Stilgoe, "in the storm of the late nineteenth-century urban frenzy." This was true in theory whether the family owned a gracious suburban villa which met the demanding requirements of the ideal, or struggled to afford a simple cottage of its own. Families that were unable to buy into the physical expressions of the suburban ideal nonetheless tried to adapt rituals of the cult of domesticity to the less hospitable setting of urban housing. The lowest classes in their tenements experienced little stability in the physical environment, as the real estate market continued treating their homes as a transitional phase on the way to some more

⁴³Wright, *Building the Dream*, 107; Jackson, *Crabgrass Frontier*, 52.

⁴⁴Wright, *Building the Dream*, 99.

⁴⁵Jackson, *Crabgrass Frontier*, 58. Frederick Law Olmsted in 1868 referred to fenced yards as "private outside apartments"; quoted in Schuyler, *New Urban Landscape*, 162.

profitable land use, but settlement house workers tried to socialize them to the domestic ideals of stability.⁴⁶

American families did not necessarily become in practice any more settled or less migratory. Kenneth Jackson describes this paradox of a highly mobile population pursuing an ideal of rootedness, which was resolved, he says, by treating each particular house as “the temporary representation of the ideal permanent house”:

Although a family might buy the structure planning to inhabit it for only a few years, the Cape Cod, Colonial Revival, and other traditional historical stylings politely ignored their transience and provided an architectural symbolism that spoke of stability and permanence.⁴⁷

The drive to express domestic permanence explains why the Colonial Revival and its kin, such as Mission Revival in California, received more widespread popular acceptance than anything American architects have done before or since. In the best suburban developments this reassuring imagery extended as well to large-scale design which nestled the individual houses in an apparently timeless pastoral landscape.

These refuges and signs of permanence served as an increasingly important underpinning to the culture of change, a reassuring private stability which allowed people to face with equanimity the continual changes in their public environment. Within the city, the Back Bay development served this same purpose, allowing upper-class Bostonians, fortified in a precinct they believed secure, to accept invasion of their old neighborhoods by business or by lower classes.

The problem was that the forces of environmental change did not respect the boundaries put around them. Even the favored classes watched their private refuges overtaken. One universal threat was the very streetcars that allowed mass realization of the suburban ideal. Where neighborhoods grew on vacant land around a trolley line, homebuyers wanted to locate at least a block or so from the tracks; when a streetcar company sought a line in an existing street of owner-occupied dwellings, such as Boston's Columbus Avenue or Marlborough Street, it could count on a vigorous

⁴⁶Stilgoe, *Borderland*, 178.

⁴⁷Jackson, *Crabgrass Frontier*, 51.

opposition. It was not that streetcars were like elevated trains a significant nuisance in themselves, but they were harbingers of further change, announcing the impending arrival of apartment houses and businesses, the evaporation of neighborhood character.⁴⁸

Homeowners' insecurity was magnified by the idealization of the domestic environment, which made them sensitive to nuance and thus vulnerable to a broader variety of potential changes. "The very qualities that made the home so meaningful," says Gwendolyn Wright, "also made it precarious."⁴⁹ A middle-class ideal which imitated country seats of the wealthy could never entirely measure up on an eighth of an acre, and so the suburban home relied on its neighbors' houses and lawns for much of the identity it sought to project. Real estate expert Richard Hurd, at the turn of the century, asserted that in residential areas "the erection of almost any building other than a residence constitutes a nuisance."⁵⁰

Sensitivity to change was further reinforced by a continuing belief in the inevitability of neighborhood decline, a deeply ingrained and tenacious idea still driving residential planning and the housing market well into the twentieth century, long after evidence was available to support a more optimistic view of the potential for environmental permanence. The infamous 'redlining' maps which steered residential mortgage lending starting in the 1930s ostensibly showed the phases of neighborhood deterioration, based, says Jackson, on the assumptions that "change was inevitable" and "the natural tendency of any area was to decline."⁵¹ Neighborhood stability, in this view, was only a respite from the inevitable, and was therefore all the more important to maintain.

⁴⁸Andrew J. King, *Law and Land Use in Chicago: A Prehistory of Modern Zoning* (New York, 1986), chapter 6; Boston Globe, October 21, 1875: 2; James Means, 'Shall We Save Marlborough Street? or Shall It be Sacrificed for the Benefit of Land Speculators?' circular letter, May 6, 1890, in Codman family MS collection (30.668), Society for the Preservation of New England Antiquities, Boston; Eleanora W. Schoenebaum, 'Emerging Neighborhoods: The Development of Brooklyn's Fringe Areas, 1850-1930' (Ph.D. diss., Columbia University, 1976), 192-197; Hurd, *City Land Values*, 118.

⁴⁹Wright, *Building the Dream*, 108.

⁵⁰Hurd, *City Land Values*, 117.

⁵¹Jackson, *Crabgrass Frontier*, 198.

One of the periods in a neighborhood's life when it was most vulnerable to change was the early stages of its development, while uncertainty remained as to what would fill its vacant lots, or even whether they might be re-subdivided, since far more land was put on the market for high-quality residences than could ever be absorbed by the market. Subdivision lots were most often taken up and built upon during economic booms, and lay dormant during busts; more-or-less complete development of a tract could take several cycles during which building patterns there could shift dramatically.⁵² Buyers preferred, where possible, to avoid this uncertainty. Homeowners' insecurity translated into a powerful economic force. Marketing emphasized 'established' neighborhoods, the character of which was already safely settled.

Developers of elite subdivisions, and later their middle-class imitators, took on an increasing share of infrastructure provision, installing utilities, paving roads, and planting trees and more elaborate landscaping, in order to reduce uncertainty about the neighborhood's ultimate character. This concern eventually drew land developers into the separate and unfamiliar field of housebuilding. In the early nineteenth century, subdividers often initially sold lots under conditions requiring prompt construction, so that early buyers' houses would help establish the value of the rest of the tract. By the 1890s developers sometimes built the first few houses themselves in order to control this critical determinant of neighborhood character.⁵³ In the middle of the twentieth century this trend would culminate in vertical integration of the housing industry, so that a single developer commonly took responsibility for subdividing and improving a piece of raw land, building all the houses on it, and selling them to the public.⁵⁴ Before this integration, sensitivity to neighborhood change ensured that homeowners and prospective buyers would remain skittish as long as any undeveloped lots remained nearby.

⁵²Spann, *New Metropolis*, 106; Doucet, 'Urban Land Development,' 329.

⁵³E.g., Chevy Chase, Maryland (1893), Jackson, *Crabgrass Frontier*, 124; Roland Park, Maryland (1894), where these houses were sold at a loss, Harry G. Schalck, 'Planning Roland Park, 1891-1910,' *Maryland Historical Magazine* 67 (1972): 423.

⁵⁴Joseph Laronge, 'The Subdivider of Today and Tomorrow,' *Journal of Land & Public Utility Economics* 18 (1942): 427; Weiss, *Community Builders*, 30-31, 40-48.

A steadily growing portion of the real estate market was non-speculative, purchases by prospective residents who set the value of residential land not by its potential for but its protection from change.⁵⁵ This new definition of value made the real estate industry ever more interested in the conceptual boundaries that exempted areas from the prospect of change. No place within reach of a metropolis was truly immune from change; like every historic structure, every valued neighborhood was potentially threatened. When intangible qualities of neighborhoods became a large part of their financial value, then their decline became not only a potential domestic trauma for their residents, but also a significant economic waste for society as a whole.

Waste, missed opportunities, and the need for planning

The waste resulting from premature neighborhood obsolescence was “[o]ne of the most appalling losses in the economic life of the United States to-day,” developer J. C. Nichols told the Eighth National Conference on City Planning in 1916.⁵⁶ People first began counting the costs of change in the late nineteenth century, not through abstract concepts such as obsolescence, but in the actual physical destruction of buildings long before their useful life was over. “We have been building up only to tear down a few years later,” said Hugh O’Brien, Boston’s mayor from 1885 to 1888.⁵⁷ As increasing environmental change forced people to recognize the economic waste in this process,

⁵⁵Laronge, ‘Subdivider of Today and Tomorrow,’ 427; Weiss, *Community Builders*, 61-62.

⁵⁶J. C. Nichols, ‘Financial Effect of Good Planning in Land Subdivision,’ *Proceedings of the Eighth National Conference on City Planning, Cleveland, June 5-7, 1916* (New York, 1916): 93; Weiss, *Community Builders*, 64-67. See also quantification of the economic effects of neighborhood change in Lawson Purdy, ‘Remarks at the Closing Dinner,’ *Proceedings of the Ninth National Conference on City Planning, Kansas City, Mo., May 7-9, 1917* (New York, 1917), 293-94.

⁵⁷He made the remarks in 1877, as alderman; Boston City Council, *Public Parks in the City of Boston. A Compilation of Papers, Reports, and Arguments, Relating to the Subject* (City doc. 125, 1880), 93.

some of them began to ask whether there might be better ways of making cities so that they would not need to be unmade so quickly.

Dislocation from environmental change showed up in numerous parts of the urban economy. Business districts shifted location, and residential neighborhoods fell from fashion, buffeting the finances of individual families, and preventing the economic stabilization that could occur through a system of long-term mortgage financing.⁵⁸ Infrastructure was provided haphazardly and then, like downtown Boston's hydrants during the fire, proved inadequate to its altered tasks. Cities paved streets only to have one new utility after another rip them up.

Boston provided one of the most direct examples of these costs in its continual struggle to cut traffic arteries through its tangled web of narrow seventeenth-century streets. "During the past twenty-five years," said Mayor Hugh O'Brien in 1885, "we have expended millions of dollars for widening and extending streets that could have been saved if some systematic plan had been adopted. ... [A] vast amount of property in buildings has been destroyed by change of street lines and grades."⁵⁹ Street widening caused not only public costs but private disruptions as well; investments had to be made in uncertainty and sometimes amidst the remnants of buildings which, while in theory 'made whole' by municipal compensation, in practice were both a wasted asset in themselves and a drag on investment around them. The Common Council Street Committee complained in 1860 that widening North Street in the North End had failed to improve business along its length because "new fronts have been placed [on] mere shells of buildings, and even chimneys form a portion of the front wall, disfiguring the appearance of the street."⁶⁰

⁵⁸Nichols, 'Financial Effect of Good Planning,' 95.

⁵⁹Hugh O'Brien, *Inaugural Address of ... Mayor of Boston* (City doc. 1, 1885), 33. Richard M. Hurd in 1903 cited Boston as the main American example of this form of "sheer waste"; Hurd, *City Land Values*, 41.

⁶⁰Boston Common Council, Committee on Streets, *Report ... on the Widening of North Street* (City doc. 72, 1860), 4; see also *Boston Evening Transcript*, January 27, 1915: 3.

Boston and other American cities long sought 'excess condemnation' powers that would allow them to take these remnants (see editorial, *Boston Herald*, January 29, 1903: 6; Boston Society of Architects' campaign for excess condemnation amendment), in order, they thought, to realize a profit on private improvements planned in a rational whole with the newly-widened streets. When Massachusetts cities

When American cities were smaller and simpler, such dislocations might have seemed an acceptable price for their vitality. But by the end of the nineteenth century some of them were growing to rank among the world's largest; surely urban fabric at this new scale could not be disposable. If resistance to change was a goal in residential neighborhoods, in much of the rest of the urban environment it was an unwelcome fact. Historian Josef Konvitz speaks of cities' permanence as a problem beginning at the end of the nineteenth century, in that increasingly durable public works - transit lines, subterranean utilities, even paved streets themselves - no longer afforded flexibility in urban form.⁶¹ Elaborate new building types such as railroad stations, hotels, department stores and elevator office blocks represented large investments which needed to be amortized over long periods, and unlike small older houses and warehouses were not adaptable to unanticipated uses. The city planning movement arose in part as a response to this problem: if important parts of the environment were in fact permanent, then they ought to be planned as permanent.

Planning for the future in this way required a new concept of progress. On Henry Tappan's return to New York in 1855, he pointed out a fundamental criticism of the culture of change, a flaw in the notion of progress as Americans had applied it in their cities. The world's great cities, he said, progressed cumulatively, as each generation built upon the best of those who had come before. The city should be "continually becoming dearer to us as it becomes more beautiful and contains more objects to render it worthy of our love." But New York grew by frenetically tearing down and rebuilding, indiscriminately destroying the best along with the worst. "[I]f she goes on increasing and flourishing," asked Tappan, "must not all the works of the present and prosperous generation sink into insignificance, and leave not a trace behind ...?"⁶²

finally received this power by constitutional amendment in 1911, they discovered that this profit was a chimera (*Boston Evening Transcript*, January 27, 1915: 3). Even when consciously planned to maximize public and private gain together, these infrastructure changes were a net drag on the common wealth.

⁶¹Josef W. Konvitz, *The Urban Millenium: The City-Building Process from the Early Middle Ages to the Present* (Carbondale, Ill., 1985), ch. 5.

⁶²Quoted in Spann, *New Metropolis*, 115-16.

Americans had to figure out how to turn Tappan's criticism into a prescription, how to plan the best which would be kept as a foundation for what was to follow.

Bostonians drew these same philosophical lessons from their street widenings, because they were so clearly avoidable had previous city-builders exercised foresight. The problem was not limited to the old streets of the original peninsula; it was if anything more serious in the suburban wards of Dorchester and Roxbury, annexed in 1867, where many miles of new development relied on what only recently had been country lanes and farm roads.⁶³ At an 1870 meeting of the American Social Science Association, in Boston, Frederick Law Olmsted pointed out that

It is practically certain that the Boston of today is the mere nucleus of the Boston that is to be. It is practically certain that it is to extend over many miles of country now thoroughly rural in character, in parts of which farmers are now laying out roads with a view to shortening the teaming distance between their wood-lots and a railway station, being governed in their courses by old property lines, which were first run simply with reference to the equitable division of heritages, and in other parts of which, perhaps, some wild speculators are having streets staked off from plans which they have formed with a rule and pencil in a broker's office, with a view chiefly to the impressions they would make when seen by other speculators on a lithographed map.⁶⁴

Such haphazard growth was setting the stage for a repetition of the same inefficiency and congestion the city experienced at its center, and the same expense and disruption in correcting them - which, said Olmsted, could never be accomplished as completely as if the streets were laid out well in the first place. Up to this point, Olmsted was saying nothing more than had Mayor O'Brien and the host of other people who grappled with the practical problems left by American cities' undirected expansion. Most of these people saw the answer as a coordinated extension of an urban grid over the countryside, as New York had done at the beginning of the century and many other cities were doing since, providing a neutral armature for whatever urban growth might bring.

⁶³Boston City Council, Committee on Laying Out and Widening Streets, *Final Report* (City doc. 116, 1870), 24-25.

⁶⁴Frederick Law Olmsted, 'Public Parks and the Enlargement of Towns,' (1870), in S. B. Sutton, ed., *Civilizing American Cities: A Selection of Frederick Law Olmsted's Writings on City Landscapes* (Cambridge, Mass., 1971), 68.

Olmsted soon questioned not only unplanned growth, but also this solution customarily prescribed for it. As the nation's most prominent landscape architect and prophet of the parks movement, a pulpit he had gained as winner of the 1858 design competition for New York's Central Park, Olmsted took on the even greater challenge of becoming the country's leading critic of the culture of change in the urban environment.

Olmsted formulated his most profound argument for environmental permanence by looking beyond the costs of actually changing land uses to count also the opportunity costs of trying to accommodate change by providing for every land use on every site. Grids might in theory be infinitely adaptable, but their one-size-fits-all urban fabric was in practice inappropriate for most of the uses to which it was actually put. A year after Olmsted's Boston speech, he made this argument in a plan for Staten Island, then a semi-rural suburb of New York. Most of the island would never be used for commercial or industrial purposes, he said, and designing it for these uses would only make it less suitable for its inhabitants.⁶⁵

A few years later Olmsted had honed these arguments further. In 1876, with engineer J. James R. Croes as his assistant, he reported a plan for parts of Westchester County which were about to be annexed to New York City as The Bronx. The Parks Commission, charged with laying out the new territory, spent several years wrestling with the difficulties of extending the Manhattan street grid, or something like it, over the rugged topography north of the city. Olmsted and Croes questioned the wisdom of this approach. While most people involved in developing the city considered the grid a great success, they said, "its inflexibility" increasingly brought problems:

If a proposed cathedral, military depot, great manufacturing enterprise, home of religious seclusion or seat of learning needs a space of ground more than sixty-six yards in extent from north to south, the system forbids that it shall be built in New York

The rigid uniformity of the system of 1807 requires that no building lot shall be more than 100 feet in depth, none less. The clerk or mechanic and his young family, wishing to live modestly in a house by themselves, without servants, is

⁶⁵Frederick Law Olmsted, et al., 'Report to the Staten Island Improvement Commission of a Preliminary Scheme of Improvements' (1871), in Fein, ed., *Landscape into Cityscape*, 173-205.

provided for in this respect no otherwise than the wealthy merchant, who, with a large family and numerous servants, wishes to display works of art, to form a large library, and to enjoy the company of many guests.⁶⁶

The clerk or mechanic and his young family, as a result, could never hope to live in their own home in New York; the idealized domestic environment was denied to most of the city's population by the grid itself, the very instrument which was supposed to provide the ultimate adaptability in land uses.

"[A]n attempt to make all parts of a great city equally convenient for all uses," concluded Olmsted and Croes, will also make them "equally inconvenient."⁶⁷ They explained their alternative through the then especially powerful metaphor of the home:

If a house to be used for many different purposes must have many rooms and passages of various dimensions and variously lighted and furnished, not less must ... a metropolis be specially adapted at different points to different ends.⁶⁸

If specific districts of the city could be built with a view to specific land uses, they could be laid out more appropriately for their intended uses, enhancing their functioning while at the same time saving money which would have been spent pointlessly adapting them for uses they would never accommodate. Topography, said Olmsted and Croes, ensured that Riverdale in the Bronx would become a commercial district "only by some forced and costly process," so why not lay it out in winding roads rather than straight blocks which not only cost more to construct but marred the landscape's residential attractiveness?⁶⁹

Such an approach required two innovations in real estate thinking. The first was "a certain effort of forecast as to what the city is to be in the future."⁷⁰ Olmsted had already shown on Staten Island and in The Bronx that he was not reluctant to make

⁶⁶Olmsted and Croes, 'Preliminary Report,' 352-54.

⁶⁷Olmsted and Croes, 'Preliminary Report,' 356.

⁶⁸Olmsted and Croes, 'Preliminary Report,' 352. Landscape architect H. W. S. Cleveland earlier invoked the same metaphor when he termed the provision of uniform blocks for differing uses "as absurd as would be the assertion that the convenience and comfort of every family would be best served by living in a square house, with square rooms, of a uniform size" (quoted in Jackson, *Crabgrass Frontier*, 75).

⁶⁹Olmsted and Croes, 'Preliminary Report,' 361.

⁷⁰Olmsted and Croes, 'Preliminary Report,' 357.

such an effort; major topographic determinants could be discerned, and their workings were not mysterious. Such forecasting was after all the real estate speculator's stock in trade, but Olmsted stepped on the speculator's prerogatives by suggesting that projecting future land use was a matter not only of private but of public interest.

The second innovation was to establish "permanent occupation"⁷¹ by intended land uses. Unlike Manhattan's grid, the curving streets which Olmsted proposed for Riverdale's suburban villas would never be good for anything else. This challenged the culture of change at its heart, the belief in literal limitlessness of possibilities, as Olmsted acknowledged:

It may be questioned whether, even in a locality as yet so remote from dense building and so rugged in its topography, the demand for land for various other purposes will not, in time, crowd out all rural and picturesque elements, and whether, for this reason, it would be prudent to lay it out with exclusive reference to suburban uses?⁷²

This was a delicate question. Olmsted pointed to London, still the largest city in the world and growing in increments greater than New York's, where similar picturesque suburbs were absorbed whole rather than converted as the metropolis overtook them. He pointed also to the considerable flexibility within such a district for incremental changes and different building types which could be accommodated without altering its permanent character. Despite these arguments, New York followed few of Olmsted's recommendations, although Riverdale grew to be just such a district as he proposed.⁷³ In 1881 Olmsted moved his office to Brookline, and continued addressing issues of environmental permanence in his plans for the Boston park system and in other work around the country.

Olmsted explored his philosophy of the permanently differentiated city through another medium, planning for private development of suburbs. He defined "true suburbs" as places "in which urban and rural advantages are agreeably combined with

⁷¹Olmsted and Croes, 'Preliminary Report,' 362.

⁷²Olmsted and Croes, 'Preliminary Report,' 364.

⁷³Olmsted and Croes, 'Preliminary Report,' 362-63; Seymour J. Mandelbaum, *Boss Tweed's New York* (New York, 1965), 116-17; Schuyler, *New Urban Landscape*, 177-78.

... prospect of long continuance."⁷⁴ Olmsted's subdivision designs, like his proposal for Riverdale, used curvilinear layouts that were intentionally unsuited to any use other than individual residences, and which would resist conversion to other uses (fig. 2.1.). The first of his suburban designs to be constructed was Riverside, Illinois, begun in 1869. In an earlier unrealized project for Berkeley, California, Olmsted felt himself excused from the culture of change by the nature of his client, the brand-new College [now University] of California, which was presumably less interested in profit than in creating suitable surroundings for its campus. Olmsted therefore presented as one of the strengths of his plan its street layout which "would be inconvenient to follow for any purpose of business beyond the mere supplying of the wants of the neighborhood itself."⁷⁵ At his Fisher Hill subdivision in Brookline, where construction began in 1884, the same logic clearly governs its curvilinear street pattern, which avoids any convenient connection between Boylston and Beacon Streets.⁷⁶

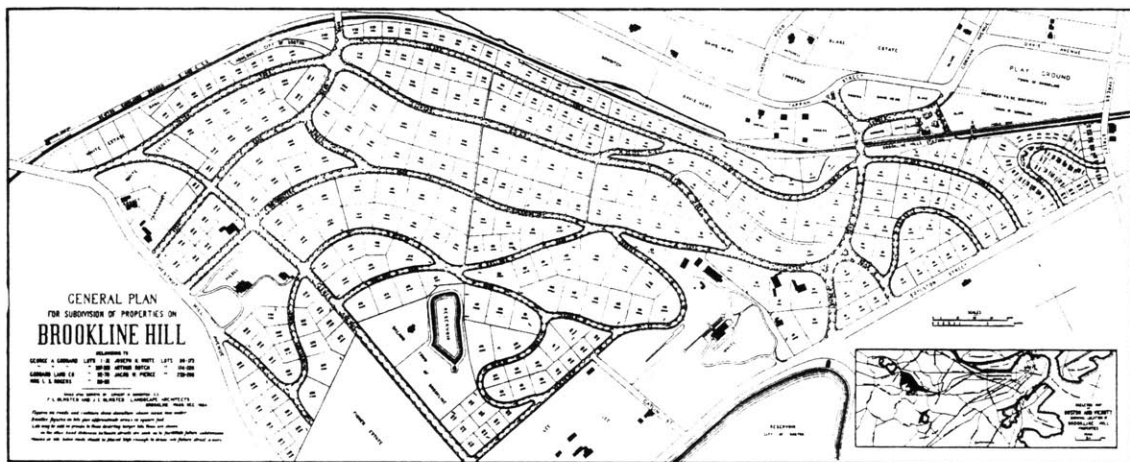


fig. 2.1. Frederick Law Olmsted's design for Fisher Hill, Brookline. The subdivision was meant to be unsuitable for conversion from residential use.

⁷⁴Olmsted, Vaux & Co., 'Preliminary Report upon the Proposed Suburban Village at Riverside, near Chicago,' (1868) in Sutton, ed., *Civilizing American Cities*, 292.

⁷⁵Frederick Law Olmsted, 'Report upon a Projected Improvement of the Estate of the College of California, at Berkeley, near Oakland,' (1866) in Sutton, ed., *Civilizing American Cities*, 288.

⁷⁶Zaitzevsky, *Olmsted and the Boston Park System*, 115-117.

Practical concerns were bringing real estate thought into line with such reformers' ideas. Olmsted's elaborately landscaped subdivision designs were examples of the larger trend in which land developers took on ever-larger up-front costs. These costs included not only their provision of increasingly elaborate roads, utilities, and landscaping, but also money they spent assembling and carrying large tracts of land which could only be brought onto the market over long periods. Stability of investment thus became important not only for the buyers but even more so for the developers of elite property, who had to be confident that their heavy initial investment would be returned in enhanced value over the years or even decades which might be required to complete sales. The people who created such communities as Chevy Chase, outside Washington, D.C., says Kenneth Jackson, were "[m]ore interested in quality than in rapid growth."⁷⁷ The financial strains of maintaining quality through lean times in Riverside, Roland Park, and the Country Club district of Kansas City made their respective developers keenly interested in protecting that quality against any threats of change.⁷⁸

Similar worries plagued developers and investors in downtowns, where even more money was at stake. There the desire for stability arose not in order to finish selling off a project, but from the need for even greater time to recoup initial investment. As New York attorney William Seton Gordon explained in 1891, "while most changes are attended by an increase in the value of land, all have a tendency to lessen the value of buildings by disturbing the harmony assumed to exist at the first between buildings and neighborhood."⁷⁹ For the tremendous investments being made in downtown buildings, this made accurate understanding of future land shifts increasingly important. Around the turn of the century the real estate industry sought a scientific understanding of urban change through increasingly systematic and quantitative appraisal methods. Whether by

⁷⁷Jackson, *Crabgrass Frontier*, 124.

⁷⁸Weiss, *Community Builders*, 48-52; Nichols, 'Financial Effect of Good Planning,' 92. On the heavy costs of improvement at Riverside, see Olmsted, 'Report to the Staten Island Improvement Commission,' 196. On the difficulty of carrying the land assembled for Roland Park, see Schalck, 'Planning Roland Park,' 422. The developers of Riverside defaulted during the Panic of 1873, and the Roland Park Company struggled through the Depression of the 1890s.

⁷⁹William Seton Gordon, 'Building Restrictions - Right to Enforce,' *Albany Law Journal* 43 (1891): 349.

science or by art, investors hoped to defeat the disruptive power of change by correctly forecasting it.⁸⁰

By the 1870s and 1880s, theorists, city-building practitioners, and much of the public had found fundamental problems with the culture of change. People were displeased by the pace of alterations around them and were no longer reluctant to say so. Families increasingly sought homes in neighborhoods which would be refuges from the changing city. Developers and real estate operators grew concerned about the stability of their investments. A new group of professionals who would become known as city planners began arguing that the metropolis could be healthy only if its form were shaped deliberately and permanently.

⁸⁰Hurd, *City Land Values*, preface, summary, and ch. 8.

CHAPTER THREE:

Available responses to change

If change in the urban environment was really a problem, rather than a healthy fact of life; if at least some parts of cities ought to be permanent, then what could Americans do about it? An examination of their attitudes toward and avenues for action around the end of the Civil War may be organized in three categories:

People first sought private solutions, practising the cult of domesticity and attempting to keep themselves and their families out of the path of change. They chose homes not for their speculative potential, but as anti-speculations, places they thought would retain their character, often suburban retreats. As they learned that no place was in itself exempt from change, they tried controlling the use of land by private agreements, through a branch of property law which came to be known as deed restrictions. If people wanted permanence in their surroundings, and were able and willing to pay for it, could they have it?

Deed restrictions sought to extend a degree of lasting control over private sections of the environment, but even more troubling were public landmarks, most of which were already under various sorts of communal control - churches, burial grounds, public buildings and public spaces. The visibility of change was magnified by the use of these places as symbols of community stability. Could community control of such sites ensure the physical permanence demanded by this symbolism?

Finally, while the community controlled landmarks, if at all, only through ad hoc or quasi-public institutions, the ongoing transformation of urban governments into modern municipalities opened opportunities for more systematic and universal public

controls. Could the government's traditional role in promoting change be reversed, using public powers instead to bring stability and permanence to the urban environment?

Deed restrictions

Perhaps it was inevitable in nineteenth-century America, with its reverence both for individual rights and for private property, that environmental permanence should receive its first systematic attention as a question of property rights. A man's home was his castle, and if its property-line ramparts included grounds around it, then from at least one small part of the city he need fear no disturbing change. But if he sold off parts of that garden for others to build on - a common occurrence as American towns grew to urban densities - did he have to completely relinquish control over its future use? Could he not bind successive owners to refrain from at least those disruptions he could define ahead of time? Lawyers searched through the baggage of legal tradition for tools which could be adapted to these new tasks.

Restrictions in deeds, specifying permissible uses of land or forms of buildings, were available as a legal tool throughout the nineteenth century. They appeared in Boston at least as early as 1703, and before 1810 they were used on Beacon Hill to specify front yard setbacks, maximum and minimum building heights, and construction "of brick or stone" only.¹ Those writing such restrictions found available many time-honored prototypes. In legal theory, they can be grouped into two categories: *easements* and *covenants*. Easements alter the way a particular piece of property is defined; covenants modify the bargain by which it is conveyed.

An easement establishes a relationship between two or more pieces of property. Party-wall easements, for example, set rules by which owners of abutting rowhouses

¹Allen Chamberlain, *Beacon Hill, its ancient pastures and early mansions*, (Boston, 1925), 181, 89; *Atkins v. Boardman*, 37 Mass. 291 (1838); *Jeffries v. Jeffries*, 117 Mass. 184 (1874).

share their common walls. Rights of way allow access from one property across another, usually along a particular route and sometimes for particular purposes only. An easement 'runs with the land' - it fixes a relationship not between individuals, but between pieces of land, no matter who later comes to own them. Ordinarily the relationship is permanent.

The problem with easements was that they were not, in theory, adaptable to the new uses which Americans had in mind. These generally involved limiting, for the benefit of one landowner, what another one could do with his property - a category known as 'negative' easements. But English precedent, the ancestor of American jurisprudence, limited negative easements to a clearly defined set including access, party walls and lateral support of the soil, light and air or 'ancient lights' (the right to prevent a neighbor from blocking one's window), and riparian rights. Conservative English courts refused to enforce restrictions "of a novel kind ... devised and attached to property, at the fancy or caprice of any owner" which would then run with it "into all hands however remote."² They were nervous about the very permanence which made easements attractive. Even with these limitations, easements seemed an appropriate model for some land development purposes. A subdivision laying out a street with ten-foot building setbacks on each side bore a strong family resemblance to a right of way mated with easements of light and air.

Unlike easements, covenants were infinitely flexible, limited only by the imagination of the people writing them. A covenant, according to a contemporary definition, was an agreement, a branch of the law of contracts, the object of which could be anything not specifically illegal or in violation of public policy.³ Massachusetts deeds in the first half of the nineteenth century included, for example, covenants to build rowhouses with facades "uniform, one with the others,"⁴ to build only "dwelling-houses ... or

²*Keppel v. Bailey*, Myl. & K. 517, 534 (1834), quoted in King, *Law and Land Use in Chicago*, 10.

³John Bouvier, *A Law Dictionary adapted to the Constitution and Laws of the United States of America* (Philadelphia, 1858), 1:345.

⁴*Codman v. Bradley*, 201 Mass. 361 (1909). The deed, in Boston, dated from 1811.

buildings for religious or literary purposes,"⁵ and to put "a roof of slate or of some other equally incombustible material" on any building more than twelve feet high.⁶

Related to covenants are *conditions*, a special form of agreement which if violated causes a property to revert to its original owner. Conditions are normally used where the new owner will need time to complete his part of the bargain. Donations of land to religious congregations often included conditions requiring that a church be built by a specified time.⁷ Subdividers sometimes sold lots on condition that buyers erect houses within a certain period;⁸ the implicit bargain was that the buyer would not later speculatively resell the vacant lot and thereby compete with the developer, but rather would contribute to the subdivider's efforts to establish the neighborhood.

The problem with covenants was how and by whom they could be enforced, questions which in turn affected how long they remained effective. There was no question that a covenant, unless limited in time, remained binding indefinitely between the original parties who signed the deed. The trouble began when properties changed hands. A covenant was of little use if the people bound by it could evade its burden by selling to others, but English precedent frowned on the assignment of contracts. This difficulty had been overcome by the invention of 'real covenants,' that is, covenants the subjects of which 'touched,' or inherently concerned, a piece of land, and therefore like easements would 'attach' and run with it. An early and common example was the fence covenant, dividing responsibility for maintaining a shared boundary fence, responsibility which attached to the land so that "he who has the one is subject to the other."⁹ Because title deeds in America were publicly recorded, purchasers of land were presumed aware of any covenants concerning it, and by taking it they presumably assented to these agreements made by their predecessors.

⁵*Hubbell v. Warren*, 90 Mass. 173 (1864), at 173-74; covenant, in Charlestown, from some time before 1846.

⁶*Lowell Institute for Savings v. City of Lowell*, 153 Mass. 530 (1891), at 530-31; deed in Lowell from 1839.

⁷*Canal Bridge v. Methodist Religious Society*, 54 Mass. 335 (1847); Cambridge deed from 1823.

⁸*Estabrook v. Smith*, 72 Mass. 572 (1856); 1852 Worcester deed; *Hopkins v. Smith*, 162 Mass. 444 (1894); 1867 Oak Bluffs subdivision.

⁹Bouvier, *Law Dictionary*, 1:346.

Conditions followed their own separate logic. The burden of a condition - the risk of forfeiture - necessarily ran with the land, but its benefit (the 'right of reverter') could not, because as far as any single parcel of land was concerned the original owner had parted with his title, and existed only as a person rather than a landowner. Reversionary rights vested in him personally and descended to his heirs, rather than attaching to any other piece of land which he might happen to have owned. The example of conditions, together with the presumption that covenants related individuals rather than pieces of property, meant that courts had great latitude in deciding who could enforce covenants, and whether they continued to run or expired with the sale of property or death of their original beneficiaries.¹⁰

Even where covenants attached to land, the question of who could enforce them presented still further intricacies. By analogy with the idea that only the parties to a contract could enforce it, real covenants bound only people between whom there was 'privity of estate' - some direct transfer of property, or a chain of such transfers. But applying this rule technically to covenants in a subdivision produced strange results. A chain of transfers linked all the lot owners with the subdivider, but not with each other. Each of them was a 'stranger' to the transactions by which the subdivider imposed restrictions on every other lot. The subdivider, however, left the scene; when he sold the last lot he no longer stood in a continuing property relationship with any of them, and if he remained the personal beneficiary of the covenants, he was the one person without any direct interest in enforcing them. As covenants expanded from special cases into ordinary real estate practice, privity of estate became a riddle with which English and American courts wrestled from time to time. Covenants would not be a workable tool for private planning until they solved it.

One final and unpredictable difficulty with covenants was the requirement that they be in accordance with public policy. One such policy was the 'rule against perpetuities.' The 1858 edition of Bouvier's *Law Dictionary* defined a 'perpetuity' as "[a]ny limitation tending to take the subject of it out of commerce" longer than the lifetime of some specified person plus twenty-one years. The rule traditionally applied to title, that

¹⁰see, e.g., *Badger v. Boardman*, 82 Mass. 559 (1860); *Skinner v. Shepard*, 130 Mass. 180 (1881), in which the court holds that the restrictions cannot be enforced even by the late grantor's heirs.

is, to restrictions on selling property, or conditions which made ownership uncertain for unacceptably long periods. But trial lawyers regularly argued that permanent restrictions on the use or arrangement of buildings were perpetuities, and the concept led many courts to look askance at any covenant which was not limited in duration. The Massachusetts Supreme Judicial Court in 1829 accepted "partial and temporary restrictions" on land, "at least for a limited number of years,"¹¹ while a less sympathetic Illinois Supreme Court later pronounced that "it is contrary to the well recognized business policy of this country to tie up real estate...."¹² Opinions like these did little to encourage faith in covenants as a long-term means of land use control, and they enhanced the attraction of easement theory, with its presumption of permanence.

The evolution of these legal tools (which will be described further in chapter 4) was crucial to efforts at securing environmental permanence, but their importance was indirect. Legal evolution followed rather than led real estate practice, and practice was surprisingly independent of the legal doctrines which theoretically underlay it, at least until courts in the late nineteenth century began taking an active interest in restrictions. Deeds seldom staked out theoretical positions, for example by designating their restrictions as easements or as covenants. Non-lawyers, and even some lawyers, blissfully ignorant of the subtleties of then-current jurisprudence, simply wrote in plain English what they meant to accomplish, in the innocent faith that courts would enforce it. Other more subtle lawyers drafted restrictions which they hoped would satisfy every school of thought. Either way, it was up to the courts to decide on the theoretical underpinnings for enforcing them, if it came to that.

The overwhelming majority of deed restrictions never made it into a courtroom. If a restriction was signed and then followed, or if it was violated without anyone suing, then its doctrinal correctness was irrelevant. The plain English of the restrictions succeeded or failed on its own, their evolution following a logic which came not from the theories of law but from the exigencies of real estate development. The equity courts in which deed restriction doctrine was hammered out were guided by the principle of

¹¹*Gray v. Blanchard*, 25 Mass. 283 (1829), at 289-90.

¹²145 Ill. 336 (1893), quoted in King, *Law and Land Use in Chicago*, 44.

reasonableness, and therefore strongly influenced by prevailing practice and the expectations which had arisen from it.

In practice, deed restrictions at mid-century were used less to withdraw land from the potential for change than to control the process of its development for a limited time.

Deed restrictions could be used to secure two distinct goals: *uniformity* and *stability*. Uniformity was addressed through the specificity and stringency of the restrictions' substance; stability through their duration, enforcement, and potential for revision. In the early nineteenth century both goals were new ones and eventually both were widely pursued, but developers' most immediate aim was uniformity.¹³

The residential subdivisions that first used systematic deed restrictions, such as Mount Vernon Street (1801) and Louisburg Square (1826) on Beacon Hill, or Gramercy Park (1831) in New York, were designed as ensembles and used restrictions to ensure that the actions of independent builders would contribute to an overall composition.¹⁴ The idea of such an ensemble - or at least its realization - was new on this continent, and conflicted with the ordinary practice of uncoordinated individual construction. Deed restrictions resolved this conflict in a way more acceptable to Americans than the leasehold tenure of England or the strict public controls of France, from which places these design precedents came.

Uniformity was no threat to the culture of change. By creating a predictable product, restrictions rationalized the land conversion process, made it more efficient and profitable, and perhaps incidentally increased its rate.

¹³For example, deeds at Monument Square, Charlestown, in 1846 include conditions "to the end that there may be an uniformity in the buildings to be erected fronting the said Monument Square, and for determining the character and style thereof ...," specifying that they were to be "not less than three nor more than four stories high, ... built of brick or stone ..." (*Hubbell v. Warren*, 90 Mass. 173, at 173, 174).

¹⁴Chamberlain, *Beacon Hill*, 89, 188; Stephen Garmey, *Gramercy Park: An Illustrated History of a New York Neighborhood* (New York, 1984), 31.

Most deed restrictions written before the 1860s specified no duration or expiration, and therefore appear on the surface to be permanent restrictions. This appearance is misleading. An examination of mid-nineteenth century practice suggests that most of them were conceived as applying only to the first generation of building on each lot.¹⁵ Conditions in deeds from the city of Boston in 1857 on the South End's Rutland Street, for example, referred to "the building which may be erected."¹⁶

This interpretation is reinforced by internal evidence in the restrictions themselves. First, many named existing buildings as prototypes to be copied - a common formula for construction contracts, naturally implying a one-time applicability, but unreliable over a long period during which the prototype might disappear or be altered. Five deeds on Common (now Tremont) Street in 1811 contained the condition

that all the said houses to be erected on said house lots shall be erected on a right line, so that no one of the said five houses shall project before another, and also that all said houses ... shall be as to the number of stories and the height of them in conformity with the new block of houses to the Northward thereof on Common street, unless all the proprietors of the said five house lots should unanimously agree on some other plan, in which their several houses shall be uniform, one with the others.¹⁷

When such restrictions were applied to single lots their intention could be even clearer, as in an 1863 deed requiring that "the front on Arlington Street shall correspond with my house adjoining according to the plan of G. J. F. Bryant herewith to be recorded."¹⁸

¹⁵*American Unitarian Association v. Minot*, 185 Mass. 589 (1904), was decided on this point. Some restrictions were indeed meant to be permanent: the Mt. Vernon Street indenture (1820), formalizing an 1801 setback agreement as a permanent restriction (Chamberlain, *Beacon Hill*, 89); Pemberton Square restrictions (1835) which include modification provisions making clear the intention that they be permanent. These were unusual; more often those drafting deeds simply did not address the question of duration, leading at least to the conclusion that it was not important to them.

¹⁶*Sanborn v. Rice*, 129 Mass. 387 (1880), at 388.

¹⁷*Codman v. Bradley*, 201 Mass. 361, at 365. Chief Justice Knowlton in that case suggests that when the parties recorded a release of this condition in 1857, they did not consider it as applying only to the initial buildings, but he goes on to say that the applicability of the condition at that time was "doubtful," (at 367) and its release more in the nature of removing a cloud on the title.

¹⁸*Welch v. Austin*, 187 Mass. 257 (1905). Similarly, an 1844 building contract for a house on Ashburton Street, executed a month after the deed, appears to have been anticipated in the restrictions (*Baptist Social Union v. Boston University*, 183 Mass. 202 (1903) at 204).

Second, restrictions' juxtaposition with other requirements, most especially that a building be erected by a certain time, implied applicability to that structure alone.¹⁹ Finally, covenants were commonly put in the form of conditions - violation of which would forfeit the estate - making it appear unlikely that they were expected to apply beyond a limited amount of time, even if that duration was not specified. Common sense boggled at the uncertainty that conditions could create in real estate titles over a long period of time, and courts were thus very reluctant to let them run indefinitely.

The conclusion that deed covenants were meant to apply to a single generation of construction is reinforced by analogy with the land lease covenants which regulated building in London. By their nature, these covenants applied to the first structure built on each lot, because tenants would negotiate new leases before rebuilding. Americans probably modelled their deed covenants more-or-less directly on the London system; Bostonians' "mimicry" of English institutions in general, writes social historian Ronald Story, was "omnipresent"²⁰ in the mid-nineteenth century, and Boston together with much of the world still looked more to London than to Paris as the pinnacle of urbane development. On Rutland Street, for example, the city followed London practice almost word for word, substituting 'deed' for 'lease.' An initial agreement with a builder specified the size, siting, and materials of houses he would build on 13 adjacent lots, with each to be conveyed by a separate deed as it was finished.²¹ The covenants in each deed simply recited the terms of the initial agreement and then affirmed that "the building at present erected upon the said lot is constructed in conformity with the above conditions..."²² Intentions about leasehold covenants' duration and enforcement were clear in the context of a well-defined landlord-tenant relationship, but became ambiguous when the same terms were inserted into freehold deeds. Americans had not yet thought through all these ambiguities.

¹⁹e.g., 1867 Cottage City conditions requiring that a house be erected "within one year" (*Hopkins v. Smith*, 162 Mass. 444).

²⁰Ronald Story, *Harvard & the Boston Upper Class: The Forging of an Aristocracy* (Middletown, Conn., 1980), 166.

²¹*Sanborn v. Rice*, 129 Mass. 387, at 388.395.

²²*Sanborn v. Rice*, 129 Mass. 387, at 389.

The assumption that restrictions ordinarily applied only to the first generation of building, leads to a paradox which makes subdividers' intentions harder to fathom in retrospect: a deed restriction without duration - nominally permanent - was as time passed less likely to be enforced than one with a stated expiration. A long finite term made clear that the restriction meant to regulate more than a single act of building, and offered little room for reinterpretation at the hands of unpredictable courts.²³ But finite terms also fit within the culture of change - the assumption of inevitable change. One generation wanting permanence could effectively secure it by a term restriction of sufficient duration; if change was inevitable, it seemed only fair that the next generation should have the opportunity to start from scratch.

Whatever their authors' intentions, restrictions' duration in practice was determined in part by who could enforce them, and for how long. Related to the idea of covenants applying only to the first generation of building was the assumption that they were enforceable only by the land's original seller. Conditions definitely worked this way. Restrictions in general were seen not as a mutual relationship among lots in a subdivision, but as a contract between two parties, like the deed itself.²⁴ This assumption can be inferred most clearly from the practice of issuing releases from deed restrictions. Before 1863, any releases were invariably issued by the subdivider or his heirs to the purchaser; neighbors within the plat had nothing to do with it.

Restrictions used in this way did not withdraw land from potential change indefinitely to protect purchasers, but only long enough to protect the developer as he sold off the lots in a subdivision. Unscrupulous or cynical subdividers might unload their last lots quickly, or even at an advanced price, by leaving them unrestricted.²⁵

²³see, e.g., *Gray v. Blanchard*, 25 Mass. 283.

²⁴*Linzee v. Mixer*, 101 Mass. 512 (1869) - the Back Bay; *Sharp v. Ropes*, 110 Mass. 381 (1872) - a small-time, unsophisticated subdivider exercising personal control.

²⁵*Hano v. Bigelow*, 155 Mass. 341 (1892), in which the last lot in a subdivision was sold unrestricted in 1869. Subdividers sold lots for triple-deckers as restrictions' expiration approached: in 1894 (*Roak v. Davis*, 194 Mass. 481 [1907] at 483); in 1899 (*Ivarson v. Mulvey*, 179 Mass. 141 [1901]).

Marketing and description of subdivisions indicated a certain ambivalence about the purpose of deed restrictions. Lot purchasers were clearly meant to think of the restrictions as a benefit to themselves, and not just to the subdividers. But if subdividers alone could enforce restrictions - or omit or even rescind them - then the protection afforded depended on the developer's good faith. Even where a developer's intentions were sincere, the passage of years rendered remote the likelihood of locating him or his heirs, and prevailing upon them to bring a lawsuit to enforce restrictions in a neighborhood in which they no longer had any material interest.²⁶ There is no indication that most home owners expected their deed restrictions to provide any such long-term legal protection. What long-term benefit they received was not from the restrictions themselves, but from the character of the neighborhood as initially established under the restrictions.

A different kind of long-term relationship existed when land was subdivided by a unit of government. From the 1840s to the 1860s, the city of Boston sold thousands of lots of filled land along the neck in the new South End, most or all of them subject to deed restrictions. The municipality would be around indefinitely, and unlike private subdividers it would presumably be responsive to neighborhood concerns and interested in long-range land uses.

By the end of the 1850s, Bostonians were beginning to look at deed restrictions with environmental permanence in mind. They put them to work for this end as the city began its expansion onto the Back Bay in 1857, an extraordinarily ambitious project which would take decades to complete. It was administered by a three-member state commission. From the beginning, lots were subject to dimensional restrictions specifying front yard setbacks, minimum building heights of three stories, and maximum cellar depth to avoid drainage and foundation problems on the filled land.²⁷ While South End deeds limited the area to residential uses for twenty years, the Back

²⁶*Codman v. Bradley*, 201 Mass. 361: the heirs of the beneficiaries of an 1811 condition were able to be located in 1857 only because they still owned property nearby.

²⁷in *Allen v. Mass. Bonding and Insurance Co.*, 248 Mass. 378 (1924).

Bay use restrictions were perpetual.²⁸ They offered an environment of long-term stability, evidently learning from and certainly competing successfully with the South End. The existence of the Back Bay commission promised an effective means of enforcement, so that buyers really viewed the restrictions as offering durable protection.

Americans were interested in securing environmental permanence through deed restrictions, and the Back Bay's unique combination of large-scale urban design, public ownership, and a specially-created long-term institutional structure provided an unparalleled context for using restrictions. In ordinary development, however, American caselaw as yet gave little encouragement that restrictions could control change over any long period.

The place of old landmarks

In the public environment, people found the disappearance of old landmarks disturbing because they believed, despite the culture of change, that at least some of them were supposed to be permanent. Ideas about the permanence of landmarks were deeply embedded in attitudes about social and institutional stability, and even having to explicitly think about the durability of churches, graveyards, or public buildings called into question that stability. A growing antiquarian sensibility allowed people to appreciate buildings and scenes of great age even while applauding the progress which was relegating them to memory. These ideas could remain so contradictory and confused only because there was seldom any call to sort them out by translating them to action. Starting around the time of the Civil War, however, the combination of increasingly pervasive change in cities together with an increasing awareness of history

²⁸*Sanborn v. Rice*, 129 Mass. 387; form of deed in Massachusetts, Commission on the Back Bay, *Catalogue of 50 Lots of Land on the Back Bay ... to be sold by public auction, on Wednesday, Oct. 24, 1860* (Boston, 1860), 6.

forced Americans to recognize these contradictions and to consider, at first tentatively and unsuccessfully, what to do with old but valued pieces of the urban environment.

Nineteenth-century Americans' earliest historical awareness had to do with people and events, which they associated only sometimes with places and seldom with actual remaining structures. Thus in 1826 Bostonians could propose demolishing their Old State House to erect a statue commemorating the events which had occurred in it. History in the environment meant not antiquities surviving from earlier periods, but monuments erected by the present generation.²⁹ Perhaps the most conspicuous in the nation and one of the most admired was the Bunker Hill monument in Charlestown, a 221-foot granite obelisk built between 1825 and 1843. Not until the end of the century did citizens begin to express regret that the monument's construction had effaced the Revolutionary battle's last remaining actual traces.³⁰

As for the permanence of monuments and monumental buildings themselves, Bostonians' thoughts throughout most of the nineteenth century were innocently simple and strangely contradictory. While they expected the city to change, they had high hopes for the durability of their institutions, and structures that symbolized these institutions should therefore endure. Samuel Adams, laying the cornerstone of the Massachusetts state house in 1795, hoped that it might "remain permanent as the everlasting mountains."³¹ At the Second Baptist Church dedication in 1811, Reverend Thomas Baldwin said, "[w]e placed no inscriptions under [the cornerstone]; our hopes were, that the building would stand, till the Arch-Angel's trumpet shall demolish the universe."³² The owner of a Trinity Church tomb in 1871 recalled of the bodies which

²⁹Edward Everett speech for Bunker Hill monument, to be erected by "the people of Massachusetts of this generation," in Lowenthal, *Foreign Country*, 322.

³⁰Kay, *Lost Boston* (Boston, 1980), 129-33.

³¹Quoted in Alfred Seelye Roe, *The Old Representatives' Hall, 1798-1895. An Address delivered before the Massachusetts House of Representatives, January 2, 1895* ... (Boston, 1895), 42. Similarly, the New York City Council in 1803 said its new city hall "is intended to endure for ages"; quoted in Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (Chapel Hill, 1983), 95.

³²Thomas Baldwin, *A Discourse delivered Jan. 1, 1811, at the Opening of the New Meeting-House belonging to the Second Baptist Church* ... (Boston, 1811), 33.

lay under the building that “when they were interred there, it was supposed they would not be removed until the general resurrection.”³³ While the durability of institutions was loosely expected to ensure the permanence of the buildings they occupied, it did not necessarily follow that protecting the buildings was a particularly high priority. When churches discovered conflicts between their roles as custodians of souls and as custodians of buildings, as when their congregations moved away from them, it seemed obvious that buildings would have to suffer.

Governments, like churches, were custodians of public landmarks. Revolutionary rhetoric aside, the permanence of monumental government buildings seemed assured by permanence of use. But like churches, government functions could move, and unlike most churches they could do so without directly consulting their constituencies. Even on the same site, permanence of use did not necessarily yield permanence of structure; by the 1860s the legislature was considering replacing the ‘everlasting’ state house. Finally, the government might make a bad custodian, as for example when city workers sometime in the mid-nineteenth century rearranged headstones in the Granary and King’s Chapel burial grounds. Whether their purpose was symmetry of appearance or ease of maintenance, the effect was that, in Oliver Wendell Holmes’ words, “nothing short of the Day of Judgement will tell whose dust lies beneath any of these records, meant by affection to mark one small spot as sacred to some cherished memory.”³⁴

Boston had a long tradition of fixing permanently certain prominent features of the urban environment. The original city charter in 1822 specifically prohibited selling the Common or Faneuil Hall.³⁵ These two places gave Boston’s citizens prototypes for thinking about environmental permanence. When the city applied street numbers to Tremont Street and its graveyards in 1850, the Common was exempted from the

³³Massachusetts General Court, House of Representatives, *Objections in behalf of several proprietors of pews and tombs to a bill to authorize Trinity Church, in Boston, to sell land ...* (Boston, 1871), 6.

³⁴Quoted in Firey, *Land Use in Central Boston*, 167-68.

³⁵article 25: “The city council also shall have the care and superintendence of the public buildings, and the care, custody, and management of all the property of the city, with power to lease or sell the same, except the common and Faneuil Hall ...”

system.³⁶ Even as Bostonians were busy withdrawing things from prospective permanence, they were drawing the line somewhere. But enumeration of these two properties served to devalue all the others that were not included in the list. This exclusion was nearly fatal to the Old State House, which the city treated as a source of income, renting its rooms to businesses which disfigured its walls with advertising signs in what one modern preservationist has called "adaptive abuse."³⁷ Its appearance (see fig. 5.3.) was both an embarrassment and a puzzle: was it an historic shrine, or a run-down commercial building?

Even for the Common and Faneuil Hall, the policy of permanence was incoherent. They were fixed landmarks in that they would not be alienated and presumably would not be destroyed, but neither of them was particularly well cared for. Until well into the nineteenth century, the Common was used as a true common for pasturing livestock, and remained in the scruffy condition which might be expected of an economic asset of such doubtful utility in its newly urban context. Afterwards, one of its main functions was as a dumping ground for snow cleared from the streets, with all the unsavory things cleared with it. Faneuil Hall had been built as a combination marketplace and meeting hall, and the municipal government treated it, too, as an economic asset, managed as an income-producing part of the marketplace complex - a utilitarian brand of preservation in which Bostonians later took great pride:

Here orators
In ages past
Have mounted their attack
Undaunted by proximity
Of sausage on the rack.³⁸

This ambivalent treatment was in a way deliberate. There was simply no category for preserved things - preservation was not in itself an assigned function, so the existence of the Common and Faneuil Hall depended on maintaining their existing uses. Many

³⁶George Adams, pub., *The Directory of the City of Boston, 1850-51* (Boston, 1850), 67-68.

³⁷Sara B. Chase, 'A Brief Survey of the Architectural History of the Old State House, Boston, Massachusetts,' *Old-Time New England* 58 (1978): 43.

³⁸Francis Hatch in *Boston Globe*, February 1, 1958, quoted in Whitehall, *Topographic History*, 44.

controversies about the Common, as we will see in chapter 5, grew out of the fact that it was not clear exactly what its use was.

Bostonians' ambivalence about the permanence of public buildings became especially evident as they left old ones to move their institutional occupants onto the new Back Bay. This district was conceived from the beginning as a civic showpiece, a special case. Many of the people steering institutions there felt they were heading for safety, a place which would be immune from the rapid changes which had driven them from other localities. Even as church proprietors embraced the culture of change to explain and excuse their abandonment of beloved downtown structures, they erected extraordinarily elaborate and expensive buildings which were clearly not intended to be transitory. They, like the upper-class families who were their members, patrons, and neighbors, sought permanence. Reverend Phillips Brooks concluded his dedication prayer for the new Trinity church, "And so make this church the Church of the Trinity forever,"³⁹ and the structure was more than adequate to the task. Even more than the ideal family home, public buildings like H. H. Richardson's Brattle Square and Trinity churches were meant, in historian Alan Gowan's words, "to stand for and from eternity."⁴⁰ American cities could have prospective permanence, even if they could not have the visible retrospective permanence of the Old World.

Americans' unsatisfied yearning for environmental antiquity led to appreciation, exploration, and eventually protection of native American antiquities, most notably the spectacular pueblo settlements of the southwest and the enigmatic mounds of the midwest. Charles Eliot Norton and other Bostonians led in this movement by organizing the Archaeological Institute of America in 1879.⁴¹ While these indigenous ruins helped satisfy a longing for ancient traces on this continent, from the everyday urban environment of American cities, they seemed just as foreign as European castles.

In Europe, with its greater number and age of old buildings, a preservation movement had been growing from the beginning of the nineteenth century, and as the second half of the century began, a preservationist debate was raging there. English and French

³⁹Quoted in Lawrence, *Address...delivered in Trinity Church*, 25.

⁴⁰Alan Gowan, *Images of American Living* (Philadelphia, 1964), 352;.

architect 'restored' a tremendous number of surviving historic buildings. But restorers such as Sir Gilbert Scott and Eugène Viollet-le-Duc were not shy about improving on history. Scott's alterations of medieval cathedrals involved such thorough reconstruction that they became essentially works not of preservation but of nineteenth-century revival architecture. Viollet-le-Duc advocated restoration to a hypothetical "condition of completeness which could never have existed at any given time."⁴² These men thought of historic structures as monuments rather than artifacts, valuing them mainly as symbols rather than as objects surviving from the hands of original makers. Their restoration efforts were guided more by stylistic theories and beliefs about the period of highest significance in each building's history than by actual evidence from the surviving fabric.

On the other side of the debate was English art critic and social theorist John Ruskin, who valued old buildings for age itself. "I think a building cannot be considered as in its prime until four or five centuries have passed over it,"⁴³ he wrote in *The Seven Lamps of Architecture*, published in 1849. Restoration, therefore, was "a Lie":

You may make a model of a building as you may of a corpse, and your model may have the shell of the old walls within it as your cast might have the skeleton, with what advantage I neither see nor care; but the old building is destroyed.⁴⁴

Ruskin saw buildings mainly as artifacts. He valued them for their genuineness, and thus found them irreplaceable even in the smallest part. Their symbolic significance was secondary, and in any case symbolism too was cumulative, so that the idea of restoring to an earlier period of greater significance was a contradiction in terms. Because the unarrested process of aging would eventually destroy buildings, Ruskin's views did not allow for literal permanence, but he aspired to a durable architecture which would undergo decay only at the scale of geologic time.⁴⁵ For existing antiquities, Ruskin had

⁴¹Ronald F. Lee, *The Antiquities Act of 1906* (Washington, 1970), 4.

⁴²Quoted in Hosmer, *Presence of the Past*, 23.

⁴³John Ruskin, *The Seven Lamps of Architecture* (1849; New York, 1971), 183.

⁴⁴Ruskin, *Seven Lamps*, 185.

⁴⁵A building should be "more lasting ... than ... the natural objects of the world around it"; Ruskin, *Seven Lamps*, 177. See also 172.

simple advice. "Take care of your monuments," he wrote, "and you will not need to restore them."⁴⁶

William Morris, a disciple of Ruskin, was moved by Scott's restorations to found in 1877 the Society for the Protection of Ancient Buildings. The society, which Morris nicknamed the 'Anti-scrape' movement, aimed "to put Protection in place of Restoration."⁴⁷ Fifty years "of knowledge and attention" to Britain's old buildings, he said, "have done more for their destruction than all the foregoing centuries of revolution, violence and contempt."⁴⁸ What exactly did Morris aim to protect? "Anything which can be looked upon as artistic, picturesque, historical, antique or substantial: any work, in short, over which educated, artistic people would think it worth while to argue at all."⁴⁹ Or as one contemporary critic said of the group's radically inclusive goals, it wanted "to preserve what is left of the past in the most indiscriminate way; whether good or bad, old or new, preserve it all."⁵⁰

Were Americans aware of these European debates? "All over the country," writes Gwendolyn Wright, "people of every class, from the mechanic to the dowager, had become familiar with the aesthetic and social theories of John Ruskin."⁵¹ His ideas informed building for permanence in the newly-made city, such as the monumental buildings of the Back Bay. But Americans only slowly came to see Ruskin's prescriptions for existing antiquities as having anything to do with their own environment. European ideas formed an intellectual background, but only a distant one, as Americans recognized their own historic landmarks and worked out for themselves what to do with them.⁵²

⁴⁶Ruskin, *Seven Lamps*, 186.

⁴⁷Quoted in Martin S. Briggs, *Goths and Vandals. A study of the destruction, neglect and preservation of historical buildings in England* (London, 1952), 210.

⁴⁸Quoted in Briggs, *Goths and Vandals*, 208.

⁴⁹Quoted in Briggs, *Goths and Vandals*, 210.

⁵⁰Robert Kerr, 'English Architecture Thirty Years Hence' (1884), quoted in Lowenthal, *Foreign Country*, 396.

⁵¹Wright, *Moralism and the Model Home*, 12.

⁵²Hosmer, *Presence of the Past*, 25.

Before the Civil War, Americans began to develop their own sense of local antiquity. Publishers offered more urban guidebooks as cities grew larger and as the railroad system's extension made it easier for strangers to visit them; most of these books included antiquarian details among their topographic descriptions. In 1851 two different Boston guides appeared specifically describing the city's old landmarks: Nathaniel Dearborn's *Reminiscences of Boston*, and J. Smith Homans' *Sketches of Boston, Past and Present*. Donald J. Olsen finds in London during the same years a similar growth in popular antiquarianism which showed "a widespread eagerness to see behind the commonplace present to a romantic past."⁵³

Bostonians' antiquarian awareness included the homes of heroes, such as John Hancock's house on Beacon Hill, and the sites of their heroic events such as the battle of Bunker Hill, but also encompassed landmarks valued solely for their hoary antiquity. The places with heroic associations - almost all dating from the Revolutionary era - fit within the European tradition of seeing ancient structures as monuments, but the second category fit instead within the Ruskinian tradition of viewing old buildings as artifacts. One such landmark in Boston was the 'Old Feather Store,' a medieval-looking seventeenth-century house next to Faneuil Hall. At least six different views of the building were published between 1825 and 1850 (fig. 3.1.), and another four appeared during the 1850s; it was "quaint,"⁵⁴ a curiosity. The Old Feather Store was demolished in 1860 to widen North Street; its imminent demolition prompted early efforts at photographic documentation, but no serious attempt at preservation.⁵⁵ Antiquarians' customary response to the passing of landmarks was regret rather than resistance.

⁵³Olsen, Donald J., *The City as a Work of Art: London, Paris, Vienna* (New Haven, 1986), 306.

⁵⁴*Ballou's Pictorial* 8 (May 26, 1855): 332, quoted in Abbott Lowell Cummings, 'The Old Feather Store in Boston,' *Old-Time New England* 48 n. 4 (Apr.-June, 1958): 86. See pp. 99-102 for his 'Check-list of known contemporary views of the Old Feather Store.'

⁵⁵Cummings quotes the *Daily Evening Traveller* of July 10, 1860, as saying that "the front wall of the building will be carefully taken down, in as good condition as possible, and will be removed to East Cambridge, where it will probably be set up in some place where it can be preserved"; he reports that "Nothing further is said about any such project, however" ('The Old Feather Store,' 87).



fig. 3.1. 'View of the Old Building at the Corner of Ann St.,' an 1835 print of the Old Feather Store. A glimpse of modern Quincy Market in the background provides a contrast with the new and reminds us that we are in a rapidly growing city.

Preservation, in James Marston Fitch's definition - "curatorial management of the built world"⁵⁶ - did not exist in American cities, and the absence of this concept no doubt unfavorably colored people's impression of old buildings. Old buildings were kept, and like the Old State House adaptively re-used often enough, but the reason was almost always economy. This motive is of course not unimportant in preservation today. But then, the absence of experience with restoration meant that adaptations were often mean, and the idea of a lavish restoration was inconceivable. When substantial amounts of money were put into an old building it was in order to make it look new. To the extent that Americans were aware of European restoration, they did not find the concept applicable at home where there were no 'ancient monuments,' though when

⁵⁶James Marston Fitch, *Historic Preservation: Curatorial Management of the Built World* (New York, 1982).

restorations were first attempted, it was to buildings such as the Old State House which first came to mind as American equivalents.

The embryonic preservation movement in America before the Civil War focused exclusively on places with historic associations. In 1847, residents of Deerfield in western Massachusetts organized to save the "Old Indian House" with its hatchet-scarred door recalling a 1704 attack on the settlement. They failed to preserve anything but the door itself.⁵⁷ In 1850 New York State bought the Hasbrouck House in Newburgh, Washington's headquarters during the final years of the Revolution, and opened, according to Charles Hosmer, the "first historic house museum in the United States."⁵⁸ In 1856 the State of Tennessee purchased The Hermitage, Andrew Jackson's estate outside Nashville. Near Boston, the Essex Institute in Salem began before the Civil War to take an interest in preserving buildings.⁵⁹

By far the most important antebellum preservation effort was the nationwide campaign to buy George Washington's home, Mount Vernon. By the 1850s, Americans treated it as a national shrine, and they were puzzled and offended that Washington's descendants, who still owned it, were not receptive to their pilgrimages. Southerner Ann Pamela Cunningham in 1853 began campaigning to save it from becoming "the seat of manufacturers and manufactories,"⁶⁰ or as was more likely, a resort hotel. She organized the Mount Vernon Ladies' Association for the purchase and "perpetual guardianship"⁶¹ of Mount Vernon. In 1856, as she expanded her organization nationwide, she was joined by former Massachusetts Senator Edward Everett, who had been instrumental in the erection of the Bunker Hill monument. Everett was motivated this time by a combination of reverence for Washington and a perception that the Mount Vernon campaign could serve as a vehicle for the cause of national unity. By 1859 this early women's organization had succeeded in raising the

⁵⁷J. M. Arms Sheldon, "The "Old Indian House" at Deerfield, Mass., and the Effort Made in 1847 to Save It from Destruction,' *Old-Time New England* 12, n. 3 (Jan., 1922): 98-108.

⁵⁸Hosmer, *Presence of the Past*, 36.

⁵⁹Hosmer, *Presence of the Past*, 37-38.

⁶⁰"To the Ladies of the South,' *Charlestown Mercury* December 2, 1853, quoted in Hosmer, *Presence of the Past*, 44.

⁶¹Quoted in Hosmer, *Presence of the Past*, 49.

enormous sum of \$200,000 and buying the property, although caring for it through the Civil War and the years that followed would prove an equally difficult task.⁶²

All of these places had in common associations with heroic figures or historic events. There was little discussion of their architecture nor of whether or how they would be restored. Of their visual role in the environment around them there was almost no consideration. Their primary role was to act as cultural symbols. In this they competed with the explicit sculptural and architectural monuments with which American cities were increasingly graced.

All the structures preserved before the Civil War stood in rural areas or small towns. There was little organized preservationism within cities. The greatest exception was Independence Hall in Philadelphia, bought by the city in 1816 to save it from destruction by the state, but like the Old State House in Boston, its status remained in doubt for decades to come.⁶³ For the most part, urban antiquarians had little thought that they could or should actually influence the physical evolution of the city. Historic structures just happened to remain, and it would have seemed strange and impractical to try to save them.

Bostonians first seriously questioned this, and gave the country a taste of the practical and philosophical difficulties of urban preservation, in an unsuccessful effort before and during the Civil War to save John Hancock's house. Before Hancock's death in 1793, he was said to have expressed the intention of bequeathing his house to the commonwealth, but he died before making arrangements to do so.⁶⁴ The estate instead passed to his young nephew, also named John Hancock, and it was the death of this nephew in 1859 which precipitated the house's crisis. "I hope," he wrote in his will, "the estate may not be sold, but retained in the family," and he directed that it "not be sold till four years after my decease,"⁶⁵ perhaps hoping the delay would force his heirs to some durable arrangement for keeping it. Instead, they immediately offered it to the

⁶²Hosmer, *Presence of the Past*, 41-62; *Boston Globe*, June 17, 1875: 1.

⁶³Hosmer, *Presence of the Past*, 30.

⁶⁴"The minutes for his will to this effect were under his pillow when he died." Boston City Council, *Report of Committee on the Preservation of the Hancock House* (City doc. 56, 1863), 9.

commonwealth for \$100,000. Governor Banks recommended the purchase as an official home for the state's governors.⁶⁶

The legislature approved buying the Hancock house, but with evident ambivalence. It required unanimous action by a committee of eight state officials, who were also to report "a recommendation as to the uses to be made of said estate in the future," with the stipulation that "it shall never be used as a residence for the governor."⁶⁷ The purchase was not consummated, and in 1863, immediately after the four years had passed, two men bought the land beneath the house for \$125,000.

Charles L. Hancock, the estate's administrator, offered the structure itself, together with its valuable furnishings and portraits, as a gift to the city, to be removed from the site.⁶⁸ The city council appointed a committee headed by Thomas C. Amory "to consider the propriety of some effort on the part of the City Government for the preservation of the Hancock House,"⁶⁹ which formulated plans to save the house by moving it elsewhere. The least expensive move would be across the street onto the Common, although Amory's committee noted that "there are prejudices, perhaps well grounded, against erections of any description on the Common."⁷⁰ If located on the Common or Public Garden, the house might be used as a caretaker's residence; elsewhere it could become "an historical cabinet."⁷¹ Individuals quickly pledged \$6,000, and were expected to provide double that, toward the estimated \$17,000 cost of moving the building, but the effort faltered when the Council learned that its estimate was low.⁷² Demolition began in June for two modern mansions to replace the single historic one.

⁶⁵Charles L. Hancock petition, March 18, 1863, Massachusetts State Archives, legislative documents, Resolves 1863, ch. 45.

⁶⁶Boston City Council, *Preservation of the Hancock House*, 8.

⁶⁷*Massachusetts Acts & Resolves*, 1859, Acts ch. 175.

⁶⁸Charles L. Hancock to Thomas C. Amory, May 23, 1863, in Boston City Council, *Preservation of the Hancock House*, 6.

⁶⁹Boston City Council, *Preservation of the Hancock House*, 5.

⁷⁰Boston City Council, *Preservation of the Hancock House*, 11.

⁷¹Boston City Council, *Preservation of the Hancock House*, 11-12.

⁷²Hosmer, *Presence of the Past*, 39.

BOSTONIANS!

SAVE THE

OLD JOHN HANCOCK MANSION

THERE IS TIME YET, ALTHOUGH THE WORK OF

DEMOLITION HAS COMMENCED

It is a question of some perplexity to decide how far it is wise or proper for the city government or for individuals to interfere to prevent the act of modern vandalism which demands the destruction of this precious relic; for that it is destroyed, in effect, if removed, we conceive admits of no question. Will it, or will it not, be a mitigation of the public disgrace to establish the house itself elsewhere as a perpetual monument of the proceeding.

Without wishing in the least degree to discourage the public spirit and the patriotism of those gentlemen in the City Council who are seeking at this moment to do the best thing they can for the preservation of the house, we still think it right that one preliminary appeal should be made to the present owners. They are gentlemen of wealth, they have made an honest purchase, and of course may plead that they have a right to do what they will with their own. It is with full recognition of their rights in this respect, and withal in the utmost kindness to them, that we would admonish them how dearly is purchased any good thing which costs the sacrifice of public associations so dear and so noble as those that cluster around the Hancock House.

These purchasers must at any rate be prepared to hear, during the whole of their lives and that of their remotest posterity, so long as any of them may live in the elegant modern palaces which shall supplant the ancient structure, the frequent expression of public discontent. Argument may show them blameless, but sentiment will ever condemn the proceeding in which theirs will be perhaps the most innocent, but nevertheless the most permanent part. It is not often that an opportunity is given to men of wealth to earn a title to public gratitude by an act of simple self-denial. Such an opportunity falls to the lot of the purchasers of this estate.

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June 6, 1832.*

*Published in
Boston*

fig. 3.2. A large handbill printed in red ink as the last gasp of the effort to save the Hancock house.

As a last resort, Bostonians appealed to the new owners themselves. "It is not often," said a large handbill printed for the effort, "that an opportunity is given to men of

wealth to earn a title to public gratitude by an act of simple self-denial." In a veiled threat the posters pointed out that although "they have made an honest purchase, and of course may plead that they have a right to do what they will with their own," they "must at any rate be prepared to hear, during the whole of their lives ... the frequent expression of public discontent. Argument may show them blameless, but sentiment will ever condemn the proceeding" of demolishing John Hancock's house.⁷³ This was an appeal to the old notion of wealth bringing with it responsibility to the community. It did not work.

Public sentiment regarded prominent families almost as institutions, and relied on them like other institutions to maintain their landmarks and historic shrines. In this view the crisis of the Hancock house ought to have been solved sixty years before it happened, for according to the Brahmin code of ethics Hancock's heirs should have honored his intentions and given his home to the Commonwealth. That they did not was thus no failure of the system but a failure of character in individuals. An appeal to a new set of individuals made sense to Bostonians, more sense than the attempts at public action.

The Hancock house episode was a transitional event in the history of American preservation. Amory's committee argued for preserving the house because "we have so few ancient or historical edifices";⁷⁴ but once Bostonians began looking they found they had quite a few. The Hancock house offered a taste of preservation battles to come. These would naturally arise only in response to threatened changes, and given the tacit assumption that institutional and social stability ensured stability of landmarks, each preservation controversy would be complicated by the implication that some institution, like the Hancock family, had failed in its role. The affair also established some general precedents. Both the state and the city recognized that preservation could be a legitimate aim of public policy and a legitimate object of substantial public expenditure. Private individuals, too, assumed financial responsibility for preservation, bringing the Mount Vernon precedent to the urban environment. Finally, translating

⁷³O. H. Burnham, publisher, 'Bostonians! Save the Old John Hancock Mansion' (June 6, 1863), SPNEA library, Boston.

⁷⁴Boston City Council, *Preservation of the Hancock House*, 10.

public policy and individual responsibility into effective action posed not only practical difficulties but also the conceptual problems of assigning a satisfactory use to a building which had left the utilitarian realm to become instead "an historical monument."⁷⁵

Although the Hancock house effort failed, it failed catalytically. Bostonians had gone beyond regretting the loss of urban landmarks to try saving one. In later years they would find energy both in the realization of how close they came to succeeding, and in the realization of how great was their loss.

Government powers, the urban environment, and parks

The ambivalence people felt about government involvement in preservation reflected the novelty not just of public action to save old buildings, but of public intervention of any sort in private development decisions.

Governments at all levels did get involved in shaping new urban form, but their actions were conceived as public preparation for essentially private processes. Municipalities graded and paved roadways, provided or encouraged private corporations to provide other infrastructure systems, located parks, markets, and a host of other public facilities, and often subsidized private enterprises such as railroads which they hoped would give them a competitive advantage in attracting further growth. States and even the federal government influenced urban form through transportation company charters and grants, bridge and harbor improvements, and other large-scale public construction. While these powers if coordinated had tremendous potential for consciously shaping the city, Americans not only failed to realize this potential, but saw little point in it. "[A]ll urban growth was good," says Sam Bass Warner, "and therefore needed no special attention."⁷⁶ The fabric of the city

⁷⁵Boston City Council, *Preservation of the Hancock House*, 11.

⁷⁶Sam Bass Warner, *The Private City: Philadelphia in Three Periods of Its Growth* (Philadelphia, 1968), 53.

emerged instead from what Warner calls the tradition of "privatism."⁷⁷ As historian Hendrik Hartog says of New York's grid, "The formal design of the city was public; but that design remained only a context for private decision making."⁷⁸

Encouraging private development was a new nineteenth-century role for governments, which according to Hartog in previous centuries confined themselves to conservatively protecting property rights. But by the beginning of the nineteenth century, policy and legal doctrine both favored "the use of public action to nurture growth, even at the cost of destroying property rights."⁷⁹ Government in America existed not for conserving static accumulations of wealth, but for increasing aggregate wealth by promoting growth.

Boston's tradition of municipal generation of new urban form was among the strongest of any mid-nineteenth century American city. Boston's constricted peninsular site made it essential to find some means of making new land at a large scale, and the city's administration had been comparatively effective by American standards, so was therefore believed capable of large-scale enterprises.

Topographical tinkering in the half-century after independence was carried out mainly by private enterprises operating under public charter. The Mount Vernon Proprietors in 1795 began grading Beacon Hill and filling the Charles Street flats; during the next thirty years the Front Street Corporation filled what is now Harrison Avenue, and the Mill Pond Corporation turned the former mill-pond between the West and North Ends into a new district since called the 'Bulfinch triangle.' The Boston and Roxbury Mill Corporation attempted the largest remolding of topography by criss-crossing the Back Bay with tidal dams to power mills. Both the Bulfinch triangle and the Back Bay mill-dams took more time and met with less success than expected, demonstrating the limits of private organization for large-scale generation of urban form.⁸⁰

⁷⁷Warner, *Private City*, 3.

⁷⁸Hartog, *Public Property and Private Power*, 175.

⁷⁹Hartog, *Public Property and Private Power*, 77; see also 203.

⁸⁰Whitehill, *Topographical History*, 77-80, 88-94.

Meanwhile, in 1825 the newly-incorporated municipal government, under mayor Josiah Quincy, began its own ambitious piece of form generation, transforming an obsolete arm of the harbor and several blocks of ramshackle old buildings at the core of the city into a new market complex of unprecedented scale. This “granite megabuilding” rose in a mere sixteen months, a triumph of design, administration, and construction, and a prototype which suggested that in Boston at least, the physical expansion of the city could safely be entrusted to government action.⁸¹

In the decades after Boston’s success at ‘Quincy Market,’ the city government continued in the role of large-scale developer, steadily transforming the tidal flats along the neck into dry land marked out into streets and blocks to be covered with new houses and warehouses. These decades of practical experience formed the background for public development of the Back Bay. As of the late 1860s, before the South End began its decline, Boston’s public development efforts thus far seemed unalloyed successes, inspiring a confidence which permitted the Back Bay’s great ambitiousness both in design complexity and in topographical scale.

Even as development of the South End and Back Bay expanded the government’s role in city-building, it emphasized the extent to which that process was ordinarily a private one. Comprehensive public control of development in these districts was possible only because the city and state owned the land, acting in effect as private developers rather than using specifically governmental powers. Like a private developer, they shaped urban form initially through land subdivision, and like a private developer they exerted control over construction and occupancy through deed restrictions. Most of those restrictions, as we have seen, aimed not so much for permanence as for uniformity and speedy development; public assets were disposed of in the interest of steering urban growth and increasing its pace. But neither subdivision nor deed restrictions provided any mechanism for public control where development took place on privately-owned tracts. Control of development was squarely on the private side of the boundary between public and private, and during this period

⁸¹Kay, *Lost Boston*, 131; Whitehill, *Topographical History*, 96.

governments achieved public control not by moving that boundary but by stepping over it, to act in a private capacity.

The use and disposal of public property was one of various generic powers of government, each of which defined another boundary between public and private, and implied other government roles in promoting environmental change - or, potentially, in securing environmental permanence. In addition to the government as a property holder, four other sovereign powers were important to urban development. First, the 'police power,' by which states regulate individual behavior, would evolve into the basis for most public control over land use and development, but in the 1860s the police power was still in its formative stages and indeed had not yet been named. Second and more important during this period was eminent domain, by which the government could take private property for public use. Third, taxation, while conceptually a mere instrument for enabling other government functions, in fact could have its own effects on urban growth. Finally, public expenditures built much of the infrastructure that enabled rapid rapid growth, but also maintained public buildings and spaces, and might have saved the Hancock house.

Each of these government powers was used in the 1860s as a way of promoting urban growth. If public action was desirable to counteract the effects of that growth - a big 'if' - it would do so with list of tools. As people began to question the culture of change, they sought new ways of using these powers in the pursuit of environmental permanence.

To the limited extent that governments regulated private development, they did so through the police power, part of the unspecified powers of sovereignty reserved to the states in the federal constitution. In its broadest sense, the police power is the state's right to control the activities of individuals in the common interest; it has been traditionally formulated as the power to regulate for public health, safety, morals, and welfare. This seemingly unbounded power was initially conceived as a conservative protection of private rights from behavior which might disturb their enjoyment. In terms of property law, all property is held subject to the requirement that it not be used to annoy or harm any other's property. The police power allows the state to intervene in defining these interests. It could and did become a medium for activist expansion of government powers, but still had to be balanced against private rights. Courts in the

nineteenth century were inclined to give the benefit of the doubt to private property rather than public regulation. Where they made exceptions, it was in the interest of promoting growth.

The most readily accepted regulations were those which had to do with public safety. London after the fire of 1666 enacted fire codes which amounted almost to architectural specifications, and North American towns from the earliest settlement regulated buildings to control the danger of fire. Controlling construction in the interest of safety grew to include not only fire but structural codes, which became increasingly important as technology began changing more quickly, and building required engineering calculations more complex than the rules-of-thumb which had sufficed for vernacular construction.

The police power also encompassed the notion of 'public nuisances,' activities which could be controlled because they inherently impinged on the rights of other property-owners. Municipalities long regulated the operation and location of slaughterhouses, piggeries, and stables, and in the nineteenth century added to the list various noxious industrial processes.⁸² A newer branch of the police power was housing laws, regulation of the environment growing out of a new empirical understanding of sanitation and public health, starting for Massachusetts with the Tenement House Act of 1868.⁸³ The term 'police power' itself dates from this period of expanding regulation.⁸⁴ Each of these applications of the doctrine helped avoid the worst problems of the increasingly complex processes of urban development, making them more efficient and thus ultimately fostering growth. However, once the government's control

⁸²"Unwholesome trades, slaughter houses, operations offensive to the senses, the deposit of gunpowder, the application of steam power to propel cars, the building with combustible materials, and the burial of the dead, may all be interdicted by law, in the midst of the dense masses of population, on the general and rational principle, that every person ought so to use his property as not to injure his neighbors; and that private interests must be made subservient to the general interests of the community." Kent, *Commentaries* (1832), quoted in Christopher Tiedemann, *A Treatise on the Limitations of the Police Power in the United States* (St. Louis, 1886), 426, n. 1.

⁸³*Massachusetts Acts & Resolves*, 1868, Acts ch. 281; Christine Cousineau, 'Tenement Reform in Boston, 1870-1920: Philanthropy, Regulation, and Government Assisted Housing,' in *Proceedings, Third National Conference on American Planning History, Cincinnati, 1989* (Hilliard, Ohio, 1990), 600.

⁸⁴Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago, 1904), preface, v.

over private development was established, it could be applied to curb change as easily as to encourage it.

Massachusetts led in the police power's evolution because compared to the rest of the country, its courts viewed the doctrine expansively, taking the position that the legislature was the proper judge of the need for regulation, and its actions were therefore to be presumed valid.⁸⁵ The police power's boundary between public and private was the limitation that it must avoid confiscating private property. One test of the validity of police power exercises was that they should affect equally all whose circumstances were equal; they modified the definition of all property rather than taking some of it. Where the common good imposed a burden which fell unequally on different property-owners, the solution was to compensate them under a different branch of government powers, eminent domain.

Eminent domain is the power by which units of government - or corporations to which they delegated the right - can take private property for public purposes, in return paying its owner a fair price for it. The purposes pursued ordinarily included public works, and private construction of railroads and other infrastructure. Eminent domain made it impossible for individual 'hold-outs' to prevent large-scale environmental change. Like the police power, eminent domain did not inherently favor change; the definition of 'public purposes' continually expanded and might conceivably include taking property to preserve it rather than to change it. With the notion of taking not land, but merely easements over the use of land, eminent domain could even become a tool of public control over private development.

Taxation might affect both the pace and the shape of urban growth. 'Single-tax' followers of Henry George hoped to encourage urban development by taxing only land and not the improvements on it; while the intent of their reform was social and economic, it was part of the culture of change. Methods of raising money for public improvements had more specific effects on urban form. The ability to assess the beneficiaries of improvements made possible a long-term program of reconstruction in the center of Boston, rendering the street pattern there less fixed. Tax abatements for

⁸⁵King, *Law and Land Use in Chicago*, 124-27.

churches and other quasi-public institutions assisted maintenance of landmarks, and potentially offered some public influence over their fate.⁸⁶

Public expenditure was the first government power widely applied to attaining environmental permanence, as urban parks in the mid-nineteenth century became one of the country's foremost new public works. Even though the landscape of a place like New York's Central Park was a wholly artificial creation, it was nonetheless about permanence rather than change. "The object of a park," said landscape architect H. W. S. Cleveland in 1855, "is to secure to the dwellers in cities the opportunity of enjoying the contemplation of such objects of natural beauty as the growth of the city must otherwise destroy."⁸⁷ Real estate lawyer and future city councilman Uriel H. Crocker in 1869 first proposed a metropolitan park system for Boston, which would not merely create parks within the city's boundaries, but preserve remaining scenery in "her beautiful suburbs We should endeavor to secure the lovely spots for the benefit and enjoyment of the people before they are built upon, and their natural beauty destroyed."⁸⁸

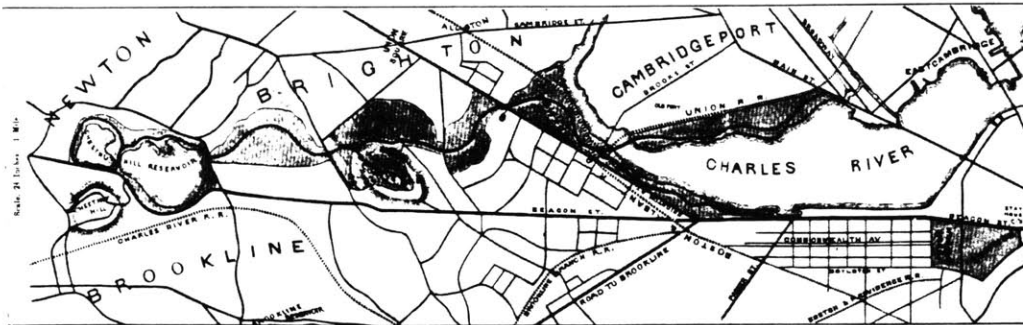


fig. 3.3. Boston metropolitan park system proposed by Uriel H. Crocker, 1869. It aims to secure permanently a variety of existing rural landscapes in Boston's suburbs.

⁸⁶J[osiah] P[hillips] Quincy, 'The Moral of It,' *The Nation* 15 (Dec. 12, 1872); Josiah Phillips Quincy, *Tax-Exemption No Excuse for Spoliation. Considerations in opposition to the petition, now before the Massachusetts legislature, to permit the sale of the Old South Church* (Boston, 1874).

⁸⁷Schuyler, *New Urban Landscape*, 67.

⁸⁸In City Council debate, April 1, 1875, quoted in Boston City Council. *Public Parks*, 34. Olmsted's 1870 Boston talk, in which he outlined the metaphor of the city as a house of many rooms, was arranged in aid of legislation for such a park plan; Zaitzevsky, *Olmsted and the Boston Park System*, 37.

Once parklands were secured, “considerations of stability and endurance” governed how they should be treated, said Frederick Law Olmsted to the American Social Science Association at its 1880 meeting in Saratoga, New York.⁸⁹ Whether their landscapes were preserved or created, they were supposed to impart a sense of timelessness which would be a therapeutic relief from the changing cities around them. Olmsted’s concluding remarks were an exhortation to “make the park steadily gainful of that quality of beauty which comes only with age.”⁹⁰ Six years later, writing specifically about Boston’s Franklin Park, he cited “the element of lastingness” as a central principle of park design, saying that “as a rule, the older the wood, and the less of newness and rawness there is to be seen in all the elements of a park, the better it serves its purpose. This rule holds for centuries - without limit.”⁹¹

The connection between parks and preservation was expressed outside the urban environment as Olmsted, Charles Eliot Norton, and others worked to protect the Yosemite Valley, Niagara Falls, and other natural wonders through creation of state and national parks. Years later the connection was also made explicit in Massachusetts by the 1891 incorporation of the Trustees of Public Reservations, a private, tax-exempt organization for saving “beautiful and historic places.”⁹² The Trustees of Reservations began with a letter in *Garden and Forest* by Charles Eliot, Olmsted’s former apprentice and later a partner in the firm, advocating preservation of the Waverly Oaks, a stand of ancient trees in Belmont and Waltham outside Boston. Eliot proposed a private association to hold “surviving fragments of the primitive wilderness of New England ... as the Public Library holds books and the Art Museum pictures - for the use and enjoyment of the public.”⁹³ Two decades of unsuccessful attempts to establish a metropolitan park system led impatient Bostonians to this private solution; thus even the

⁸⁹Frederick Law Olmsted, *The Justifying Value of a Public Park* (Boston, 1881), 4.

⁹⁰Olmsted, *Justifying Value*, 20.

⁹¹Frederick Law Olmsted, ‘Notes on the Plan of Franklin Park and Related Matters,’ (1886), in Sutton, ed., *Civilizing American Cities*, 256-257.

⁹²*Massachusetts Acts & Resolves*, 1891, Acts ch. 352.

⁹³Charles Eliot, letter to editor, *Garden and Forest* (Mar. 5, 1890), quoted in Zaitzevsky, *Olmsted and the Boston Park System*, 118.

parks movement, with the enormous expenditures it entailed, involved a boundary between public and private.

Eliot added 'historic' places to the group's purview while he was organizing it, although the list of historic places that he had in mind includes only natural sites, making it clear that the organization's focus was landscapes rather than preservation of architectural landmarks. The Trustees of Reservations served as a model for the Trustees of Scenic and Historic Places and Objects in the State of New York,⁹⁴ and for the British National Trust, both founded in 1895. In Massachusetts, Eliot immediately directed the Trustees back to their origins by using them as an institutional instigator for creation of Boston's Metropolitan Park Commission, to save pieces of the landscape which were beyond the means of a private organization.⁹⁵

The parks movement was one of the earliest organized responses to environmental change, and it was the first to use government powers in pursuit of environmental permanence. While parks were important both in themselves as permanent features of cities, and also as criticisms of the culture of change, they were inherently an exception to the norms of urban fabric and its development. That development remained thoroughly on the private side of the boundaries of public powers, and for their own individual answers to the problems of change Americans turned first to private methods, seeking permanence in their homes and neighborhoods through residential deed restrictions.

⁹⁴Hosmer, *Presence of the Past*, 94-100. It was renamed the American Scenic and Historic Preservation Society in 1901.

⁹⁵Zaitzevsky, *Olmsted and the Boston Park System*, 121-23.

CHAPTER FOUR:

'Neighborhood restricted'

Urban Americans after the Civil War increasingly sought to buffer themselves and their families from environmental change by moving, if they could, to homes in suburbs that looked permanent and that they hoped would in fact resist alteration. While Olmsted and others explored physically arranging the residential subdivision for permanence, they sought to reinforce their designs by imposing deed restrictions which would accomplish the same thing legally - determining once and for all the future shape and character of neighborhoods.

Land developers, including the Back Bay commissioners, were beginning to impose restrictions that clearly aimed at long-term resistance to environmental change, rather than merely control of the initial development process. But the difficulties in enforcing them made them essentially unworkable for this new purpose, as demonstrated by the numerous restrictions imposed long ago and since lying dormant. Was there some way to make deed restrictions enforceable not through the uncertain agencies of subdividers or their heirs, but instead by the affected residents of a neighborhood? The Supreme Judicial Court of Massachusetts provided an answer in the 1860s, a story which began forty years earlier in a garden off of Washington Street.

Equitable Easements

When Dr. Lemuel Hayward died in 1821 after a long career as one of Boston's leading surgeons, he left nine warehouses on Long Wharf, stores and houses around the city, and two hundred acres of farmland elsewhere in Massachusetts, all to be shared by eight members of his family. The most valuable single property was Dr. Hayward's mansion and the acre of garden behind it on Washington (then called Newbury) Street, between Bedford and Essex Streets. The house with its grounds was worth several times the share of any single heir, and so the family decided to subdivide the garden as building lots.¹ The solution was obvious enough; fashionable new streets and row houses had been sprouting for years all around them in the growing South End.

In the spring of 1823 the estate's executors hired a surveyor who laid out the garden as 19 houselots along a 36-foot-wide dead-end 'Avenue,' which soon came to be called 'Hayward Place.' By agreement among the heirs, each lot was conveyed subject to the condition "that no other building shall be erected or built on the lot except one of brick or stone, not less than three stories in height, and for a dwelling-house only."² The lots sold quickly and the street was built up with what a resident later described as "large and elegant dwellings, ... all of brick or stone," either occupied by their owners or "rented ... to tenants at a high rent."³ Several of the heirs, including Dr. Hayward's son George, settled on the little street.⁴

Time passed and Boston grew. Next door to the former Hayward garden, 'Rowe's Pasture' was built up, as was every other scrap of open land nearby. George Hayward became a prosperous surgeon in his own right and moved to Beacon Hill; his father's

¹'Warrant and Partition of Hayward Estate,' Suffolk County Land Records, Deed Book 277: 269-81.

²*Parker v. Nightingale*, 88 Mass. 341 (1863), at 342.

³Testimony [of Samuel Parker?] in *Equity Records, S. J. C., April- Oct. 1863*, 412, in Supreme Judicial Court Archives, Boston.

⁴One of the heirs settled on the farm in East Sudbury, one took the mansion house itself, and two - still minors when the doctor died - were living a few years later on what had been his garden.

mansion was demolished and replaced with a commercial building. By the early 1860s, forty years after Hayward Place was laid out, Washington Street held a busy horsecar line and was strictly commercial, its converted old houses mostly replaced by big new mercantile structures which had spread onto side streets as far south as Bedford Street, the first big cross street north of Hayward. In the midst of all this Hayward Place itself was still a quiet middle-class neighborhood, many of its houses occupied by their owners. By comparison with Peter Knights' samples of Boston's population, their lives were stable. Ellinor Hayward, widow of one of the original heirs, still lived at number 13, and across the street at number 3 lived Samuel Parker, a retired customs inspector who had bought his house new in 1823.

Early in 1862, change turned the corner onto Hayward Place. The house next door to Parker's belonged to a Walpole resident, James Nightingale, who rented it that year to a Frederick Loeber. Loeber lived nearby and owned a restaurant at the center of town on Congress Square; he had first opened it three years earlier on Washington Street, directly opposite Hayward Place.⁵ Shortly after Loeber rented number 2 Hayward Place, Parker heard workmen busy there. According to his later testimony "it seemed, from the apparent preparation, that the changes might be more than what is usual in regard to dwelling-houses ordinarily," so he inquired and "to his great surprise and sorrow, he was informed by the workmen that ... Loeber was going to convert the house ... into a restaurant, or eating-saloon."⁶

Parker's neighbors were as unhappy about the change as he was, and once the restaurant opened accused Loeber of

having large numbers of people in and about said premises, at all hours of the day and night, eating and drinking, and indulging in all kinds of merriment and loud and boisterous conversation, debate, and controversy, in the usual manner of allowing such establishments to be conducted in the large cities, and where the police have little or no power to repress or control the conduct of the class of persons collecting about restaurants, saloons, eating-houses, and other similar places of refreshment; and, in this way, ... Loeber, as the natural and almost necessary consequence of applying the premises, ... to the use aforesaid, has

⁵401 Washington Street (*Boston City Directory*, 1859).

⁶*Equity Records, S. J. C., April- Oct. 1863*, 411-412.

rendered the locality about Hayward Place almost wholly unfit for quiet and comfortable residences ...⁷

Their testimony underlines the close relationship between dissatisfaction with environmental change and a more pervasive unease about social changes accompanying urbanization. The sense of losing control over society led to new demands being put on spatial segregation of land uses as a means of ordering social relations. In the eighteenth century Dr. Hayward built his mansion undeterred by the White Horse tavern across the street, but now to the residents of his former garden, Loeber's restaurant symbolized the unravelling of civilized life.

Parker and his neighbors summoned Loeber's landlord Nightingale, who was sympathetic but found himself in a dilemma. His lease recited the same provisions as the deed, but Loeber "insisted ... that he has good, general, and lawful right to apply the premises ... to any use he may choose, as long as he resides therein ..."⁸

As of 1862 the law offered two clear ways for this dispute to come to court. First, Nightingale could bring action against Loeber for violating his lease. Second, the Hayward heirs could sue Nightingale for violating conditions in the deed. If they won, Nightingale would lose the house, and they would have to deal with Loeber themselves. But it was Parker and his neighbors who wanted relief, and as neither of these courses of action was available to them, their lawyers sued under a third untested doctrine; thus this ordinary tale of nineteenth-century neighborhood life elevated itself to lasting significance. The deed, they said, contained not 'conditions' but 'restrictions' on the tenure of the land, constituting "the organic law of that block of houses,"⁹ and enforceable by any neighbor who held property from the same subdivision. If neither Nightingale nor the Hayward heirs would bring suit, then such a doctrine was necessary to let Parker himself bring it.

The Supreme Judicial Court had in effect invited just such a suit in Associate Justice George T. Bigelow's 1860 *Whitney v. Union Railway* opinion. The *Whitney* decision involved restrictions written in 1851 which specifically stated that they would be

⁷*Equity Records, S. J. C., April- Oct. 1863, 415.*

⁸*Equity Records, S. J. C., April- Oct. 1863, 414.*

⁹*Parker v. Nightingale, defendants' brief, 4, Social Law Library, Boston.*

enforceable by any proprietor within the tract. Bigelow endorsed this principle, but it had no direct bearing on the case as Whitney herself was the original subdivider.¹⁰ Parker was in a very different position: his deed contained no such statement of his right to enforce the restriction, yet unlike Whitney he had no other grounds upon which to sue. Bigelow's discussion of co-proprietors' rights was essentially gratuitous, because the case did not turn on the question. It established no binding precedent, but extended an invitation for some other plaintiff to come forward and test the principle. Parker was to be that test, and his whole case turned on whether he had standing to bring the suit at all. Bigelow had indicated his receptiveness to the arguments which formed the crux of Parker's case; and by 1862 Bigelow had become Chief Justice.

The Supreme Judicial Court in 1863 ordered a permanent injunction against Loeber's restaurant. The case set an important precedent in three different ways, which were recognized with various degrees of explicitness in Bigelow's decision. First, restrictions could be enforced by any property owner within a subdivision; second, their duration could be permanent, and third, the word 'condition' in an old deed could be interpreted not as a condition but as a restriction.

Parker's standing to bring the suit at all, said Bigelow, was "the most important and difficult question raised":

In strictness, perhaps, the right or interest created by the restrictions ... did not pass out of the original grantors, and now remains vested in them or their heirs. But if so, they hold it as a dry trust, in which they have no beneficial use or enjoyment ... and [those] now holding the estates ... are proper parties to enforce the restriction."¹¹

¹⁰*Whitney v. Union Railway*, 77 Mass. 359 (1860), at 362.

¹¹*Parker v. Nightingale*, 88 Mass. 341, at 346, 348. He continues: "...circumstances may exist which might warrant a refusal to grant equitable relief....If, for instance, it was shown that one or two owners of estates were insisting on the observance of restrictions and limitations contrary to the interests and wishes of a large number of proprietors...by which great pecuniary loss would be inflicted on them, or a great public improvement be prevented, a court of equity might well hesitate to use its powers to enforce a specific performance or restrain a breach of the restriction" (at 349).

Thus, as Lawrence Friedman puts it in *A History of American Law*, Bigelow “vaulted over”¹² privity of estate, making enforcement of deed restrictions practicable over long periods of time.

Second, the court specifically addressed the restrictions’ duration; the words “shall be” in the deed, said Bigelow, created “a permanent regulation.”¹³ This too had been discussed in *Whitney v. Union Railroad*, where Bigelow explained that restrictions without time limits did not violate the rule against perpetuities because they could be released at any time by their beneficiaries.¹⁴ But the *Whitney* case was at best a weak precedent for this principle, since the restrictions were only six years old when she sued. By enforcing the Hayward Place restrictions after forty years, Bigelow squelched any idea that public policy, at least as Massachusetts courts defined it, would prevent people from fixing elements of the built environment for as long as they liked.

Third, in addition to vaulting over privity, Bigelow stepped around the definition of a condition. Conditions not only created awkward uncertainties as to title, but they did nothing to solve the practical problems they addressed. If an offending building caused forfeiture of an estate, the result was new ownership with same offending building. The original grantor’s heirs who could enforce conditions could also release them, a strange and inadequate arrangement in which land use decisions were made by people with no continuing interest in the neighborhood. Bigelow simply assumed without comment that the Hayward deed covenants were restrictions, affecting the use of land but not its ownership. Subdividers even before *Parker v. Nightingale* had begun addressing this problem by imposing “conditions” which “shall not work a forfeiture.”¹⁵ After *Parker*, courts began explicitly reinterpreting conditions as restrictions in order to enforce them over long periods of time.¹⁶

¹²Friedman, *History of American Law*, 421.

¹³*Parker v. Nightingale*, 88 Mass. 341, at 347.

¹⁴*Whitney v. Union Railway*, 77 Mass. 359, at 366.

¹⁵*Ladd v. Boston*, 151 Mass. 585 (1890), at 587, quoting 1835 deeds on Pemberton Square. The Pemberton Square restrictions are remarkable for having fully anticipated equitable easement doctrine. Not only did they spell out enforcement provisions, but they reserved these rights both for the subdivider and for “the owner of any lot interested in such breach.” See also *Tobey v. Moore*, 130 Mass. 448 (1881), which quotes 1850 deeds in Cambridge that include “restrictions and conditions”

Bigelow's decision had more lasting effect on the legal landscape than on the landscape of Boston. Commerce continued spreading around Parker and his neighbors. The First Church, whose Chauncy Place building was within the same city block as Hayward Place, decided in 1865 to find a new location because tall commercial structures around it had darkened its interior. Parker died, and several of his co-plaintiffs moved away.

Not only did change continue, but so also did acceptance of change. Justice Bigelow had used the case to advance his own judicial agenda, but for the residents of Hayward Place his proclamation that the restriction was "a permanent regulation" was apparently too strong medicine; they simply wanted Loeber's restaurant out. In 1869, just five years after the state's high court bestowed permanence upon them, Hayward Place's owners - including some of the original plaintiffs - petitioned the city of Boston to extend the street through so that it could become a business thoroughfare (fig. 4.1.). The following year they signed mutual releases of their restrictions,

it being deemed for the best interests of all concerned, that said condition and restriction should be waived, so that ... Hayward Place, and the houses thereon,

violation of which "shall not subject the said grantees or their heirs or assigns to a forfeiture of their estate in said land ..." (at 449).

¹⁶The leading case on the subject before *Parker v. Nightingale* had been *Gray v. Blanchard*, 25 Mass. 283 (1829), in which the Supreme Judicial Court enforced a 30-year condition by forfeiture of an estate after 25 years had elapsed, saying "We cannot help the folly of parties who consent to take estates upon onerous conditions, by converting conditions into covenants" (at 287). In 1847, the court voided a 24-year-old condition rather than enforce it by forfeiture; *Canal Bridge v. Methodist Religious Society*, 54 Mass. 335.

After *Parker*, the court in 1874 explicitly reinterpreted an 1807 "condition" as a restriction in order to enforce it in *Jeffries v. Jeffries*, 184 Mass. 184. The following year in *Episcopal City Mission v. Appleton*, 117 Mass. 326, it declared an 1847 condition to be a restriction, but refused to enforce it. By 1879, in *Keening v. Ayling*, 126 Mass. 404, it had blurred this boundary enough to refer to conditions as "conditions or restrictions." See also *Skinner v. Shepard*, 130 Mass. 180 (1881), an 1859 deed; *Cassidy v. Mason*, 171 Mass. 507 (1898), an 1847 subdivision.

The question received a final airing in 1900 in *Clapp v. Wilder*, 176 Mass. 332, in which a 4 to 3 majority declared that a condition imposed in 1867 was really a condition, in order to decide that it was too late to enforce it. In the dissenting opinion, Associate Justice Marcus Morton 3d explained what had become the settled practice: "conditions are construed as restrictions ... not because the courts have any special fondness for or leaning towards building schemes or plans of general improvement, but because it would be inequitable and unjust as against the owners of adjoining and neighboring estates to construe them otherwise, and to permit a party taking an estate with notice of a valid agreement respecting its mode of use and occupation towards such estates to avoid it" (at 344).

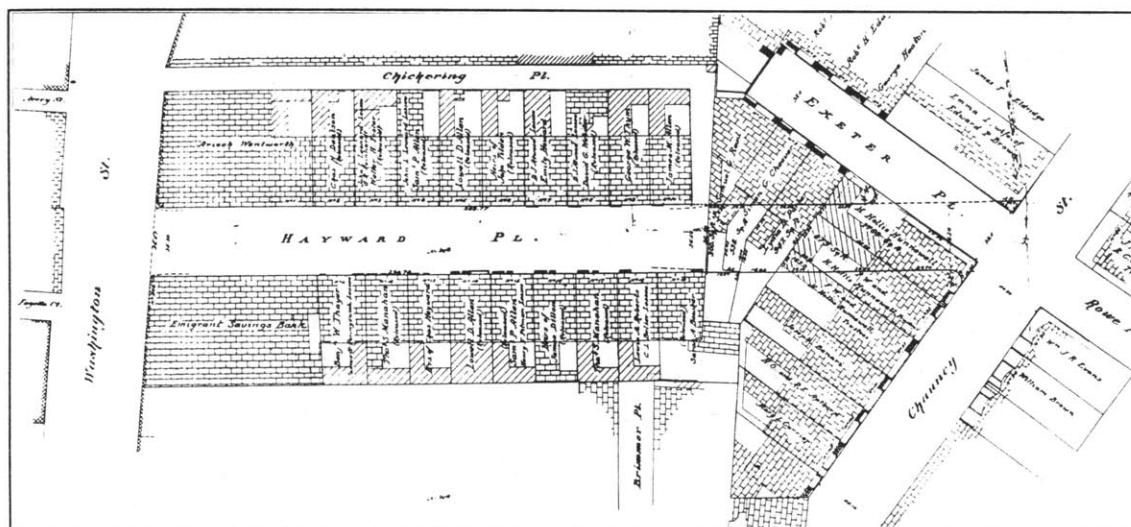


fig. 4.1. Hayward Place, plan accompanying second petition for street extension, 1871.

may be used for business purposes, we the undersigned, owners ... waive all of said conditions and restrictions, ... so that each several owner may use his or their respective estates entirely independent of any other owner ...¹⁷

Only one owner had begun taking advantage of his releases, when the Great Fire swept away all the new mercantile buildings to within a block of Hayward Place, and the flood of commercial refugees seeking new quarters swamped whatever remained of the little neighborhood.

Parker v. Nightingale launched in America the branch of property law variously known as deed restrictions or covenants, or equitable restrictions, equitable servitudes, or equitable easements. These different names imply different explanations for what these legal tools were, and in turn raised different questions about how courts should treat them. How effective they would be over time depended on how courts answered these questions. While the real estate industry and the public knew them as restrictions, the lawyers' term 'equitable easements' best embodies both what was new and what

¹⁷Suffolk County Land Records, Deed book 1034: 181.

was powerful about them. They were 'equitable' because judges ruling on them would act technically as courts of equity rather than courts of law, and could therefore order that violations be abated, rather than leaving the violations in place and merely awarding damages. They were 'easements' because they were relations between property rather than between people, and legal action would therefore be initiated not by subdividers, but by neighbors, who most cared about violations.

Equitable easements took a while to filter into practice, partly because courts took some time to work out the details of the new doctrine. On the Back Bay, a neighborhood whose deed restrictions probably produced more litigation than any other in the nation, residents wanted the protection promised by this tool and were too impatient to wait for the courts. In 1866 they secured an act from the legislature which accomplished the same result by empowering them to sue the Back Bay commissioners to enforce their restrictions; three years later the Supreme Judicial Court declared that owners in the Back Bay already had a right to enforce their restrictions, under the *Parker v. Nightingale* doctrine, even before passage of the act.¹⁸

In the emergence of new legal doctrines like that of equitable easements, the conservative momentum of the law is maintained by judges' extreme reluctance to explicitly reverse precedent, relying instead on finding or inventing rules to 'distinguish' cases from earlier decisions that they do not care to follow. In *Parker v. Nightingale*, Bigelow thus did not change the definition of deed restrictions, but discovered a new category which supposedly had existed all along: restrictions imposed for the mutual benefit of a group of owners, and therefore enforceable by any of them.¹⁹ By what rule would courts - and property owners - distinguish when a set of restrictions belonged to this new category? The *Parker* decision stressed the common "scheme or joint enterprise"²⁰ to which the restrictions gave expression. It was common reliance on a single agreed plan which related the Hayward Place proprietors

¹⁸*Massachusetts Acts & Resolves*, 1866, Acts ch. 264; *Linzee v. Mixer*, 101 Mass. 512.

¹⁹Fifty years later another case challenged the legal fiction that such restrictions had always existed. Lawyers for the Massachusetts Institute of Technology claimed that provisions in its 1861 deed from the Commonwealth could not have been meant as equitable easements because they did not exist until two years later when the *Parker* decision created them. The court observed that it was "not impressed" by this argument. *M.I.T. v. Boston Society of Natural History*, 218 Mass. 189 (1914), at 196.

²⁰*Parker v. Nightingale*, 88 Mass. 341, at 347.

to one another, so that they did not need to be contractually related in the customary way. The 'general plan,' as it was called in subsequent decisions which further elaborated the concept, was a reification of binding shared assumptions about a neighborhood's enduring form and character.

Courts were initially cautious in recognizing the existence of such plans. The kind of arbitrary control developers had often exercised while selling off a subdivision was not enough to make restrictions enforceable afterward by the purchasers.²¹ In the ten years after *Parker*, the court recognized plans conferring mutual enforceability only in the Back Bay and Beacon Hill.²² But as popular expectations grew that restrictions would be enforced, courts found such plans easier to discover. The restrictions imposed in any residential subdivision developed in a reasonably orderly and coherent manner were held to create equitable easements.²³ As the body of caselaw matured into a predictable set of rules, land developers could be sure to follow these rules in their deeds.²⁴ By 1895, the "natural" assumption, according to the Supreme Judicial Court, was that any restrictions were intended as part of a general plan;²⁵ the burden of proof had shifted in favor of creating and enforcing equitable easements.

An ultimate token of judicial acceptance of equitable easements, given their commercial context of American urban real estate development, was the determination that they were worth money. Justice Bigelow had suggested this possibility in the *Parker* decision where he discussed the economic aspects of restrictions and noted that purchasers might pay a premium for land because of them.²⁶ In 1890 the court moved beyond theoretical discussion to recognize the expectations of permanence under

²¹*Sharp v. Ropes*, 110 Mass. 381.

²²*Linzee v. Mixer*, 101 Mass. 512 (1869): Back Bay; *Jeffries v. Jeffries*, 117 Mass. 184 (1874): Beacon Hill.

²³*Sanborn v. Rice*, 129 Mass. 387 (1880): South End; *Tobey v. Moore*, 130 Mass. 448 (1881): Dana Estate, Cambridge; *Hano v. Bigelow*, 155 Mass. 341 (1892): Roseland Street, Cambridge, held to have a general plan despite several lots left unrestricted.

²⁴See, e.g., an 1886 deed by a private developer in the Back Bay, which recited that its restrictions were imposed in "furtherance of a general scheme for the improvement of the granted property and that the same were imposed to benefit the parcels conveyed," not merely to benefit the subdivider. *Evans v. Foss*, 194 Mass. 513 (1907), at 514-15.

²⁵*Locke v. Hale*, 165 Mass. 20 (1895), at 23, referring to an 1871 deed.

²⁶*Parker v. Nightingale*, 88 Mass. 341, at 348.

restrictions as a compensable taking under eminent domain, in the case of *Ladd v. Boston*. In 1886 the city took for its new courthouse site one side of Pemberton Square, on the east slope of Beacon Hill. When the square had been developed in 1835, it was “mutually agreed, in the strongest and most unmistakable terms,” according to the deeds, that certain areas “shall remain forever open,” including the front ten feet of the lots taken for the courthouse.²⁷ The city blocked Nathaniel W. Ladd’s view of the square by building to the front line of the lots, but claimed that equitable easements, unlike ordinary easements, were not property interests for which Ladd had any right to compensation. Wrong, wrote Justice Oliver Wendell Holmes, Jr., in the court’s opinion. “If the plaintiff has an easement, the city must pay for it.”²⁸

In some other jurisdictions, an economic framework governed interpretation of deed restrictions from the beginning, but that worked against securing permanence in the environment. The economic interpretation was less in keeping with a theory of restrictions as easements, which were ordinarily enforced through injunctions for specific performance, than as covenants, which implied remedy as with other broken contracts through the assessment of damages. But environmental permanence was a cultural goal rather than an economic one. Compensation “would be an unsuitable remedy” for an encroachment beyond the building line on Commonwealth Avenue, decided the Massachusetts high court in 1891. “The injury is not one easily measurable by money.”²⁹ By most contemporary economic thinking, restrictions distorted the land market and ultimately reduced the value of land, even if individuals might perversely prefer them for sentimental reasons. A judicial approach which looked to economic theory, therefore, often not only left restrictions unenforced, but also awarded no damages.

The confusion between easement and covenant doctrines was not resolved. In a recent study of deed restrictions in Illinois, Andrew J. King notes that “the courts often picked their theories to suit their purposes. ... [D]ecisions based on a judge’s preference for the social and economic implications of different kinds of land use

²⁷*Ladd v. Boston*, 151 Mass. 585.

²⁸*Ladd v. Boston*, 151 Mass. 585, at 588.

²⁹*Attorney General v. Algonquin Club*, 153 Mass. 447 (1891), at 454.

received an acceptable intellectual gloss.’³⁰ The ambivalence remained precisely because of the flexibility it allowed judges to provide theoretical support for decisions based on practical or sentimental considerations. And Massachusetts judges’ preference, where they recognized stable neighborhoods, was most often to perpetuate them.

Massachusetts courts quickly removed any explicit legal props from the culture of change. While early nineteenth-century caselaw favored “temporary restrictions ... for a limited number of years,”³¹ the *Whitney* and *Parker* decisions in the 1860s accepted permanent restrictions. A building line in Cambridge brought the question of permanence squarely before the court in 1881. “[T]hough unlimited in point of time,” wrote Chief Justice Horace Gray in what was afterward cited as the definitive national precedent on the question, “it is a valid restriction.”³²

Judges’ preference for permanence expressed itself in another way: though there was no theory to justify it, they were less inclined to enforce short-term restrictions than long. For example, an 1894 subdivision in the Jamaica Plain section of Boston included restrictions of only eight years duration, one of which limited construction to one- or two-family dwellings. The subdivider was still selling lots after five years had passed, and one of these latecomers built a ‘triple-decker’ three-family tenement. Though the court found it “very clear” that the building violated the restrictions, it awarded monetary damages rather than ordering compliance, “considering the short time the restrictions were to run.”³³

Justice John W. Hammond in 1911 summed up the judicial attitude toward restrictions in Massachusetts in a case concerning the new Back Bay, intended in his words as “a fine residential district ... not only for the present but also for the future”:³⁴

³⁰King, *Law and Land Use in Chicago*, 19.

³¹Gray v. *Blanchard*, 25 Mass. 283.

³²*Tobey v. Moore*, 130 Mass. 448, at 450; *Corpus Juris* 18:386.

³³*Ivarson v. Mulvey*, 179 Mass. 141, at 142-143. See also *Scollard v. Normile*, 181 Mass. 412 (1902), in which the restrictions’ short time to run (six years left of fifteen) contributed to a decision not to enforce them.

³⁴*Riverbank Improvement Co. v. Bancroft*, 209 Mass. 217 (1911), at 221.

If, in these days of noise and bulging, intrusive activities, one who has been in confusion all day desires to have a home where, awake or asleep, he can pass his hours in quiet and repose, there is no reason of public policy why, if he can get it, he should not have it.³⁵

Selling permanence

While lawyers and judges worked out what legal tools would be available for the private control of neighborhood change, thousands of large and small subdividers were at work exploring the market to figure out how to use these tools. Imposition of some form of land use and building line restrictions became common even in unpretentious subdivisions. "So common have agreements of this nature become," wrote a New York attorney in 1891, "that there is scarcely a title in those districts in our large cities which have been called into requisition for building purposes during the past thirty years in which they are not to be met with."³⁶ By the turn of the century they were prevalent enough in Boston that advertisements stated when they were offering "unrestricted land."³⁷ Restrictions spread nationwide even to places where neither courts nor custom had favored them previously.³⁸ Everywhere their use became more self-conscious; developers began to use restrictions aggressively as a marketing tool.

Early restrictions regulated buildings' construction and position on the land; restrictions on permissible uses gradually became common and eventually became the most important use of the tool. Regulation of siting and dimensions fit the early idea of applying restrictions to a single generation of building, though they could also be useful over the years to keep alterations and reconstruction in conformity with their

³⁵*Riverbank Improvement Co. v. Bancroft*, 209 Mass. 217, at 223.

³⁶Gordon, 'Building Restrictions,' 349.

³⁷*Boston Herald*, 1 Nov. 1902: 13.

³⁸"The whole subject of restrictions is still in its infancy. Outside England, Massachusetts, and New York, the cases are few ..." Charles I. Giddings, 'Restrictions Upon the Use of Land,' *Harvard Law Review* 5 (1892): 284. Restrictions were common in Illinois throughout the late nineteenth century, even though courts refused to enforce them there until 1902; King, *Law and Land Use in Chicago*, 52.

surroundings. Regulation of use inherently applied over a period of time, whether finite or permanent. The first generation of use restrictions focused on the activities to be excluded, accepting the nineteenth-century pattern of mixed land uses but seeking a benign mix. A particularly elaborate version imposed in Cambridge in 1850 forbade owners to build structures

which shall be used for the trade or calling of a butcher, currier, tanner, varnish-maker, ink-maker, tallow-chandler, soap-boiler, brewer, distiller, sugar-baker, dyer, tinman, working brazier, founder, smith, or brickmaker, or for any nauseous or offensive trade whatsoever; nor occupy such lots for these or any other purposes which shall tend to disturb the quiet or comfort of the neighborhood...³⁹

Soon mixed use itself began to seem a problem, and restrictions focused not on what would be prohibited but what would be allowed, at first simply by limiting land to residential use. Developers soon found that there was a market for unmixing uses even further by unmixing social classes. They restricted subdivisions to ensure a certain class of occupancy by limiting them to single-family houses, by setting a minimum construction cost for them, and in many parts of the country by limiting the race, religion, or ethnicity of their owners or occupants.⁴⁰ Almost as important as class were the visible signs of class, and provisions for design and landscaping, together with prohibitions of such activities as outdoor drying of clothes, made restrictions grow ever more elaborate.

³⁹*Tobey v. Moore*, 130 Mass. 448, at 449.

⁴⁰Clement E. Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases* (Berkeley, 1959), 8-11. Racially restrictive covenants were most common in midwestern and border states, and in California where they were directed against Asians (Helen Monchow, *The Use of Deed Restrictions in Subdivision Development* [Chicago, 1928], table III, 47-50). Patricia Burgess Stach, in a study of deed restrictions in Columbus, Ohio, found two subdivisions which "prohibited ownership or occupancy by 'foreign undesirables,' and a third singled out foreigners of the 'Dago class.'"; 'Real Estate Development and Urban Form: Roadblocks in the Path to Residential Exclusivity,' *Business History Review* 63 (Summer 1989): 356-383, 375. Sam Bass Warner, in his study of Boston between 1870 and 1900, found "no evidence, however, of the use of covenants against any racial, religious, or national group." *Streetcar Suburbs*, 122. They could be found in California at least as early as the 1890s, but they came into most widespread use between 1917, when the U.S. Supreme Court declared racial zoning unconstitutional in *Buchanan v. Warley* (245 U.S. 60) and 1948, when the court did likewise with racial covenants in *Shelley v. Kraemer* (334 U.S. 1). The use of deed covenants to enforce racial segregation was thus a relatively late use of a legal tool which had already developed to deal with issues of uniformity and permanence of environmental design.

In spite of this growing complexity, the 'restricted neighborhood' came to be treated as something of a commodity, a standardized product which could be traded without requiring further information. Real estate advertisements used the word "restricted" to telegraph an image of exclusivity and stability, while rarely bothering to elaborate on the substance - or duration - of the restrictions.⁴¹ Specifics were more common in advertisements for moderate rather than high-prestige developments, addressing market resistance among people who might fear their intentions would be restricted against. A subdivision on Devon Street in Dorchester was advertised in 1897 as offering "small, choice building lots ... restricted to one or two family houses";⁴² the important message was that duplexes were not prohibited. For elite projects, on the other hand, advertising copywriters could devote themselves to rhapsodic descriptions of picturesque settings and use a phrase such as "carefully restricted" to say all they needed.⁴³ The Norton Estate in Cambridge near Harvard was designed in 1887 by Charles Eliot, an Olmsted apprentice and son of Harvard College president Charles William Eliot, and included restrictions elaborate for the time. They permitted single-family dwellings only, to cost at least \$4500 above the foundations, specifying large setbacks not only for front yards but also at the sides and rear of lots, and regulating the heights of fences. Advertisements for the lots expressed all this as a "carefully protected neighborhood."⁴⁴

⁴¹Alexander S. Taylor discussed the substance of typical restrictions in 'Districting Through Private Effort,' 'Districting Through Private Effort,' *Proceedings of the Eighth National Conference on City Planning, Cleveland, June 5-7, 1916* (New York, 1916), 180-82. See advertisements in *Boston Evening Transcript*, April 18, 1896: 11, (Babcock Hill, Brookline); October 2, 1897: 23, (Wellington Hill); May 3, 1924: VI/3, (Winchester, "in one of the finest restricted residential streets"). My favorite is an ad for lots in Chestnut Hill: "Fine location. Restrictions." *Boston Evening Transcript*, May 3, 1924: VI/2.

⁴²*Boston Evening Transcript*, September 18, 1897: 23. See also auction advertisement for Hunnewell Hill Land Co., in Newton, "single houses to cost not less than \$4000 to build, and two-family houses to cost not less than \$6000 to build - all to have a twenty foot setback from line of street." *Boston Sunday Herald*, June 28, 1903: 23.

⁴³*Boston Evening Transcript*, April 18, 1896: 5 (Battery Heights, Cushing Hill, Hull). See also *Boston Evening Transcript*, April 3, 1915: IV/13: 'fully restricted' (Brookline); *Boston Evening Transcript*, April 3, 1915: IV/12: 'properly restricted' (Allindale Homesteads, Dedham).

⁴⁴*Boston Evening Transcript*, January 16, 1896: 5; Antoinette F. Downing, Elisabeth MacDougall, Eleanor Pearson, *Survey of Architectural History in Cambridge, Report Two: Mid-Cambridge* (Cambridge, Mass., 1967), 30. The restrictions ran for only twenty years.

“In some localities,” found Helen C. Monchow in a 1929 study of deed restriction practice, “subdividers literally sell the restrictions themselves.”⁴⁵ “Absolute protection,” offered one ad for Boston suburban property.⁴⁶ Many subdivisions distributed pamphlet explanations of their restrictions, written partly as aids to their administration and partly as marketing tools.

Subdividers found that buyers responded not only to the substance of restrictions, but to their duration. “The making or unmaking of value in a community,” said longtime Cleveland developer Alexander S. Taylor in 1916, “lies in proper restriction of land, and the more rigid and fixed they are, the safer and surer is the land owner’s investment.”⁴⁷ Monchow concluded that “the more highly developed the subdivision, the longer the terms of the restrictions.”⁴⁸

This emphasis on duration appeared in marketing. “The restrictions are such as will always keep them strictly first-class estates,” assured one Boston real estate ad in 1896.⁴⁹ “A great opportunity to build in a permanent residential restricted neighborhood,” said another almost thirty years later.⁵⁰ Outside Cleveland, the Van Sweringen brothers developed Shaker Heights in the ‘teens and ‘twenties with restrictions running to the year 2026, more than a century. “[N]o matter what changes time may bring around it,” said one of their advertisements, “no matter what waves of commercialism may beat upon its borders, Shaker Village is secure, its homes and gardens are in peaceful surroundings, serene and protected for all time.”⁵¹ Another of their brochures began with the question, “What is Shaker Heights Village?” and answered, “A permanent, strictly restricted, exclusively residential municipality, carefully planned and being developed for the benefit of those desiring to purchase homes with the certain knowledge that no undesirable elements of any kind shall ever

⁴⁵Monchow, *Deed Restrictions*, 71.

⁴⁶*Boston Evening Transcript*, April 3, 1915: II/5.

⁴⁷Taylor, ‘Districting Through Private Effort,’ 178.

⁴⁸Monchow, *Deed Restrictions*, 57.

⁴⁹Advertisement: ‘Jamaica Plain,’ *Boston Evening Transcript*, April 28, 1896: 11,.

⁵⁰Advertisement: ‘Parkway Land,’ *Boston Evening Transcript*, May 3, 1924: VI/4,.

⁵¹Quoted in Eugene Rachlis and John E. Marqusee, *The Land Lords* (New York, 1963), 72.

be allowed to intrude.”⁵² Such ostentatiously long duration - and a perpetual restriction, if less ostentatious, was longer still - made no sense in terms of rational planning or economics, but developers looked beyond beyond economic rationales to the market. They were selling something more than economic accordance between building and location; they were selling permanence.

Permanence was most satisfying if it extended backward as well as forward in time. The best developers combined an assured future provided by restrictions with a visible past which offered a patina of environmental continuity to brand-new neighborhoods. J. C. Nichols, developer of Kansas City's Country Club District, explained that good subdividers practised “preservation ... of the interest and charm, the historic feeling, the peculiar individuality of property.”⁵³ Near Boston, this combination of preservation with prospective permanence was “The Vision” in a brochure for the new deed-restricted community of Westover:

Here is a compact area of nearly a thousand acres of virgin territory of striking natural beauty, which has been preserved for a notable undertaking - *the planning and building of a complete village of small estates, where every home shall have a perfect setting and a protected privacy, in harmonious and artistic surroundings, which shall grow more beautiful through succeeding generations.*⁵⁴

Other developers chose to provide this appearance of continuity not with any actual historic features of their sites, but through design controls requiring traditional styles of architecture.

By the turn of the century, as restrictions became more common, buyers (especially in expensive subdivisions) became more sophisticated in looking for restrictions that not only sounded good, but would work well in practice. Developers continually refined their deeds in response to experience. The result was increasingly specific and enforceable restrictions.

⁵²Green-Cadwallader-Long, *Questions and Answers Regarding Shaker Heights Village* (Cleveland, n.d.)

⁵³Nichols, 'Financial Effect of Good Planning,' 94.

⁵⁴'Westover: A New England Village of the Twentieth Century' (N.p., n.d.), 5. Italics original.

This happened in part through standardization. The Olmsted firm offered its clients a printed form of restrictions, which local lawyers could adapt to their own jurisdictions.⁵⁵ The restriction brochures which developers distributed as a marketing tool served also as prototypes from which others could copy, and helped spread details of practice beyond local communities of real estate operators.⁵⁶

Enforceability was aided by more careful legal draftsmanship. Language became increasingly specific, so that restrictions with the same substantive intentions were expressed in ever more elaborate terms. The first Back Bay deeds allowed "steps, windows, porticos, and other usual projections" beyond the building line, but after six years of practice the commissioners drafted a new form of deed that specified detailed dimensions for these projections.⁵⁷ Elaborate language appeared for defining single-family use.⁵⁸ These simple measures recognized that restrictions might in fact be invoked after a long period of time, when the original parties' intentions would otherwise be difficult to ascertain.

⁵⁵John C. Olmsted to W. M. Elliott, President, Licton Mineral Springs Co., Seattle, August 2, 1907, 8, box B232, Olmsted Associates papers, Library of Congress Manuscript Division.

⁵⁶Roland Park's first restrictions were modelled on those of Llewellyn Park, New Jersey, and Tuxedo Park, New York; Schalck, 'Planning Roland Park,' 427-28.

⁵⁷*Linzee v. Mixer*, 101 Mass. 512, at 514,,522-23. The new deeds provided that "steps, windows, porticos and other usual projections appurtenant to said front wall are to be allowed in this reserved space of twenty feet, subject to the following limitations, namely, first, that no projection of any kind (other than door-steps and balustrades connected therewith, and also cornices at the roof of the building) will be allowed to extend more than five feet from said front wall into said space; and second, that no projection in the nature of a bay-window, circular front or octagon front, with the foundation wall sustaining the same, (such foundation wall being a projection of front wall,) will be allowed, unless any horizontal section of such projection would fall within the external lines of a trapezoid, whose base upon the rear line of the aforesaid space does not exceed seven-tenths of the whole front of the building, nor exceed eighteen feet in any case, and whose side lines make an angle of forty-five degrees with the base."

"The commissioners always considered that this was a fair construction of the restrictions and limitations of the former deed," said one of them, Franklin Haven, "and, on October 26, 1865, voted accordingly." (at 523).

⁵⁸Monchow, *Deed Restrictions*, 32-33. The reason for this was cases like *Stone v. Pillsbury*, 167 Mass. 332 (1897), in which the Supreme Judicial Court allowed an alcoholism hospital in an 1887 Roxbury subdivision restricted to single-family construction. "*Single dwelling-house*," said the court, was a technical real estate term which did not bind the owners because they were not real estate professionals.

One of the most important of intentions was who could enforce restrictions. At first, enforcement clauses aimed at ensuring that the restrictions would be interpreted as equitable easements, not mere personal agreements with the subdivider. Later J. C. Nichols expanded the scope of deed restrictions to something akin to public zoning, by writing into his deeds enforceability even by people outside his subdivisions, in return for reciprocal rights in surrounding developments.⁵⁹

Real long-term enforceability could best be accomplished through self-perpetuating groups to administer restrictions. Such groups had existed since the early nineteenth century to care for the common spaces of urban subdivisions such as Louisburg Square on Beacon Hill, Gramercy Park in New York, and the private streets of St. Louis. After the turn of the century, large-scale developers set up community organizations which were also charged with approving construction and alterations within the development. In its fully-articulated form this method involved a homeowners' association to levy fees, see to maintenance and services, and enforce restrictions, and a separate architectural board of review or 'art jury' - sometimes composed of paid professionals - to determine the propriety of proposed improvements.⁶⁰ As an enforcement agency the homeowners' association was a hybrid, combining the institutional identity of a developer with the permanence and community self-interest of neighbors. "The theory," wrote Nichols, "is that these directors have a vital interest in the continuance of the established character of the development, they are elected by vote of their neighbors and thus represent the lotowners and afford a sound medium for perpetuating the ideals and standards of the development."⁶¹ In such developments deed covenants also took on the new role of subjecting owners to the private

⁵⁹J. C. Nichols, 'Developer's View of Deed Restrictions,' 133.

⁶⁰Monchow, *Deed Restrictions*, 65-71; Elvon Musick, 'Legal Authority for Architectural Control,' *Planning Problems of Town, City and Region: Papers and Discussions at the Nineteenth National Conference on City Planning* (Philadelphia, 1927), 269-83. One reason for increased use of this mechanism was a failure of minimum-cost provisions in long-term restrictions because "with the cyclical economic changes and improvements in home building, costs varied from time to time, thus tending to defeat the purpose of the restriction as it related to the figure originally proposed" (Laronge, 'Subdivider of Today and Tomorrow,' 428).

⁶¹Nichols, 'Developer's View of Deed Restrictions,' 138.

assessments that ensured resources for enforcement and reinforced the institutional permanence of these private quasi-governments.⁶²

Too much permanence?

The evolution of deed restrictions was not, however, a triumphant march toward ever-greater permanence. A list of actual deed restrictions arranged by the date they were imposed, for example, does not appear to show any trend toward longer specified durations.⁶³ This is inconclusive, however, for several reasons. First, restrictions were applied to an increasing percentage of new subdivisions, so that comparisons from one period to another can end up comparing different classes of development. Second, courts in many jurisdictions outside Massachusetts refused to honor permanent covenants, and developers everywhere responded by switching to finite durations rather than perpetual ones. Other kinds of evidence point to a growing embrace of long-term if not permanent environmental stability: first, the increasing use of restrictions, and second, the increasing care taken to ensure that these restrictions remained unambiguously enforceable after many years.

What is clear in this evolution is that a steadily growing amount of attention was paid to issues of duration and permanence, and that this attention was directed toward

⁶²E.g., Roland Park Co., *Deed and Agreement ... Guilford* (Baltimore, 1913), 13-14, covers care of common areas and provision of services, and also "For expenses incident to the examination and approval of plans as herein provided, and to the enforcement of the restrictions, conditions, covenants, easements, charges and agreements herein contained. (14). Nichols, 'Developer's View of Deed Restrictions,' 139; Charles S. Ascher, 'Reflections on the Art of Administering Deed Restrictions,' *Journal of Land and Public Utility Economics* 8 (1932): 376-77.

⁶³Monchow attempted such an arrangement and concluded there was no discernible trend (*Deed Restrictions*, 56-57). See chart in H. V. Hubbell, 'Land Subdivision Restrictions,' *Landscape Architecture*, October, 1925: 53-54, which shows all restrictions drawn up by the Olmsted firms to 1925, and see Table V in Monchow, *Deed Restrictions*, 59-60. I am indebted to Patricia Burgess Stach for access to her raw data on restrictions in Columbus, Ohio, which further reinforce these conclusions. No systematic sampling of Boston restrictions has been attempted for this study, and this discussion is based instead on examination of restrictions described in Supreme Judicial Court decisions and other sources.

devising practical mechanisms for controlling environmental change. When participants in this process looked around at what they had accomplished, however, many had second thoughts about the practicality of environmental permanence.

How could property owners tell which restrictions were permanent? *Parker v. Nightingale* appeared to breathe eternal life into many old restrictions, most of which were probably never intended to be perpetual. Their duration like their other terms was to be divined by consulting the intentions of their authors, but these people were no longer available to clear up the question, and courts had a way of consulting their own idiosyncratic preferences instead. On these unpredictable results could depend most of the value of a piece of property. For example, three lots on Beacon Hill's Mount Vernon Street had been conveyed between 1806 and 1808 with the provision that stables then standing on them should "never" be raised above their height of thirteen feet. Did the word 'never' create a permanent restriction limiting any future buildings on this land to the same height? It took two separate suits before the Supreme Judicial Court in 1874 and 1875 to establish that buildings there would indeed be limited to a single story forever.⁶⁴

Once restrictions were in force, how could they be ended? First, by their own internal mechanisms, the simplest of which was a finite duration, or as later became more common, a specified expiration date. Restrictions unlimited in duration might specify some predetermined procedure for modifying or abrogating them, such as a majority vote of lot owners. Few early deeds contained any of these internal mechanisms. Second, restrictions could be voluntarily terminated by uniting the restricted and benefitted properties in a new legal instrument, as the Hayward Place owners had done. If this was accomplished by assembling all the affected lots back into a single ownership, the restrictions were said to be extinguished; if it was accomplished by an agreement among several different owners, the restrictions - or any subset of them - were said to be released. It was the existence of these mechanisms, external to the provisions of the deed itself and available at any time, that kept permanent restrictions from violating the rule against perpetuities. Finally, where differences among owners prevented either reassembly or release, restrictions could still be terminated by the

⁶⁴*Jeffries v. Jeffries*, 117 Mass. 184, at 184-185.

action of a court. If the restriction was properly drawn, and ran with the land - if, in other words, it was in force to begin with - a court might set it aside for one of two reasons. Either a failure to enforce the restrictions, or a change in the neighborhood on which they operated, could in the judgement of a court render their enforcement inequitable.⁶⁵

Permanent restrictions without internal provisions for modification were durable indeed; they could be altered only by a court or by unanimous action among all the owners in a subdivision. For one large hotel proposed in 1896 in the new Back Bay, the *Boston Globe* gave special credit to the legal team which assembled the land and secured the releases necessary to build it. "This work ... was in itself tremendous."⁶⁶

At the same time that real estate dealers were learning to sell permanence, the increasing patchwork of permanent conditions and restrictions led to a growing unease among the real estate conveyancers and lawyers who dealt with them professionally. In 1886 a group of them petitioned the legislature to reform this system of land regulation; no real estate brokers joined in the petition, which complained that

many real estate titles especially in Boston and vicinity are incumbered with burdensome and vexatious conditions and restrictions, in some cases exposing valuable estates to the risk of forfeiture, on grounds comparatively insignificant; that those incumbrances frequently prevent the improvement of such real estate and subject the persons holding such estates to great trouble, annoyance and expense and that no adequate legal remedies exist for these evils.⁶⁷

The petitioners asked for "laws to limit and regulate the power of imposing such conditions and restrictions upon real estate and to define the remedies & rights of all persons interested in such conditions and restrictions"

The specific complaints make it clear that these professional drafters and examiners of deeds were mainly concerned about conditions, with their potentially drastic

⁶⁵see Monchow, *Deed Restrictions*, 24, for a version of this list organized somewhat differently.

⁶⁶*Boston Globe*, February 2, 1896: 16.

⁶⁷Eighteen signatures appear on the petition; of the seventeen legible names nine are listed in the 1886 *Boston City Directory* as lawyers, two as conveyancers, and one as both. Petition, presented by Mr. Bailey of Everett, February 3, 1886, Massachusetts State Archives, legislative documents, Acts 1887, ch. 418.

consequences for land titles, but they also included restrictions in their petition, and these people if anyone understood the distinction. The legislator who presented the petition also presented a bill that focused on conditions; after a specified deadline most of them would be treated as restrictions, and they could henceforth be created only by strictly defined language. A final section of the bill dealt with restrictions and their duration:

No restriction on the mode of use of real estate, ... shall be hereafter created to be in force for more than twenty years from the date of the deed ... unless the time during which such restrictions shall be in force is expressly set forth ...⁶⁸

The judiciary committee recommended against the bill, but the legislature kept it alive by referring it to the next year's session. The committee in 1887 revived only the section limiting the duration of restrictions and increased the default term to thirty years; the legislature enacted it. From then on, new restrictions with expiration dates could run as long as anyone liked, but if they were "unlimited as to time," they would "be construed" as limited to thirty years.⁶⁹ In Massachusetts, restrictions on land use could no longer be permanent.

It was not clear in practice exactly what was to be limited to thirty years. Did 'use of real estate' refer only to, for example, a limitation to single-family dwellings, or was it to be understood in a broader sense as including location of buildings, their height - in effect the whole substantive content of restrictions? Developers already distinguished between dimensional and use restrictions and commonly set different durations for them. The city of Boston in all its South End deeds had limited buildings to residential use for twenty years, and also imposed dimensional and construction requirements which were not limited in duration. "After the twenty years had passed the scheme must have been intended to have regard to some possible occupation," wrote Justice William

⁶⁸1886 House bill 406.

⁶⁹*Massachusetts Acts & Resolves*, 1887, Acts ch. 418. The complete text of the act was: "When the title or use of real estate is affected by conditions or restrictions unlimited as to time, such conditions or restrictions shall be construed as being limited to the term of thirty years from the date of the deed or other instrument or the date of the probating of the will creating such conditions or restrictions, except only in cases of gifts or devises for public, charitable, or religious purposes. This act shall not apply to existing conditions or restrictions or to such as may be contained in a deed, gift or grant of the Commonwealth, nor shall it operate in any case to defeat restrictions for a term of years certain."

C. Loring in 1910. He speculated that the dimensional requirements themselves might have been intended to control uses, in effect limiting them to ones compatible with a residential neighborhood. "[W]hatever may have been the scheme which was to exist after the twenty year period as to the use to be made of the buildings had expired, I do not see why that scheme cannot be maintained."⁷⁰ A restriction on the height of houses written after the 1887 act was deemed perpetual in an 1897 decision, supporting the idea that the limit on duration applied only to restrictions on use.⁷¹

The act caused another kind of confusion by specifying a default term which was misunderstood as a maximum by some people, apparently including Associate Justice Marcus P. Knowlton of the Supreme Judicial Court. "It is not for the interest of the community," wrote Knowlton in a 1903 decision,

nor is it the policy of the Commonwealth, that, as conditions greatly change in our large cities, restrictions put upon land in reference to the quiet of residential streets should continue, when the neighborhood is entirely given up to business, unless they are so expressed as plainly to be binding. ... Such restrictions created since the enactment of the St. 1887, c. 418, ... cannot remain in force longer than thirty years.⁷²

The rules would not be determined definitively until some time after 1917, when restrictions imposed after the 1887 act had been around for thirty years or more. Given these confusions, subdividers might have felt discouraged from writing restrictions for very long terms. Nevertheless, some did impose then for finite terms considerably longer than thirty years, and they were ultimately upheld.⁷³ Others continued writing

⁷⁰*Stewart v. Finkelstone*, 206 Mass. 28 (1910), at 32. Justice Loring favored environmental permanence in other forms, as well. He had worked to save the Bulfinch State House, and shortly after this decision he would join the new Society for the Preservation of New England Antiquities as a life member (see chapter 5).

See also the South End deed in *Hamlen v. Werner*, 144 Mass. 396, a decision handed down by the Supreme Judicial Court on March 7, 1887, during the month the Committee on Judiciary was considering the bill to limit restriction terms.

⁷¹*Brown v. O'Brien*, 168 Mass. 484 (1897). The decision does not mention Acts 1887, ch. 418, and was based on other grounds.

⁷²*Baptist Social Union v. Boston University*, 183 Mass. 202, at 205.

⁷³*Jenney v. Hynes*, 282 Mass. 182 (1933), which enforced a thirty-seven year old use restriction imposed in the new Back Bay in 1896, terminating in 1950.

perpetual restrictions on use, which though unenforceable offered their customers the illusion of permanence.⁷⁴

Since the 1887 act allowed finite terms no matter how long, it permitted virtual permanence, and the real target of its prohibition was unintentional permanence. No longer would property owners and courts have to wonder whether a subdivider's omission of an expiration date was a product of deliberation or of sloppiness. The act applied only to new restrictions, however, and thus did not address the early-nineteenth century deeds which most often presented these problems. Two years later the legislature produced a companion act which dealt with conditions and restrictions already on the books. It simply allowed any person interested in deed covenants more than thirty years old to bring action in the Supreme Judicial Court "for the purpose of determining the validity or defining the nature and extent of such possible condition, or other incumbrance."⁷⁵ Wary of unconstitutional interference with private contracts, the legislators offered the court none of the substantive guidelines rejected in the 1886 bill. It was a purely procedural reform which would reduce the contentiousness and waste of private land use regulation by resolving doubts about restrictions before rather than after they were violated. The court would continue to act as it had, in theory interpreting the intentions of the original parties to the agreements, and in practice routinely changing 'conditions' to restrictions.

The legislature, in creating a procedure for interpreting dubious language in old deeds, implicitly acknowledged changing standards of permanence, in effect admitting that the Hayward deeds, and others like them, did not necessarily mean what Justice Bigelow had said they meant. Eventually the act would also help resolve ambiguities in the intentions of its contemporaries, as a mechanism for bringing post-1887 deeds into court to see whether they fell within the prohibition of perpetual restrictions. Perhaps most important, it would provide a non-adversarial way of determining where restrictions' intentions had been fatally undermined by neighborhood change.

⁷⁴E.g., the 1900 'Montvale' subdivision in Worcester, limited to one- or two-family houses. *Allen v. Barrett*, 213 Mass. 36 (1912).

⁷⁵*Massachusetts Acts & Resolves*, 1889, Acts ch. 442, §1.

The emergence of the judicial doctrine of 'neighborhood change' demonstrates that the intentions which fundamentally determined environmental permanence were not those of the generation which wrote restrictions into a deed, but those of the generation which enforced or failed to enforce them. Courts inevitably had a great deal of discretion in enforcement, affording a flexibility which could defeat environmental permanence and yet was necessary for truly achieving it. For deed restrictions really to ensure permanence, they had to be taken literally when they said 'no' and literally when they said 'forever,' yet their interpretation had to be supple enough to meet new problems as they arose. Judges were most likely to enforce restrictions when someone was violating clear neighborhood character, and were less likely to enforce them when a neighborhood was changing. In other words, of the two fundamental purposes of deed restrictions, they would use their flexibility in enforcement more for uniformity than for stability.

The leading case on neighborhood change, for Massachusetts and for the nation, was *Jackson v. Stevenson*, decided in 1892. In an 1853 residential subdivision at Boston's Park Square, the city imposed restrictions which, among other things, defined rear yards which were not to be covered by buildings. Nearly forty years later, as the area was being absorbed into the expanding downtown, one owner sought to enforce the restriction to keep another from expanding his store. "It is evident that the purpose of the restrictions as a whole was to make the locality a suitable one for residences;" said the court,

and that, owing to the general growth of the city, and the present use of the whole neighborhood for business, this purpose can no longer be accomplished. If all the restrictions imposed in the deeds should be rigidly enforced, it would not restore to the locality its residential character, but would merely lessen the value of every lot for business purposes. It would be oppressive and inequitable to give effect to the restrictions; and since the changed condition of the locality has resulted from other causes than their breach, to enforce them in this instance could have no other effect than to harass and injure the defendant, without effecting the purpose for which the restrictions were originally made.⁷⁶

This passage from *Jackson v. Stevenson* established a two-part test that courts could apply to determine whether restrictions should be enforced despite changes in a

⁷⁶*Jackson v. Stevenson*, 156 Mass. 496 (1892), at 502.

neighborhood. First, had the change been caused by violations of the restriction? Second, would enforcing the restriction restore the district to its intended character - or in the court's words, would it accomplish "the purpose for which the restrictions were originally made"? Park Square failed both tests, so the court declined to enforce the restriction there and instead called for an assessment of the plaintiff's monetary damages, if any.

Changing neighborhoods gave practical importance to the theoretical question whether restrictions were easements to be enforced by injunction or contracts to be enforced by award of monetary damages. Massachusetts early favored the easement theory which eventually dominated through much of the United States, and treated damages as a lesser remedy to be used only when, as in *Jackson v. Stevenson*, enforcement was inappropriate. In other jurisdictions, however, contract theory dominated at first. The problem, as King points out in his study of restrictions in Illinois, was that "[a] change in neighborhood usually indicated that business or multi-family use now predominated. Normally land values would rise, and the plaintiff could show no recoverable monetary loss."⁷⁷ Strictly economic theories of land use, which did not take into account neighborhood character independent of its financial value, could not account for complaints about neighborhood change and could do little to answer them.

A string of decisions refined the neighborhood change doctrine put forth in *Jackson v. Stevenson*, defining the extent of changes, both geographical and substantive, that would render restrictions invalid, but the mere existence of the doctrine was a blow to the pursuit of permanence. In practical terms the discretion exercised by courts made deed restrictions seem unreliable as a long-term tool for controlling land use and built form. "We all know what these private restrictions, as a rule, are worth," said city planning expert Lawrence Veiller in 1916. "'There ain't no such animal'" as a long-term restriction, he said,

because we all know that 25, 50, or 75 years after the development has been made, conditions change and the courts step in, and the man who placed the restrictions

⁷⁷King, *Law and Land Use in Chicago*, 50.

being dead, the courts as a rule say, 'We will not maintain these restrictions any longer.'⁷⁸

But many developers continued selling permanence, and in order to do so in this more skeptical judicial environment they had to modify their products. One response to the insistence on finite terms was to write term restrictions which included procedures for their own renewal by some specified majority of owners, easing the otherwise almost insurmountable obstacle of achieving unanimity among them. In a further innovation, developers offered de facto permanence by making the restrictions self-renewing, shifting the burden of action from those who would like to continue them to those who wanted to change them. By 1929, said Helen Monchow, this was the most common form of restriction.⁷⁹ J. C. Nichols claimed to have used it first in the Country Club district of Kansas City:

The restrictions automatically extend themselves unless the owners of a majority of the front feet execute and record a change or abandonment of the restrictions five years before the respective expiration dates. ... In the Country Club District the presumption in favor of the established character of the development for home purposes has prevailed and, if its character is to be changed, the affirmative vote of those wishing the change is required. ... With the greater protection to property through such automatic extension of restrictions, ... the original restriction period need not be so long. Perhaps 25- to 30-year periods are long enough to give reasonable assurance and yet short enough to permit readjustment of restrictions to changing modes of life.⁸⁰

'Changing modes of life' challenged environmental permanence at least as much as did changing neighborhoods. Norms as well as neighborhoods evolved over time and could leave restrictions behind. The deeper intent of restrictions - maintaining a certain neighborhood character - often could not be reduced to permanent objective rules, and attempts to do so could skew a neighborhood's development in unwelcome ways. Restrictions had to be interpreted flexibly to follow their intent rather than their letter when tastes changed, as in the growing suburban predilection for the picturesque and consequent chafing of the uniform setback lines enshrined in many deed restrictions, or

⁷⁸Lawrence Veiller, 'Districting by Municipal Regulation,' *Proceedings of the Eighth National Conference on City Planning, Cleveland, June 5-7, 1916* (New York, 1916), 149.

⁷⁹Monchow, *Deed Restrictions*, 61.

when there arose whole unanticipated categories of land use, such as garages. "If we had made a restriction a few years ago against garages or outbuildings, we would be up against it to-day," said J. C. Nichols in 1916. "It may be that in ten or fifteen years we might want housing for aeroplanes."⁸¹ The Massachusetts Supreme Judicial Court grappled with garages in a suit filed in 1907 in the new Back Bay, where restrictions written in 1890 prohibited stables but allowed other "usual outbuildings." Well, said the court after four years, a garage is not a stable, but then again it certainly was not in 1890 a usual outbuilding, either.⁸² To property owners who needed to know whether they could build garages, such deliberation was alarmingly academic and time-consuming.

By inserting internal provisions for modifying restrictions, developers acknowledged their potential obsolescence, and aimed for longevity through flexibility. These provisions put the power of amendment into the hands of owners in an attempt to keep it out of the hands of courts. One aim of this flexibility was to create a judicial presumption of validity whenever restrictions had *not* been altered. The restrictions in Palos Verdes, outside Los Angeles, included a complex system of different requirements for approving modifications, depending on the area they would affect and on whether the provision was deemed 'basic.'⁸³

Where deed restrictions reserved some discretionary decision-making powers, the process of administering the restrictions could offer even more flexibility than the process of amending them. Community design committees were a built-in mechanism for dealing both with unanticipated change in circumstances, and with evolving neighborhood standards. Monchow in 1929 found that requiring review of all building plans, rather than mere conformity to pre-set objective standards, was "comparatively

⁸⁰Nichols, 'Developer's View of Deed Restrictions,' 135. Nichols had earlier discussed his self-renewing restrictions at the Eighth National Conference on City Planning in 1916; Nichols, 'Financial Effect of Good Planning,' discussion, 109.

⁸¹Nichols, 'Financial Effect of Good Planning,' discussion, 109.

⁸²*Riverbank Improvement Company v. Bancroft*, 209 Mass. 217.

⁸³Musick, 'Legal Authority for Architectural Control,' 278.

new and ... its use is increasing."⁸⁴ Attorney Charles S. Ascher in 1932 wrote 'Reflections on the Art of Administering Deed Restrictions,' defining his art as "the free rendering of the black and white of legal documents in the pastel shades of human conduct and desire."⁸⁵ Whatever mechanism intermediated between legal documents and human desire, it was to "perform the vital function of making the plan serve the people for whom it was intended but who could not be consulted in its preparation, instead of making the residents slaves to the preconceived plan."⁸⁶

This growing appreciation for flexibility was a second phase in the reaction against the culture of change. Now people sought not permanence in the environment, but control over it. They explored the tool they had invented to prevent change and discovered that it was even more powerful when used to shape change. Instead of exerting control only once by defining a permanently fixed state, control could be exercised over and over.

When this new philosophy was applied by developers, they sometimes retained more control for themselves than they allowed to their customers. This was a partial return to the original system that preceded equitable easements. For example, Frederick Law Olmsted, Jr., advised Baltimore's Roland Park Company to plat "sketchily and only as needed" for the sake of flexibility, and the company's deeds retained the right to modify restrictions on land it still held.⁸⁷ Subdivision marketing would allow this to work only when, as in Roland Park, the integrity of the developer was above question and the flexibility was clearly being used only for adjusting designs within their original

⁸⁴Monchow, *Deed Restrictions*, 35; see also Nichols, 'Developer's View of Deed Restrictions,' 137. For an example in Springfield and Longmeadow, Massachusetts, see *Parsons v. Duryea*, 261 Mass. 314 (1927). As of 1868, by contrast, Frederick Law Olmsted thought "We cannot judiciously attempt to control the form of the houses which men shall build" in Riverside; "we can only, at most, take care that if they build very ugly and inappropriate houses, they shall not be allowed to force them disagreeably upon our attention," through setback and landscaping requirements. Olmsted, 'Proposed Suburban Village at Riverside,' 301-02.

⁸⁵Ascher, 'Art of Administering Deed Restrictions,' 375.

⁸⁶Ascher, 'Art of Administering Deed Restrictions,' 376.

⁸⁷Olmsted to Bouton, December 1, 1900, quoted in Schalck, 'Planning Roland Park,' 425; Roland Park Co., *Deed and Agreement ... Guilford*, 9-10. Similarly, 1920 Merrymount Co. deeds cited in *Abbott v. Siegman*, 263 Mass. 585 (1928).

intentions. Monchow found such provisions common, usually tempered by definite limits on the developer's prerogatives, or requirements for consent, to avoid producing "a feeling of insecurity" on the part of residents, the very feeling that restrictions existed to alleviate.⁸⁸

An even stronger retention of control was provision for enforcement by the developer but not by neighbors. By the 1890s, the Riverbank Improvement Company in its Beacon Street subdivisions included restrictions limiting owners' enforcement rights to their own block, while the company could enforce them throughout the district. A more extreme version appeared a few years later in Newton Center, written by a subdivision syndicate which included one judge from the Superior Court and one from the Supreme Judicial Court. The latter tribunal later wrote with glee of these part-time developers that "[a]ll had a wholesome fear of equitable restrictions, and a desire to profit by them."⁸⁹ These legal savants broke all the rules for creating equitable easements, varying both the substance and the duration of their restrictions from one lot to the next. Clearly this was deliberate, said the court; they "intended to retain a power in themselves to change their system of development; and, while restricting the several lots as they were granted, they intended to avoid granting power to the purchasers to prevent the imposition of different restrictions."⁹⁰

The most important effect of deed restrictions was to challenge real estate orthodoxy, undermining the culture of change. Neighborhoods could indeed remain stable, and speculation on continual land use conversion was not the only way to make money in real estate. "Through the use of private deed restrictions," says real estate historian Marc Weiss, "residential subdividers had already market-tested the value of land-use regulations and found them to be most desirable."⁹¹ The presence of unrestricted land, and the emergence of threats unanticipated by existing restrictions, eventually led homeowners and the real estate industry both to embrace the idea of public regulations

⁸⁸Monchow, *Deed Restrictions*, 54. See also Nichols, 'Developer's View of Deed Restrictions,' 136.

⁸⁹*Beekman v. Schirmer*, 239 Mass. 265 (1921), at 266.

⁹⁰*Beekman v. Schirmer*, 239 Mass. 265, at 270.

⁹¹Marc A. Weiss, 'Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley,' *Berkeley Planning Journal* 3 (1986): 8. J. C. Nichols in 1929 claimed that "the effectiveness of the

that would act like restrictions while overcoming their limitations, as we shall see in chapter 6.

Boston was a leader among the places that developed deed restrictions as a legal tool in the late nineteenth century so that new residential districts would no longer be at the mercy of the culture of change. By the early decades of the twentieth century, most urban development in the United States took place under this system of private land use planning which aimed to secure, if not permanence, at least a degree of stability in the newly-made urban environment.

What of the existing urban environment, already built and thus beyond the reach of deed restrictions? How could Bostonians save the parts they valued of the city they already had?

CHAPTER FIVE:

Preservation

Why does Boston differ from Chicago? Why do we differ here from Cincinnati? If in addition to the loss of the house where Benjamin Franklin was born, the old Hancock residence, and the Brattle Street Church, you shall add the Old State House, which has already been desecrated and half its sanctity destroyed, the Old South, and Faneuil Hall, then what have you, Bostonians, left in any sense different from any city that has sprung up within the last twenty years?

Rev. William H. H. Murray, at the Old South Church, 1876¹

These monumental buildings are Boston's ancestral jewels, held in trust by us, to be handed down to our posterity.

Rev. James Freeman Clarke, 1872²

Historic monuments

In the years after the Hancock house fell in 1863, Bostonians experienced further losses of prominent old buildings, mostly as churches took their places in the migration to the Back Bay. Brattle Square Church acquired its new site in 1867; Trinity Church in 1870 began preparing to move, although the congregation still held services in its old downtown building until the Great Fire consumed it in November of 1872. Both these moves aroused opposition, but both went ahead anyway. "[F]or the last few years nearly all of the older churches have been on a stampede after their worshippers," said the *Christian Register* in 1871. "[S]oon the Old South will be the only reminder, in the

¹Quoted in Everett Watson, *History of the Old South Meetinghouse in Boston* (Boston, 1877), 96.

²*Boston Globe*, December 9, 1872: 1.

heart of the city, of the church edifices of a former generation."³ The greatest American preservation effort of the nineteenth century, and the one which brought preservation to the cities, began when the Old South Church congregation decided that it too would follow its worshippers to the Back Bay.

The Old South dated from 1729, a large brick barn of a building whose plainness made it architecturally fit the old puritan term 'meeting-house' better than 'church.'⁴ It had been the largest assembly space in provincial Boston and the town used it for public meetings that would not fit in Faneuil Hall; from this fact its historical significance flowed more or less automatically. It was said to be the second richest church in the United States, after Trinity in New York. The Old South combined a prominent congregation and a venerable structure, as did for example Brattle Square Church, but also had a unique Revolutionary role as the site of famous orations and gatherings such as the one which launched the Boston Tea Party.⁵ It was this combination of great age, social prominence, and historical importance, but especially the last, which made the Old South meeting-house seem a special case, its preservation worthy of extraordinary measures.

The effort to preserve the Old South went through three phases of successively widening scope. First, a faction within the church sought to block its decision to move. Then, opponents both within and outside the church challenged its right to make such a move, in effect trying to force the congregation to take responsibility for preserving the building. Finally, preservationists campaigned to save the building independently of the congregation.

The Old South's organization was typical of protestant churches of the period. About 350 individuals were listed as members of the church.⁶ Anyone could attend Sunday services and, member or not, had to pay 'pew rent.' The only exceptions were the 45 or so pew proprietors, who made up the voting membership of the Old South Society,

³*Christian Register*, August 5, 1871, quoted in Lothrop, *A Discourse ... July 30, 1871*, 42.

⁴See Detwiller, 'Thomas Dawes's Church in Brattle Square': fig. 7, 8-9.

⁵*Boston Globe*, December 4, 1872: 4; G. G. Wolkins, *Freedom and the Old South Meeting-house*, Old South leaflets, no. 202 (Boston, 1945), 17.

⁶*List of Pastors, Officers, and Members* (1870).

the corporation which for civil purposes was the church. These proprietors had each paid a substantial fee for their right, and paid a quarterly 'pew tax' as well; they were the more well-to-do among the congregation. The pew proprietors selected a 'standing committee' to actively manage the society's affairs. The standing committee was powerful indeed, for it not only took care of the society's million dollars or so of assets, but also controlled admission to pew proprietorship. These officers, said a contemporary observer, "are chosen mostly from a class of men who can afford to live on the Back Bay," and in the early 1870s ten of eleven did, while for the congregation as a whole less than a quarter lived there.⁷

The experience of one particular hour in 1865 convinced many in the society that it was time to leave the old meeting-house. A national synod of Congregationalists met in the Old South that year, but traffic noise from Washington Street drowned out the proceedings. After the very first speaker, the participants resolved to remove to a quieter location, deeply embarrassing their hosts.⁸ The following year a committee of the church's proprietors described its neighborhood:

Business presses on all sides; and the air around this locality is corrupted by cooking and eating houses, and other establishments about us. Washington Street has become so crowded and unpleasant that it is hardly a suitable place for females to walk in the evening.⁹

In 1869 the congregation bought a lot at Copley Square in the Back Bay. The pew proprietors by 14 to 6 approved this purchase of land "sufficient for a house of worship," yet they almost unanimously affirmed that the action "does not contemplate the sale or removal of the Old South Meeting-house."¹⁰ How could these two votes be

⁷Richard Henry Dana, Jr., *The Old South. Argument ... before the Committee on Parishes and Religious Societies, November 27, 1872* (1872), 3. Dana quotes an earlier pastor of the society as saying "he wished the funds were in the sea, for they kept people in the church whose chief object was to administer them" (2).

⁸Hill, *History*, 521.

⁹April 30, 1866 report by Charles Stoddard, Loring Lothrop, Avery Plumer, and the church's two pastors, quoted in Hill, *History*, 524. They were speaking of the congregation's Spring Lane chapel, on another side of the same block; the congregation voted to give up the chapel and rent one on Beacon Hill instead.

¹⁰Oct. 19, 1869 meeting, 'Extracts from the Records of the Old South Church,' 2, in Massachusetts Supreme Judicial Court, *Old South Society v. Crocker; Attorney General v. Old South Society* (Boston, 1874-1896), various papers bound as 1 v. [Boston Public Library].

reconciled? Taken together, they were a compromise which meant different things to different people. For the majority, it seemed to be a matter of timing. A new church would be built on the lot, and the fate of the old meeting-house would be decided then. From the beginning, the society's building committee made provisions for a complete replacement of the old structure on the Back Bay, even though they constructed only a chapel at first.¹¹ The minority, said one of its members, viewed the purchase merely as "a precautionary measure."¹² Several alternatives seemed possible. The Back Bay chapel might be operated as a sort of satellite facility for the congregation, like the Beacon Hill chapel it replaced, or a Sunday School the church ran in the West End.¹³ The size and prominence of the Copley Square property argued against such a policy, and pointed toward the more radical alternative of partitioning the society, one half to remain in the original meeting-house and the other to worship on the Back Bay. The minority were fortified in their interpretations by the church's charter, which prohibited selling or leasing the meeting house property, in accordance with the 1669 gift by which the society acquired it.¹⁴ They questioned the religious efficacy as well as the fairness of catering to the richest quarter rather than the bulk of the congregation and the large transient downtown population, which the location and financial resources of the Old South made it uniquely able to serve.

Several of the preservationist minority were already at odds with the rest of the proprietors from an earlier controversy, and perhaps for that reason were quicker to organize an internal opposition. Publisher Uriel Crocker, together with his son Uriel H. Crocker, who would later propose Boston's metropolitan park system, had questioned the church's financial management, and in 1857 the younger Crocker was deposed as an officer of the society.¹⁵ He spent much of the next fourteen years before the Supreme Judicial Court arguing against the Old South. The first suit, heard between 1859 and 1866, charged that the society had systematically diverted money from its

¹¹Old South Society, *Report of Committee*, June 24, 1870, 2.

¹²Jacob Dresser, quoted in *Boston Globe*, November 27 1872: 4.

¹³Hill, *History*, 507-08.

¹⁴See 'Brief for the Attorney General,' 11, in Supreme Judicial Court, *Old South Society v. Crocker; Attorney General v. Old South Society*.

¹⁵Joseph Ballard, *Reasons for the Appointment of a Committee, to Investigate the Prudential Affairs of the Old South Church in Boston* (Boston, 1859), 22.

poor-relief funds to general support of the wealthy congregation. Crocker won, although the court did not find the amounts involved as large as he claimed.¹⁶ During this period he evidently found it uncomfortable to worship at the Old South, and joined the West Church, apparently considering the move temporary. After he won the decision against Old South's management, the society in 1870 took the unprecedented step of expelling him and confiscating his valuable pew rights.¹⁷ The episode is significant both for its acrimony and for the fact that, like the issue of preserving the old meetinghouse, the earlier complaint involved a perceived failure of the society in its duty to the community.

Despite the charter's prohibition of selling the old meeting-house, the Old South standing committee informally entertained offers for the property. The Boston Board of Trade in 1869 asked to buy the land for a proposed Union Merchants' Exchange, and even released a rendering for the building at that site. In April, 1872, the society voted to ask the legislature for authority to dispose of the property, but they were too late for action in that year's session.¹⁸

That November, the Great Fire destroyed the city around the Old South, and firemen worked hard to keep the flames from the meetinghouse itself. Many of the church's proprietors, wrote Bostonian Charles Francis Adams in *The Nation*, "by no means regard this as a matter for felicitation,"¹⁹ as they saw the smoking ruins of nearby Trinity Church end any opposition to that congregation's relocation. They found another way to take advantage of the fire. The city commandeered the Old South to quarter troops guarding the burnt district, and several burnt-out businesses sought to use the meeting-house as temporary accommodations when it became available. Almost as soon as the fire was out, the standing committee announced that the post office wanted the Old South as emergency quarters; this use was perhaps the most essential they could have proposed and the one best calculated to win legislative approval. Their

¹⁶*Attorney General v. Old South Society in Boston*, 95 Mass. 474 (1866).

¹⁷*Crocker v. Old South Society in Boston*, 106 Mass. 489 (1871). This time the church won.

¹⁸Hill, *History*, 527-529.

¹⁹[Charles Francis Adams], 'The Fate of an Historic Edifice,' *The Nation* 15 (November 28, 1872): 346.

petition to the legislature was not limited to post office use, however, nor to leasing the building; they asked for the removal of all restrictions on disposal of the property.²⁰

A hundred of the church's members and nineteen of its proprietors - only twenty-one had voted for the post office lease - asked the legislature to deny the request, as did other opponents from all around New England.²¹ These remonstrants were represented by Richard Henry Dana, Jr., former U.S. Attorney for Boston, whose testimony set many of the arguments which would remain constant throughout the rest of the controversy. Even though the campaign had now entered its public phase, it was still framed largely as a question of interests within the religious society itself. The question, said one legislator, was simply whether "the Lord could not afford to own a respectable corner lot."²²

But the campaign also considered the meeting-house as an historical monument, and the institution of the Old South Society as a custodian in the larger public interest. "Here are some twoscore persons," wrote Charles Francis Adams of the pew-proprietors,

who, by mere accident, find themselves the trustees of an edifice of first-class historical interest. Instead of jealously guarding and preserving it, they are wholly unable to see anything but the inconvenience to themselves and their families of attending religious services in it once a week.²³

The standing committee vehemently objected to this view of their responsibility. There was "no sense in having such a sentimental veneration for bricks and mortar," testified Deacon Charles Stoddard, "for even if the British did do something or other in the church, that was nothing to do with the work of Christ."²⁴ Stoddard said that he had fought the placing of an historical tablet on the wall, and Reverend Jacob M.

²⁰Hill, *History*, 528; Dana, *Argument*, 3.

²¹Dana, *Argument*, 2-3.

²²*Boston Globe*, December 3, 1872: 4.

²³[Adams], 'Fate of an Historic Edifice,' 347.

²⁴*Boston Globe*, 23 Nov. 1872: 4.

Manning, who before the relocation project arose had fostered historical appreciation of the building, told his congregation that it now threatened to “bring us into bondage.”²⁵

The Old South’s defenders made almost no mention of the building as an architectural or visual landmark. They almost ostentatously disdained its appearance; as the *Globe* reported:

No enthusiasm for the preservation of the old structure could ever throw a glamour of beauty about the severely plain, rectangular building, its curious spire, or the odd-looking weather vane which surmounted it. Only historic associations could make the structure so interesting to the people of New England and of the nation.²⁶

“They say the Old South is Ugly!” said reformer and orator Wendell Phillips. “I should be ashamed to know whether it is ugly or handsome. Does a man love his mother because she is handsome?”²⁷ If the sight of the church was ever mentioned as a reason for saving it, it was as a daily reminder of higher values within the mundane atmosphere of Boston’s business district.

At the same proprietors’ meeting which approved the post office lease, the society also voted to offer the meetinghouse for sale to the Massachusetts Historical Society, for its market value to be determined by appraisal. The historical society’s executive committee answered that it could not possibly afford the building, although it would be happy to act as a custodian if someone were to contribute the purchase price. Individual members of the majority offered 25 to 30 thousand dollars toward the cost, feeling a personal responsibility that they did not feel the church as an institution shared.²⁸ But neither the historical society nor anyone else attempted to raise the additional hundreds of thousands of dollars which would be necessary to meet the terms of this offer.

The legislature approved not the complete release the society sought, but only the actual two-year lease to the U.S. government for the post office.²⁹ The Old South moved services to its Copley Square chapel in spring of 1873, voting that “for all

²⁵Sermon, May 2, 1869, quoted in Hill, *History*, 525.

²⁶*Boston Globe*, June 24, 1876: 1.

²⁷Massachusetts General Court, Committee on Federal Relations, *Hearing*, 31.

²⁸‘Extracts from the Records,’ 6, in Supreme Judicial Court, *Old South Society v. Crocker; Attorney General v. Old South Society*, Hill, *History*, 530-31.

purposes it shall be the meeting-house of the Old South Church."³⁰ Over the objections of its preservationist pew-holders, the society began constructing a \$450,000 church there.³¹ Then, in 1874, when the post office lease was half over and the new church was rising in the Back Bay, the society renewed its application for a complete release to dispose of the building. The legislature finally sidestepped the contentious issue by passing jurisdiction to the Supreme Judicial Court.³²

The court in the summer of 1875 heard arguments on the society's right to sell the meetinghouse. A preliminary decision in October of that year seemed to favor the building's preservation; the court held that a majority vote of the proprietors was not alone sufficient for the its sale and destruction, but that the society also had to demonstrate that the minority's interests were not unreasonably compromised by the action.³³ Once again the issue would be treated as a religious matter internal to the Old South Society. The Society dedicated its new church in December of 1875.³⁴ The following spring, the court heard the second half of the case. The justices, noting that the law did not permit them to take into account "regrets ... at the probable removal of a building surrounded by so many patriotic and historical associations," on May 8, 1876, granted the Old South Society permission to dispose of its meetinghouse.³⁵

As soon as the decree was finalized, the society advertised for sale:

All the materials above the level of the sidewalks ... The spire is covered with copper, and there is a lot of lead on roof and belfry, and the roof is covered with imported old Welch slate. 60 days will be allowed for the removal. Terms cash.³⁶

²⁹*Massachusetts Acts & Resolves*, 1872, Special session, Acts ch. 368.

³⁰Hill, *History*, 531.

³¹*Old South v. Crocker*, 119 Mass. 1 (1875), at 7.

³²*Massachusetts Acts & Resolves*, 1874, Acts ch. 120.

³³*Old South v. Crocker*, 119 Mass. 1.

³⁴Hill, *History*, 547.

³⁵*Old South Society v. Crocker*. This decision was not published in the *Massachusetts Reports*, but appears in *Transactions of the Colonial Society of Massachusetts* 3 (1896): 264-67; quote on 267.

³⁶Wolkins, *Freedom and the Old South*, 24-25.

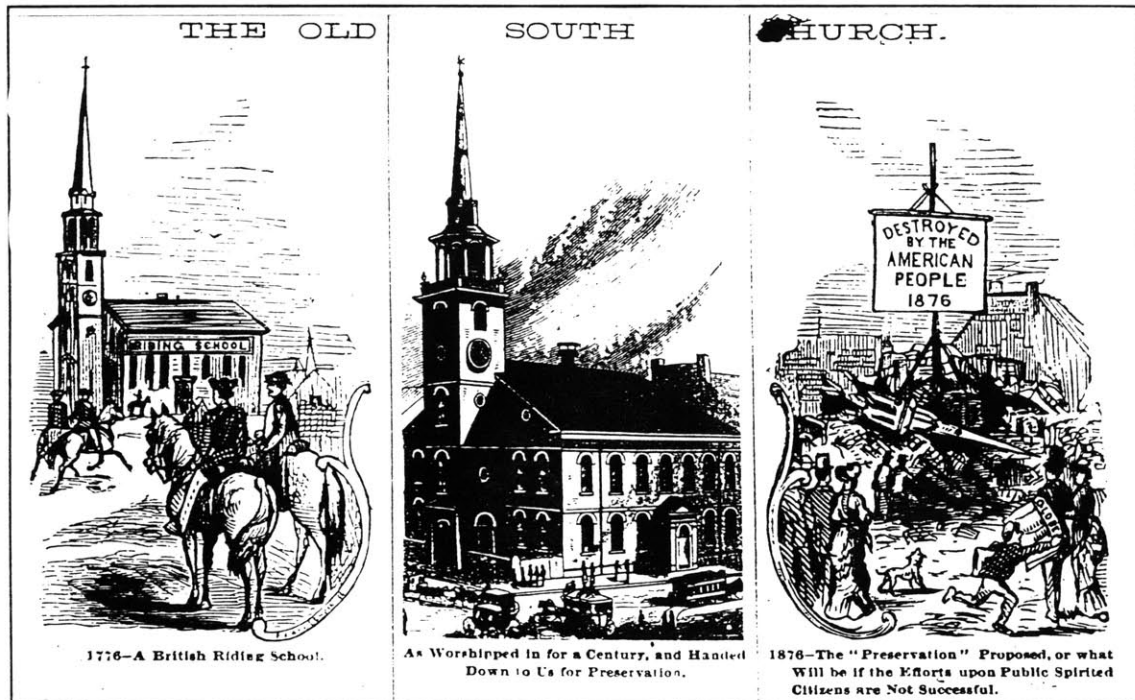


fig. 5.1. 'The Old South Church.' Political cartoon, *Boston Globe*, June 24, 1876.

On Thursday, June 8, 1876, auctioneer Samuel Hatch, who had earlier presided over disposal of the Hancock house, announced in the *Old South* that "This ancient structure has done its work. Time is no respecter of persons or of buildings,"³⁷ and opened bidding which reached only \$1350. On Saturday, the purchaser began dismantling the steeple of the meetinghouse as salvage.³⁸

The following day, the third and most extraordinary phase of the *Old South* preservation effort began as George W. Simmons & Son, proprietors of Boston's 'Oak Hall' clothing store, secured a seven day delay in the demolition. Simmons hung from the steeple a banner reading:

THE ELEVENTH HOUR!
MEN AND WOMEN OF MASSACHUSETTS!
Does Boston desire the humiliation which is to-day a part of her history since she
had allowed this memorial to be sold under the hammer?
SHALL THE OLD SOUTH BE SAVED?

³⁷*Boston Globe*, June 9, 1876: 2.

We have bought the right to hold this building uninjured for seven days, and will be conditionally responsible for raising the last \$100,000 to complete its purchase.
G. W. Simmons & Son, Oak Hall, Boston.³⁹

At noon on Wednesday, June 14, Bostonians crammed the building for a mass meeting at which Wendell Phillips, according to one of his listeners, "spoke as if pleading for the life of one condemned unjustly."⁴⁰ The issue was no longer one of religion, but of secular historical significance. Phillips invoked the national centennial and challenged the idea of monuments which had prevailed among Bostonians for generations.

The saving of this landmark is the best monument you can erect to the men of the Revolution. You spend \$40,000 here, and \$20,000 there, to put up a statue of some old hero But what is a statue of Cicero compared to standing where your voice echoes from pillar and wall that actually heard his Phillippics? ... Shall we tear in pieces the roof that actually trembled to the words which made us a nation?⁴¹

The meeting appointed a committee, chaired by Governor Alexander Rice, to appeal for funds and negotiate the building's preservation. They obtained a month's extension on the structure's stay of execution, and asked the Old South's standing committee for a lease on the underlying land and an agreement to sell it for a value to be fixed by appraisal, as in the offer to the historical society. The church's officers waited to respond on the day before demolition was to resume. They withdrew the offer to the historical society; the price of the land was \$420,000, to be paid in cash in two months. They expressed skepticism that the preservation committee would raise it, and required that the committee agree in writing "that if at the expiration of the time above fixed ... you are unable to purchase the property on the terms proposed, you will not ask us for any further extension of time."⁴² They pointed out that they had generously refrained from asking any rent for the building in the interim. "[T]he society," wrote *The Commonwealth*, "does not mean that two edifices bearing the name of 'Old South'

³⁸*Boston Globe*, June 10, 1876: 4.

³⁹Burdett, *History*, 89.

⁴⁰Burdett, *History*, 90. Directors of the Old South Work, *The Old South Meeting House*, Old South leaflets no. 183, 15, quotes Burdett as "one who was present."

⁴¹*Old South Meeting House*, Old South leaflets no. 183, 7.

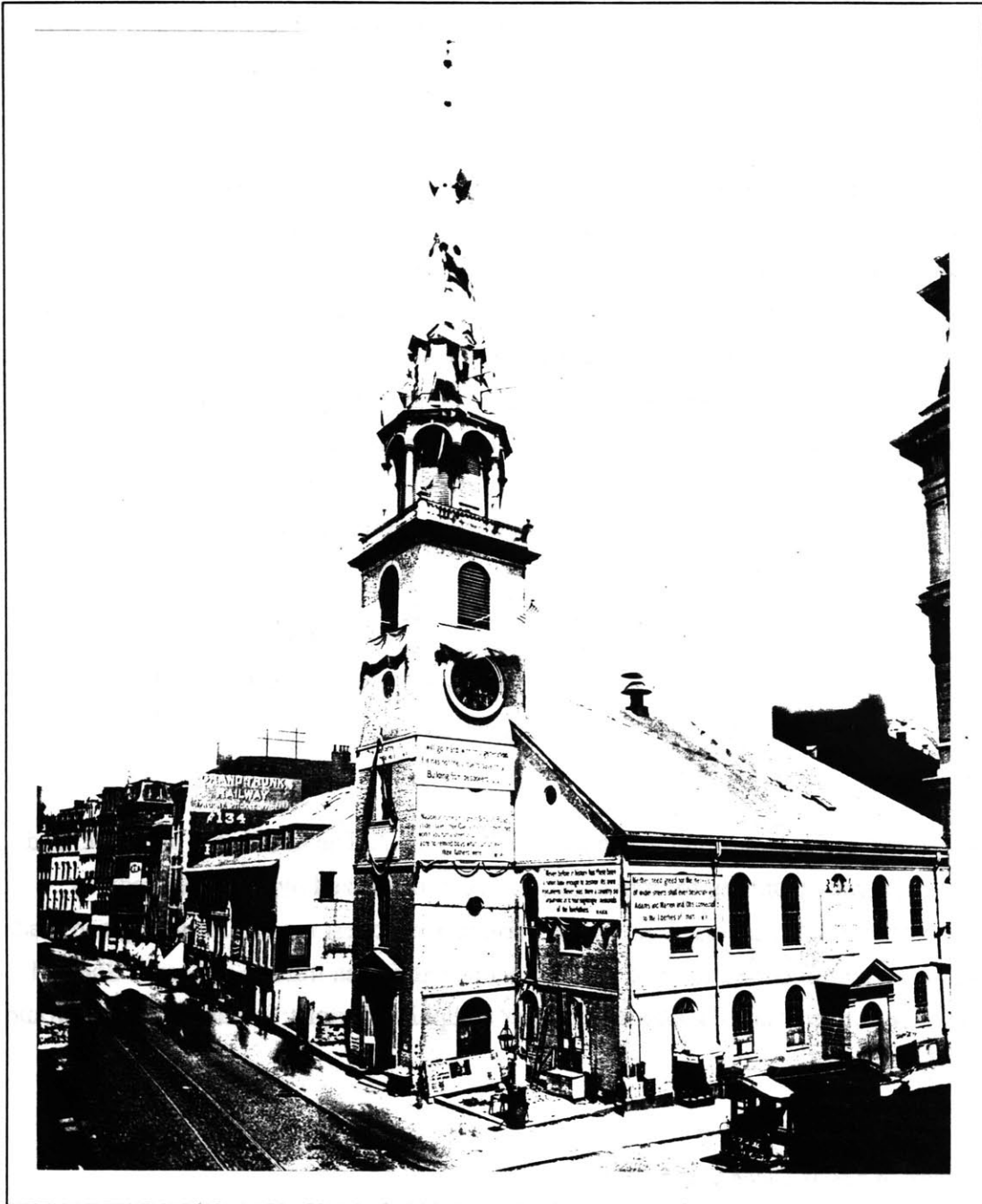


fig. 5.2. The Old South meeting-house during fundraising efforts, 1876.

⁴²Quoted in *Boston Globe*, July 14, 1876: 4.

shall stand at the same time in the city of Boston - one to be a continual reminder of the unpatriotic course of the controllers of the other!"⁴³ Clearly it was unwilling to become the de facto funder of the building's preservation by holding it off the market indefinitely.

Despite the roster of male speakers and committee members, it was the women of Boston who did most of the work toward saving the Old South.⁴⁴ The fundraising, which totalled \$60,000 in its first month, was largely carried out by women canvassers. While the preservation committee wrangled with the church society over the land, twenty women on July 19 spent \$3,500 to buy the structure itself from the salvage contractor. They engaged architects to prepare plans for moving and reconstructing the building, if necessary. They proposed to acquire as its new site a vacant lot opposite the new Old South Church at Copley Square, "in which case," wrote the *Globe*, "rumor states that an injunction restraining the erection of the ancient edifice will be applied for by the Old South Society."⁴⁵

Purchase of the structure energized the preservation effort, but the sum of money required was enormous. Preservationists appealed to the city for financial assistance, but the society's short deadline fell before the City Council would reconvene in the fall.⁴⁶

Once again, the Old South was rescued by a woman. The building's purchase, and the contingency planning for moving it, had been organized by Mary Hemenway, whose husband, Augustus Hemenway, perhaps the richest man in New England, had died just a month before leaving an estate valued at fifteen million dollars.⁴⁷ She had long been active as an educational reformer and philanthropist; in later years she would

⁴³Quoted in *Boston Globe*, July 8, 1876: 4.

⁴⁴Already at the first mass meeting on June 14, journalist Curtis Guild spoke "highly commending the part women took in such movements," according to Burdett (*History*, 97), in apparent reference to the preservation of Mount Vernon.

⁴⁵*Boston Globe*, July 19, 1876: 2; *Boston Globe*, July 20, 1876: 5. This rumor, said the chairman of the standing committee, was "a lie"; *Boston Globe*, July 27, 1876: 5.

⁴⁶*Boston Globe*, July 15, 1876: 8.

⁴⁷*Boston Globe*, June 19, 1876: 2; *Boston Globe*, July 13, 1876: 4.

fund archaeological exploration of the American west.⁴⁸ Shortly before the standing committee's immovable deadline, she anonymously offered \$100,000 to the preservation effort. Together with a \$225,000 mortgage previously arranged with the New England Mutual Life Insurance Company, and a reduction in the price to \$400,000, the Old South was saved, at least for awhile.⁴⁹

A trustee for the preservation committee took title to the property on October 11, 1876. The Old South Society, which had not been so concerned about the building's future when it was sold for salvage, was considerably more concerned now that it appeared that it could continue to stand. The sale was subject to the condition

that said building shall not at any time during the period of thirty years ... be used for any business or commercial purpose, and shall be used during said period for historical and memorial purposes only, and that it shall not at any time during said period be used for any purpose whatever on Sunday, ... and in case of breach of the foregoing conditions or any of them, said building shall be forfeited to said Old South Society in Boston, and said Old South Society in Boston reserves the right to enter for breach of condition and enforce said forfeiture, and take down and remove said building,⁵⁰

The church, its attorneys later explained, had no objection to selling the building to the Massachusetts Historical Society without such draconian conditions, but "It was a very different question whether it should pass into the control of men who, by reason of successive defeats in the Courts or other reasons, had become unfriendly to the interests of the Society."⁵¹

The preservation committee asked the 1877 legislature to incorporate and exempt from taxes an 'Old South Association' as a permanent custodian for the building. The incorporation bill delegated eminent domain powers to the association, specifically to remove the odious condition in its deed. Some legislators opposed this provision, both on the grounds that it was a high-handed breach of contract and that historic preservation was not a public purpose for which eminent domain could legitimately be

⁴⁸*Dictionary of American Biography*, 518-519.

⁴⁹*Boston Globe*, October 14, 1876: 2.

⁵⁰Quoted in Hill, *History*, 544.

⁵¹Old South Society, *To the Legislature of Massachusetts. Answer to the Reply of Petitioners to the Remonstrance of the Old South Society* [1877], 3.

used. The bill passed by 176 to 30 after John D. Long, past speaker of the Massachusetts House and one of the charter directors of the association, explained to the legislature that, far from being a contract freely entered, the society's terms were nothing short of ransom. "As they have not done equity," he said, "they have no right to expect equity." Long urged his former colleagues to pass the bill in order to end a "miserable squabble" which had now occupied the city for years.⁵²

The campaign to save the Old South was not at an end, however, because the building was still encumbered by a \$225,000 mortgage. The preservation committee in 1877 sought, along with eminent domain and tax exemption, a state appropriation of \$25,000, but 241 petitioners, many of them business firms, opposed the expenditure because of the need for "strict economy" in that depression year. As far as can be discerned, not a single woman signed this remonstrance, although at least one of the petitioners was the father and two were husbands of women on the preservation committee.⁵³ The legislature dropped the appropriation from the bill before it passed. The following year, the Old South Association came back to ask \$50,000, and both supporters and opponents gave more energy to the question. During the two years of deepest depression Americans had yet experienced, more than 50,000 people from around the nation had contributed over \$230,000 to the preservation effort.⁵⁴ A succession of fairs, balls, and other fundraising events for the Old South were raising diminishing amounts of money while hurting the rest of Boston's charities. "We ask this aid," said lawyer George O. Shattuck for the association, "because we need it."⁵⁵ Opponents cited not only the state's fiscal condition, but also the danger of setting a

⁵²*Boston Globe*, April 26, 1877: 2; April 27, 1877: 2; *Massachusetts Acts & Resolves*, 1877, Acts ch. 222. After winning this battle, the Old South Association did not actually use the building on Sundays. "Should anything be attempted at any time in the future under the sanctions of this law," warned Hamilton Andrews Hill in the congregation's official history in 1890, "it will, of course, be competent to the Old South Society to take measures to test the question of its constitutionality" (Hill, *History*, 546).

⁵³One of the business firms was New England Mutual Life Insurance Company, which held the mortgage on the property. Another signatory was Avery Plumer, a member of the Old South church standing committee. Mrs. Henry Warren Paine and Mrs. Arthur T. Lyman, both of whose husbands signed the petition, were on the Preservation Committee; Mrs. Lyman's father was John Amory Lowell, another petitioner against the appropriation. Massachusetts State Archives, legislative documents, Acts 1877, ch. 222.

⁵⁴Massachusetts General Court, Committee on Federal Relations, *Hearing*, 5,7.

⁵⁵Massachusetts General Court, Committee on Federal Relations, *Hearing*, 9.

precedent for historic preservation as a new category of public spending.⁵⁶ The legislature voted \$10,000 to be paid only when the remainder of the money was raised from other sources.⁵⁷ The Old South Association continued for years arranging festivities and exhibitions, slowly paying down its mortgage.

The preservation of the Old South had to overcome not only practical difficulties, but philosophical ones as well. When Bostonians set out to save it, they had little coherent idea of what to do with it. In general, it was to be an historic monument, like the Bunker Hill column, but unlike a column or a statue the meetinghouse was an accessible and usable structure, now without an assigned use. At the first mass meeting in 1876, Wendell Phillips suggested it be made into a "mechanics' exchange," in recognition of the role of the working men of Boston in the revolution. Reverend William H. H. Murray said "I would, had I my wish, make this building a Westminster Abbey," complete with busts of American patriots. A group of Boston antiquarians began preparations for an historical museum which they hoped would occupy the building, although nothing immediately came from the effort.⁵⁸

Instead, fundraising itself became the building's use. Twenty-five cents gained admission to view a rotating exhibit of revolutionary relics, described for the *New York Graphic* by one British visitor:

Ancient tongs, pokers, cradles, bed-quilts, andirons, stew-pans, old hats, old shoes, old breeches which bled and 'fit into' the Revolution. Pewter plate General Washington once ate from. Verified by inscription on plate. ... A wasp's nest. One of Lady Washington's old shoes. Buttons off Washington's coat never sewed on by Lady Washington. ... Silk banner inscribed 'The Hero of Tippecanoe.' No explanations. Boston children leaving with impression that this relic of the Harrison campaign of 1845 [sic] was carried during the revolution. ... Nut crackers of the times which tried men's souls.⁵⁹

The Old South had become a "side show," complained the *Boston Globe*. "There is still room, however, for a fat lady."⁶⁰ In time its uses came to be more noticeably

⁵⁶Massachusetts General Court, Committee on Federal Relations, *Hearing*, 43.

⁵⁷*Massachusetts Acts & Resolves*, 1878, Resolves ch. 26.

⁵⁸Burdett, *History*, 95-96; *Boston Globe*, August 22, 1876: 5.

⁵⁹Quoted in *Boston Evening Transcript*, January 28, 1880: 4.

⁶⁰*Boston Globe*, June 21, 1878: 4.

educational, with the beginning in 1883 of an historical lecture series later endowed by Mary Hemenway.⁶¹

The Old South effort set precedents for how to achieve environmental permanence. During the several years of the preservation campaign, Bostonians explored every avenue for saving the building, from the institutional custodianship on which they had implicitly relied, to action by the state, city, and existing historical organizations, and finally ad hoc private effort. Because of the Hancock house, they were already skeptical of the efficacy of public action for preserving landmarks, and the Old South campaign reinforced that skepticism. For the next generation or so of preservation in New England, the Old South set a precedent of privately organized, privately funded effort directed toward a single immediate end.

The greatest significance of the Old South campaign was that, despite overwhelming odds, it worked. The building occupied some of the most valuable real estate in America; its owners were hostile to its continued existence; demolition had actually begun before the preservation effort started. Yet it was saved. Here was a case, given tremendous nationwide attention, where for one part of the urban environment change was not the answer. Permanence was, and a community took action to achieve it. Americans looked around themselves with new eyes: if the Old South could be saved, anything could.

One of the first significant by-products of the Old South's preservation was to alter the context for debate about the future of the nearby Old State House. Most Bostonians agreed that the Old South was the more important of the two buildings. As demolition of the Old South began, one scheme called for commemorating it by re-erecting its clock in a tower "on the site of the Old State House," according to the *Globe*, "when that crumbling structure shall have been removed."⁶² But once the Old South was out of danger, the *Evening Transcript* noted that the Old State House "does not require

⁶¹Edwin D. Mead, *The Old South Historical Work* (Boston, 1887); Old South Association, *The Old South Association in Boston. List of Officers, members, Committees* (Boston, 1912), 17-24.

⁶²*Boston Globe*, June 13, 1876: 4.

redemption from other hands, but is already the property of the people, and therefore can easily be preserved.”⁶³ The issues involved in the two cases were very different. The claims against the Old State House were not financial, but functional; it stood in the middle of what its detractors thought should be an unobstructed wide street. In addition, while the Old South had been maintained more or less faithfully by its proprietors, the Old State House had been abused by commercial tenants throughout most of the nineteenth century (fig. 5.3.), and thus it raised curatorial issues of material integrity and restoration.

In a city where the prefix ‘old’ had plenty of work to do, the Old State House was old indeed. Its exterior walls dated from 1712; the rest of the building was rebuilt after a fire in 1747. It was the seat of government in Massachusetts until 1798, when that function was transferred to the new state house on Beacon Hill designed by Charles Bulfinch. For some years it deteriorated in commercial tenancy, leading up to the 1826 proposal that it be removed; instead, it was renovated for use as a city hall from 1830 to 1841, after which it was again crammed with as many as fifty tenants.⁶⁴ The Old State House in its heyday had been an imposing presence at the head of present-day State Street, appropriately ostentatious for the representatives of empire in one of its most prosperous colonies. By the early 1870s, a contemporary observer reported that

its external and internal appearance has been so changed that it would be a mistake to allow sentimental considerations to delay its demolition, for the climax of incongruity was capped when after every vestige of its original internal arrangements had yielded to the encroachments of business, a French roof was put on the sturdy old Britisher. James Otis himself, in a Parisian bonnet and chignon, could hardly have been more of a surprise to his companions than the old State House in its new attire. When a historic memorial is so altered that its identity is lost, the lover of the past is repelled by the attempt to combine essentially inharmonious characteristics, and would prefer demolition to disfigurement.⁶⁵

In 1876 the building’s leases expired, and the Board of Aldermen ominously referred the question of their renewal not to the Committee on Public Buildings, but to the

⁶³*Boston Evening Transcript*, June 1, 1881: 4.

⁶⁴Chase, ‘Old State House,’ 31-49; Elizabeth Reed Amadon, *Old State House. Historical Report* (Boston, 1970).

⁶⁵*Boston Globe*, May 28, 1872: 4.

Committee on Streets.⁶⁶ Alderman John T. Clark, who had presided at the Old South preservation meeting on June 14,⁶⁷ voted less than two weeks later in favor of demolishing the Old State House. "[I]f the Old South stood in the way of a necessary improvement of the public street," according to a newspaper account of his comments, "he should be in favor of its removal."⁶⁸ A resident of Chicago, feeling its acute shortage of structures more than five years old, suggested buying the building and re-



fig. 5.3. 'The Old State House: As It Is.' An 1876 drawing made as part of the preservation effort. Signs cover much of the building's exterior; a mansard roof has been added to increase rentable space. At left, a portico added in 1830 projects into traffic. At right is the Sears Building, a recently-built office block.

⁶⁶*Boston Globe*, February 22, 1876: 2.

⁶⁷*Boston Globe*, June 15, 1876: 2. Clark's arguments in favor of preserving the Old South were clearly meant to distinguish the two cases: "It has never been prostituted to the use of traffic or gain only once in its history, and then in an emergency such as was never before known in the history of the city, and which we trust we shall never again know, nor has it been used except for the purpose of sacred worship. Its retention will not interfere with public improvements, as there is room enough to move it back when the time comes for the widening of the street."

⁶⁸*Boston Globe*, June 27, 1876: 8.

erect it there.⁶⁹ Out of some sense of historical considerations, but mainly for financial reasons, the city government decided merely to remove a portico which projected most seriously into the traffic, and renew the tenants' leases for five years.

Those five years encompassed the whole public phase of the Old South campaign, and by the time they had passed there was little chance of the newly preservation-conscious city letting this other conspicuous landmark fall. City Registrar and Commissioner of Public Records William H. Whitmore had worked on the Old South effort, and decided to devote himself next to saving the Old State House. In 1876, he had requested that his department be moved to it, but the request was ignored.⁷⁰ In 1879, as an indirect offshoot of earlier efforts to organize an historical museum in the Old South, Whitmore helped organize the Boston Antiquarian Club, later renamed the Bostonian Society.⁷¹ Its first president, Samuel M. Quincy, said that its purposes were "to aid the historian in his work, and in preserving intact the monuments of past times"; it quickly resolved to fight for the Old State House.⁷² Whitmore, meanwhile, won election to presidency of the Common Council, and in 1880 he persuaded his fellow councillors that the Old State House should be added to Faneuil Hall and the Common as an inviolable property of the municipality. The Board of Aldermen did not concur, so this request did not come before the legislature,⁷³ but opposition had more to do with avoiding state interference than with any remaining desire to get rid of the building.

At the end of the new leases in 1881 Whitmore sought to eject the tenants in order to use the building for municipal offices. He secured an appropriation of \$35,000 to restore it, which he cheerfully admitted was his main goal. "I hope that in the course of another ten or twenty years our successors will go beyond that," he said. "I hope the time will come when public convenience will allow the removal of the public offices

⁶⁹Curtis Guild, Sr., President's Address, *Proceedings of the Bostonian Society at its Twenty-third Annual Meeting, January 12, 1904* (Boston, 1904), 7.

⁷⁰*Boston Globe*, June 16, 1876: 2.

⁷¹The earlier 'Historical Commission' lapsed into inactivity; most of the same people, including Whitmore, were involved three years later in organizing the Antiquarian Club; *Boston Globe*, August 22, 1876: 5; *Boston Evening Transcript*, June 19, 1879: 1.

⁷²*Boston Evening Transcript*, January 14, 1880: 1; February 11, 1880: 1.

⁷³*Boston Evening Transcript*, January 16, 1880: 2; January 20, 1880: 3.

from the building When that time comes I feel sure that the greatly enlarged city of Boston will thank us for having preserved the opportunity for it to establish a city museum."⁷⁴

Downtown real estate interests sought to reverse this decision so that the building could be removed as a traffic improvement. Their cause, a long shot to begin with, was entirely lost when the largest landowners in the area, including Joshua M. Sears whose Sears Building was across the street, publicly sided with the preservationists. But Whitmore's plan was more vulnerable to criticism on economic grounds, especially after a bank offered to restore the building at its own expense and pay the city more rent than it had been receiving. The Board of Aldermen and even Whitmore's own Common Council reversed themselves to favor this private-sector form of preservation. At least one newspaper endorsed it precisely because it was private. "There is nothing about the appointments of a first-class banking house," wrote the *Globe*, "that could in any way offend the most fastidious sense, and this cannot be said of some of the city departments which it is proposed to locate there."⁷⁵ Whitmore denounced the proposal, claiming that the bank's plans were tantamount to destroying the building. Whitmore eventually secured a compromise in which the building's lower floors would still be leased, but the city would restore the exterior and the upper-story assembly halls "as memorial halls, to be always accessible to the public."⁷⁶ The Bostonian Society was granted possession as custodian of these rooms.

Restoration of the Old State House, carried out by city architect George A. Clough working under Whitmore's direction, aimed to bring the building's exterior and interior "as nearly as possible to their appearance when used by the Legislature."⁷⁷ This was exactly the brand of restoration to an earlier period that Ruskin opposed as a "lie," and Bostonians made similar objections. "[S]o far as the interior is concerned we cannot make it a relic," said one Common Council member, "We can only make an imitation.

⁷⁴*Boston Evening Transcript*, June 10, 1881: 2.

⁷⁵*Boston Globe*, June 19, 1881, quoted in *Boston Evening Transcript*, June 21, 1881: 2.

⁷⁶*Boston Evening Transcript*, June 24, 1881: 3; June 18, 1881: 4.

⁷⁷*Boston Evening Transcript*, June 24, 1881: 3. Before beginning work, Clough in a letter to Whitmore referred to "the restoring of the outside walls to conform with its original outline and appearance as shown by your sketches" (*Boston Evening Transcript*, June 24, 1881: 2).

It will be a spurious relic."⁷⁸ When the project was completed in 1882, Whitmore's committee report reinforced this view when it said that "the antiquarian part" of the work, on the second floor, "has cost considerable money, but there every part of the finish had to be constructed afresh."⁷⁹ The restoration became the subject of bitter debate for years after it was completed. A recent preservation report on the building concludes that by Whitmore and Clough's work, "the entire interior of the building was restored faithfully - back to the 1830 reconstruction" for a city hall, which they mistakenly identified as its original form.⁸⁰

Both the Old South and the Old State House were saved for their historical associations rather than their architectural qualities; they were monuments rather than landmarks. Each presented awkward conceptual problems of just what its use was to be. They were exceptions from the utilitarian calculus by which the culture of change still prevailed in the business center around them, even if it was losing its hold in some residential neighborhoods. The Ruskinian premium on visible antiquity was not an important motivation for saving these buildings; neither of them was valued for its contribution to the visible cityscape. Another contemporary preservation cause, however, had everything to do with the appearance of the city, through protection not of historical monuments, but of the city's old public landscapes, its burial grounds and especially its Common.

⁷⁸*Boston Evening Transcript*, May 27, 1881: 2.

⁷⁹Boston City Council, *Re-dedication of the Old State House, Boston, July 11, 1882*, 5th ed. (Boston, 1889), 158.

⁸⁰Amadon, *Old State House*, 10; George Henry Moore, *Prytaneum bostoniense. Examination of Mr. William H. Whitmore's Old State House Memorial and reply to his appendix N*, 2d ed. (Boston, 1887); William Henry Whitmore, *The Old State House defended from unfounded attacks upon its integrity. Being a reply to Dr. G. H. Moore's second paper....* (Boston, 1886).

The urban landscape

The Common was a truly permanent feature of Boston, more permanent than any structure or street or other public space. Actually getting rid of the Common was unthinkable, yet in the late nineteenth century, Bostonians found an increasing need to defend it. The threats came from differing definitions of what the Common was, the essence which was to be presumed permanent.

The Common's presumption of permanence dates from a 1640 town meeting vote that "there shall be no land granted either for houseplot or garden to any person out of the open ground or common field."⁸¹ When the 1822 city charter denied the municipal government power to sell or lease the Common, contemporary legal opinion held that it was merely recognizing a status which already existed because of this vote and two centuries of dedication to public use.⁸² But what public uses?

In the seventeenth century, the Common was a common pasture for cows and sheep, and sometimes a site for executions and for burials. In the eighteenth century militias drilled and revivalists preached there, as the cows looked on. From 1768 to 1776, the British troops who occupied Boston mainly occupied the Common. The first of many committees "for the preservation of the Common" was appointed by the town selectmen in 1769 because of the troops' wear and tear on the pasturage; as hostilities grew imminent the damage was multiplied when they threw up earthen fortifications. The townspeople in the early eighteenth century had inaugurated a more urban use of the Common by planting a 'mall' along Tremont Street, a double row of trees where "every afternoon, after drinking tea, the gentlemen and ladies walk," according to an English visitor.⁸³ The occupying troops cut these trees for firewood, but Bostonians planted new ones, including some set out by John Hancock opposite his Beacon Street house,

⁸¹Boston City Council, Committee on Common and Public Grounds. *Evidence taken at the hearing ... on the petition of the Mass. Charitable Mechanics Association, for leave to erect a building on Boston Common* (City doc. 26, 1877), 38.

⁸²J. Mason and Franklin Dexter, *Legal opinion ... on the title of Boston Common* (Boston, 1843).

so that by the 1830s each perimeter street had its own mall. A guide published in 1821 included a table by which proto-joggers could calculate their speed "by the time taken to pass the long Mall" on Tremont Street.⁸⁴ As paths and trees began to invade the Common's interior, they conflicted with earlier uses; the militia were confined to an ever-smaller treeless plain, and in 1836, "dangerous accidents having occurred to promenaders," the anachronistic cows were banished altogether.⁸⁵ By the 1860s, baseball games had largely superseded the militia in the remaining open tracts. The Common held open-air meetings, fireworks, festivals of every sort, and from 1863 to 1882 even a 'deer park' - a sort of petting zoo.⁸⁶ It was, in other words, a thoroughly miscellaneous urban public ground shaped in the years before American cities self-consciously built parks.

The parks movement complicated Bostonians' understanding of their Common. It provided a coherent definition of urban open space, but its definition excluded many of the Common's past functions. The presumed permanence of park landscapes conflicted with the Common's tradition of continuing adaptability. For more than two centuries it had been an open-ended community resource. It was space available for the new game of baseball, but it was also space available for exhibits of industrial products in the early nineteenth century and for army recruiting centers during the Civil War. If the Common's essence was its common-ness, then such uses were no less appropriate than promenading. The Common was set aside, the editors of the *Globe* said in 1877, to be employed "for public uses. To hold that these employments are to consist in walking, playing and breathing upon it would be to greatly restrict its benefit."⁸⁷ But if the Common's permanent essence was as open space, as the parks movement now defined it, then its uses should indeed be restricted to "walking, playing, and breathing."

⁸³Joseph Bennett, 1740, quoted in M. A. DeWolfe Howe, *Boston Common: Scenes from Four Centuries* (Boston, 1921), 26; 34, 38.

⁸⁴John G. Hales, *Survey of Boston and Its Vicinity* (1821), quoted in Howe, *Boston Common*, 57; 39-42.

⁸⁵*Boston Globe*, May 13, 1873: 8.

⁸⁶Howe, *Boston Common*, 57.

⁸⁷*Boston Globe*, February 13, 1877: 4; Boston City Council, *Hearing on the Charitable Mechanics building*, 72; Howe, *Boston Common*, 62-63.

As the city grew in size and density, the inherent conflict between the Common's roles as open space and as available space grew in intensity. More new uses arose which could not be accommodated elsewhere. In 1863 the city council considered but rejected moving the John Hancock house there, noting that "there are prejudices, perhaps well grounded, against erections of any description on the Common."⁸⁸ Temporary structures were a more difficult issue. The promoters of a 'Peace Jubilee' after the Civil War sought and received permission to erect a temporary 'Coliseum' on the Common, but their project drew such vehement protests that they elected to build on the Back Bay instead. After the Fire, there was even opposition to the City Council's offer of space on the malls to accommodate businesses while they rebuilt, and no merchants took advantage of it.⁸⁹

These conflicts reached a crisis in 1877, in a proposal for a temporary exhibition hall for the triennial industrial exhibition of the Charitable Mechanic Association, a venerable fraternal organization which had promoted Massachusetts industry since the eighteenth century. The mechanics' exhibitions had outgrown their traditional sites in Faneuil Hall and Quincy Market; the example of the Philadelphia Centennial Exhibition, together with the desire to spur the economy at the depths of a depression, led to an ambitious scheme to erect a 600-foot long crystal palace on the Common's playing fields. "It was for such purposes that the Common was kept," said Edward Everett Hale, a staunch defender of Boston traditions. "... I do not see the distinction between putting a canvas tent on it for a week, and showing azalias under it, and making a tent ... of iron and glass, and keeping it up a month."⁹⁰

The mechanics' proposal was squarely within the tradition of treating the Common as available space. As the association's representative explained it, "[w]e simply want to have the use, for a short period, of a small portion of a large tract of unused land."⁹¹ To serve the city as it was meant to, explained another member, the exhibition hall

⁸⁸Boston City Council, *Preservation of the Hancock House*, 11.

⁸⁹Howe, *Boston Common*, 67; *Boston Globe*, November 12, 1872: 4; November 14, 1872: 4; November 15, 1872: 8.

⁹⁰Boston City Council, *Hearing on the Charitable Mechanics building*, 15.

⁹¹Charles W. Slack in Boston City Council, *Hearing on the Charitable Mechanics building*, 65.

needed to be located in a convenient and central place, and “[t]his is altogether the most central place of any that I know of.”⁹²

The project’s opponents, led by William H. Whitmore, numbered many people who were active in the Old South preservation campaign. They invoked that effort in part out of exhilaration at its recent success, momentum which they hoped to borrow for this new cause, but also because they thought of the two issues as kindred. Like the Old South, one said, the Common was a place of “old and sacred memories.”⁹³

Early in March the Common Council rejected the association’s proposal, on the motion of Uriel H. Crocker, the park advocate and Old South antagonist. The mechanics, like the Peace Jubilee before them, found space at the Back Bay frontier. The Common’s defenders had petitioned the legislature, for good measure, and two months later this effort too bore fruit in ‘An Act for the Preservation of Public Commons and Parks.’ The act provided that no building greater than 600 square feet could be erected in any public common or park in Massachusetts without the legislature’s permission, and thus converted this specific threat in Boston to a general statewide affirmation of the permanence of parks.⁹⁴ The Common’s essence, it was decided, was as open space, and no further serious attempts were made to place substantial buildings there.

A more utilitarian threat to the Common had recently emerged, however, and was not to go away so easily. Increasing concentration of business downtown and the need to move tens of thousands of people in and out of it every day put a strain on transportation facilities, more acute in Boston than in other cities because its streets were narrow and access constricted by arms of the harbor, Beacon Hill, and the Common. Many people whose daily paths were blocked by the Common thought that if it was available space for community needs, there was no more pressing need than access. The Common’s irregular shape obstructed what would otherwise be the longest

⁹²Boston City Council, *Hearing on the Charitable Mechanics building*, 16-17.

⁹³Boston City Council, *Hearing on the Charitable Mechanics building*, 40. See also 41, 42, 57.

⁹⁴*Boston Globe*, March 9, 1877: 4; *Massachusetts Acts & Resolves*, 1877, Acts ch. 223.

straight street in Boston, connecting the city's most populous neighborhoods and suburbs with the heart of downtown from Columbus Avenue to Tremont Street. The extension of Columbus Avenue across the Common remained a vague threat never seriously attempted, however, and a more modest corner cutting was easily defeated in 1872.⁹⁵

Streetcars from all these southwesterly directions instead ran around the perimeter of the Common to come together on its Tremont Street side. There they formed 'blockades,' or traffic jams, exacerbated by the uncoordinated operation of competing companies on the same tracks. Many Bostonians who opposed streets across the Common thought widening Tremont Street reasonable, and perhaps even prudent to forestall more radical solutions. "Nobody's morning or evening walk would be much curtailed," wrote one; "nobody's enjoyment of the grounds at all diminished."⁹⁶ But when the city council in 1874 held hearings on the idea, they found intense opposition. Some Bostonians even insisted that any widening should come from the other, built-up side of the street; others made early proposals for placing the streetcars underground in a subway. "We are almost prepared to declare," the *Globe* editors wrote hysterically, "that any man who should propose a diversion of any portion of the Common from the uses to which it has been set apart should do it with a rope around his neck and a committee of citizens at the other end!"⁹⁷ The proposal effectively died when that year's council election returned a majority pledged to defeat the scheme.

The following year the Common's defenders consolidated their victory in two ways, one big and one small. The big measure was structural reform to raise the threshold for change. "What we want," said the *Globe* during the Tremont Street battle, "is an insurmountable safeguard that no committee, present or future, and no organization or body of men can get over, giving us assurance that these grounds can *never* be thus desecrated."⁹⁸ They got it in an 1875 act of the legislature providing that neither streets nor street railways could not be placed in any Massachusetts commons or parks more

⁹⁵*Boston Globe*, April 10, 1872: 8.

⁹⁶'R.L.S.' letter, *Boston Globe*, May 28, 1874: 2.

⁹⁷*Boston Globe*, May 23, 1874: 4; November 17, 1874: 2; 'Nauticus' letter, January 16, 1874: 5.

⁹⁸Editorial, *Boston Globe*, May 27, 1874: 4; italics original.

than twenty years old except by approval of city's voters.⁹⁹ The idea of putting streetcars underground in a subway had entered the discussion sufficiently that it too was proscribed. Years later the structural impediments to change on the Common, which already included city charter provisions, legislative acts, and the vague doctrines of long-term public dedication, would be reinforced by yet another important safeguard: in 1908 George F. Parkman left five million dollars to the city as an open space endowment, contingent that "the Boston Common shall never be diverted from its present use as a public park for the benefit and enjoyment of its citizens."¹⁰⁰

The small consolidation of the 1874 victory involved the physical form of the boundary between Tremont Street and the Common. The old fence there was removed during the hearings on street widening, and while some of the Common's friends had favored this new openness, under the circumstances it made the Common seem less defined and more vulnerable, as if the streetcar tracks might some night creep onto the mall. The newly preservationist city council proposed resolving the problem with a massive granite curb, but was persuaded instead to use a system of cast-iron fencing which would use existing the existing post-holes and thus avoid trenching across the roots of trees on the Tremont and Boylston malls.¹⁰¹ The initiator of this careful measure was Uriel H. Crocker's brother and law partner, George G. Crocker, a young former state legislator who had taken up the fight to preserve the Old South after his brother had left, and who years later would become important to the fate of the Common in bigger ways than how it was fenced.

A decade later streetcar blockades had become serious enough to prompt an attempt to overcome the legal impediments to solving them on the Common. In 1887 the West End Street Railway petitioned the legislature to authorize tunnelling under Beacon Hill and elsewhere, or as an alternative, to permit on the Tremont and Boylston street malls of the Common what we would today call a 'transit mall.' Horsecars would join pedestrians there, separated from any other traffic, on tracks "to be laid as an

⁹⁹*Massachusetts Acts and Resolves*, 1875, Acts ch. 163.

¹⁰⁰Firey, *Land Use in Central Boston*, 145.

¹⁰¹*Boston Globe*, May 26, 1875: 8.

experiment only - not to become permanent unless it shall be voted by the citizens of Boston at the next city election."¹⁰²

The West End did not pursue either the tunnel schemes or the transit mall, and instead alleviated congestion by consolidating Boston's entire streetcar network under a single ownership, rationalizing operations so that blockades became once again a rarity. But by the early 1890s increasing traffic made it clear not only that this had been a temporary solution but also that merely widening Tremont, Boylston, and other streets, as difficult as that would be to accomplish, would not be enough. The growing length of suburban commutes pointed toward the more radical solution of supplementing streetcars with some form of rapid transit. Boston suburbanites familiar with New York or Chicago thought enviously of sailing along above the streets at twenty or thirty miles an hour on those cities' elevated railroads. But elevateds would not work well in Boston's narrow and crooked streets. Some suburban residents proposed solving these problems with an elevated approach to downtown located altogether out of streets, running instead across the Common or above the Tremont Street mall. They told the legislature's rapid transit committee, reported the *Evening Transcript*, that "the sentiment which was formerly attached to the Common had to a great extent died."¹⁰³

They discovered, however, that affection for the Common was alive and well. Protests rained on the legislature from as far away as Virginia, and once again women took a particularly active preservationist role. Mayor Nathan Matthews proposed a compromise in which the elevated would be constructed above Tremont Street, which would then have to be widened at the expense of the mall. The West End company, already viewed with the distrust naturally accorded to monopolies, intensified the protests by proposing an alternative in which several subways would be trenched across the Common to meet at a subterranean switching yard for which four acres would be excavated. The legislature sought to avoid the issue entirely, seizing instead on a proposed 'Alley Route' in which a new street, just wide enough to hold the elevated railroad, would be carved from the backs of building lots half a block east of

¹⁰²Petition quoted in *Boston Evening Transcript*, March 25, 1887: 5.

¹⁰³*Boston Evening Transcript*, February 1, 1893: 1, quoted in Charles W. Cheape, *Moving the Masses: Urban Public Transit in New York, Boston, and Philadelphia, 1880-1912* (Cambridge, Mass., 1980), 134; see also 120, 124.

Tremont Street. Cutting a slot through the most valuable real estate in the city, however, would be astonishingly expensive. Mainly for this reason, it was opposed by Mayor Matthews, the good-government Citizens' Association, and others, and was defeated at a city referendum in November, 1893.¹⁰⁴

The Citizens' Association instead backed an alternate proposal by which streetcars would be routed into a more modest subway skirting the Common along Boylston and Tremont Streets, and after the defeat of the elevated the city turned to building this subway, the first in the nation to be completed.¹⁰⁵ The comparative ease of excavating under parkland, together with growing awareness of potential business disruption while streets were dug up, led the city transit commission to draw its plans for the subway not under Tremont and Boylston Streets themselves but under the adjacent malls of the Common, with the attendant loss of hundreds of trees. Citizens' Association organizer George B. Upham, later credited as "the father of the subway,"¹⁰⁶ understood that it would inevitably run under the malls, but felt that it would "prove a safeguard to the Common as it would prevent a demand for a larger portion of it."¹⁰⁷ Many of Upham's followers, however, had not understood the proposal's compromise nature. "We have been fooled and bamboozled," wrote one. "We thought by a subway under Tremont [Street] we were to save the Common, but we are really to have a worse injury to it than to have tracks on the mall under the trees."¹⁰⁸ Others pointed out that the decision was a purely economic one, to avoid the expense of excavating and relocating utilities in the street. "[W]e are constantly paying enormous sums," wrote 'M.P.L.' to the *Boston Advertiser*, "for acquiring bits of

¹⁰⁴Cheape, *Moving the Masses*, 135-136; Nathan Matthews to Horace G. Allen, March 14, 1893, Nathan Matthews papers 4:237, Littauer Library, Harvard; *Massachusetts Acts and Resolves*, 1893, Acts ch. 481.

¹⁰⁵Since the existing streetcar system would still continue in operation alongside any elevated railroads, the problem of surface congestion was to some extent independent of the question of rapid transit, and the same legislature which approved the alley elevated also authorized a subway; *Massachusetts Acts and Resolves*, 1893, Acts ch. 478.

¹⁰⁶Sylvester Baxter letter, *Boston Evening Transcript*, September 24, 1898: 17. Upham later served as the first president of the Boston Common Society; *Boston Globe*, April 17, 1900: 6.

¹⁰⁷*Boston Evening Transcript*, December 18, 1893: 8.

¹⁰⁸*Boston Daily Advertiser*, April 1, 1895: 8.

nature which if not purchased just then will be destroyed. Does not Boston Common come under this head?"¹⁰⁹

Most of the Common's defenders no longer insisted that it was inviolable; they simply did not want it to look bad. They were particularly concerned about the loss of trees, and an astonishing amount of testimony and debate in the legislature concerned the likely fate of individual trees under various proposed subway alignments. In May of 1895 several hundred friends of the Common signed a petition to the legislature as notable for what it omitted as for what it asked. They requested that no permanent subway structures be located above ground on the Common, and that all stations and other subterranean structures be located at least twelve feet from the surface, where they would have comparatively little effect on tree roots. In return, they were willing to remove restrictions on how far beneath the Common the subway would extend, leaving that to the transit commissioners. They did not ask that construction proceed by tunnelling, in which the surface of the ground is not disturbed, rather than by the more economical cut-and-cover, even though the distinction was well understood, and true tunnelling was clearly what they wanted. They were evidently willing to settle for the long-term prospect of mature trees replacing those lost, and willing to trust the commissioners to do the right thing. "Almost everybody," wrote the staunchly preservationist editors of the *Evening Transcript*, "believes the commission to be thoroughly imbued with Boston notions as to the indispensable duty of preserving all the best features of the Common."¹¹⁰

The transit commission's five members were well chosen to inspire confidence in their sensitivity to the Common. Among them was Charles H. Dalton, a former chairman of the parks commission, and Thomas J. Gargan, a former legislator and city councilman who had fought actively against the Charitable Mechanics' building. The commission elected as its chair George G. Crocker, who had worked so hard twenty years earlier preventing damage to the Common's tree roots by a curbstone. Crocker led the commission on a path of preservationist sensitivity wedded with pragmatism,

¹⁰⁹*Boston Daily Advertiser*, April 1, 1895: 8 (probably Mary P. Lanza, who signed the May 11, 1895 petition in the *Evening Transcript*).

¹¹⁰*Boston Evening Transcript*, May 13, 1895: 4.



fig. 5.4. Subway excavations under the Tremont Street mall of the Common, 1896. The Bulfinch State House dome and the Park Street Church spire are visible on the skyline.

foregoing the religious concern for the Common which he himself had once shared, but on the other hand showing a sincere concern for its treatment and appearance. The commissioners worked with George B. Upham and others to devise means of protecting the Common's trees.¹¹¹ When it became clear that the Boylston street excavations would disturb a previously discontinued burial ground, the commissioners put the matter in the hands of Dr. Samuel A. Green, an official of the Historical Society and former mayor, and arranged for both a respectful re-interment of the remains and

¹¹¹Boston Transit Commission, *First Annual Report* (Boston, 1895), 30: the commissioners acknowledged to Henry Lee, Thomas L. Livermore, Charles S. Sargent, and George B. Upham, "for assistance in devising means for reducing, so far as possible, the destruction of trees on the common, and for advice as to the best treatment of those trees which stand so near the subway lines as to be possibly affected by the work."

an historical investigation of the site.¹¹² They engaged landscape architects Olmsted, Olmsted, and Eliot in order to use the occasion of the subway excavations for a restoration of the entire Common, hoping to “permanently add to the beauty and salubrity of the Common,” in the commissioners’ words, and to provide Bostonians “some compensations for the sacrifices they have made in having the subway built under the Boylston and Tremont street malls.” By most accounts they succeeded.¹¹³ Several years later, George B. Upham formed the Boston Common Society to lobby for its continuing care, and Crocker, Dalton, and Gargan all worked as members of its executive committee.¹¹⁴

Boston’s Common was initially valued, like the Old South and the Old State House, as the site of historic events. Arthur Pickering, defending it in 1877, mixed up places with people as mutually equivalent reference points in history: “There was a time when there were names that would cause the blood of every true Bostonian to thrill. Those names were George Washington, Adams, Hancock, Otis, Faneuil Hall, the Old South, and last, but not least, Boston Common.”¹¹⁵ On this mental map of history, the Common was not merely a single point, but a whole symbolic landscape where every hill and every tree had its own meaning. Even as late as the 1890s, many Boston men could remember playing as boys amidst the still recognizable earthworks thrown up by British troops there.¹¹⁶

Debate about the Common gradually came to revolve around its role not as a symbol but a visible piece of the urban environment. In the 1870s, as preservations deprecated the Old South’s architecture, the *Globe* similarly dismissed the Common’s appearance. “Nobody affects to believe that this precious spot of historic ground has high

¹¹²Boston Transit Commission, *First Annual Report*, 17. See also App. C, D, E. See also *Second Annual Report* (Boston, 1896), 7 & pl. C, D, E.

¹¹³Boston Transit Commission, *First Annual Report*, 19; editorial, *Boston Evening Transcript*, August 11, 1896: 4.

¹¹⁴*Boston Globe*, April 17, 1900: 6.

¹¹⁵Boston City Council, *Hearing on the Charitable Mechanics building*, 40.

¹¹⁶Howe, *Boston Common*, 39-40. The visible traces were evidently obliterated in the 1830s.

pretensions as a city park.”¹¹⁷ But during the coming decades, Frederick Law Olmsted oversaw the creation of a citywide system of public parks, and in this ‘emerald necklace’ the Common was the heirloom jewel. Newly created parks were infused with some of Boston’s traditional reverence for the Common, and the Common itself was absorbed into the ethos of the parks movement. Its visual qualities became foremost. During construction of the subway, public opposition centered on the visual issues of whether it would damage trees or erect inharmonious structures on the Common, rather than on the symbolic issue of disturbing an historic burial ground.

The shift from preserving historic monuments to preserving visual environments could be seen most sharply defined in the evolution of Boston’s treatment of burial grounds. This was governed at first by the symbolism of ancestors, which could be antithetical to environmental permanence when it was served by removing remains and monuments to Mount Auburn cemetery. By the end of the century, however, they were treated as little urban parks, all the more satisfying because their old stones, like the old trees Olmsted sought in parks, gave a sense of temporal depth.

From monument to landmark: Beacon Hill I

The ahistorical brand of preservationism which emerged around issues of open space in the city quickly came into play toward buildings, too. People began to treat them not as monuments but as landmarks, defining their significance less by historical than by visual importance. The building which served as fulcrum for this shift was the Massachusetts State House on Beacon Hill, designed by Charles Bulfinch and completed in 1798, the building which superseded the Old State House and later won Bulfinch the commission for the capitol at Washington. The 1808 Park Street Church just down the block extended this trend even further, since its significance was almost entirely visual rather than historical.

¹¹⁷*Boston Globe*, June 24, 1875: 4.

The Bulfinch State House was the subject of the first major preservation controversy in the country in which architectural history was more important than political, military, or religious history. It was the first one in which architects took a leading role. It also revealed - in part because of the architectural orientation of its defenders - latent conflicts between preservation and some of the kinds of permanence which people sought. It did not pit preservation against utility, but rather one kind of permanence against another.

The last time Massachusetts had focused its attention on enlarging its capitol was immediately after the Civil War, and immediately after the demise of the Hancock house. Between 1864 and 1867, at least five legislative committees considered the problem, the final one commissioning architects Alexander Estey and Gridley J. F. Bryant (who had designed an earlier extension behind the building) to prepare three alternate schemes: 'Plan No. 1' would meet the state government's "most pressing wants" by extending short wings from each end of the Bulfinch building, which would remain intact;¹¹⁸ 'Plan No. 2' added to these wings an expansion of the House chamber by extending the front 25 feet forward. The Bulfinch facade would be reconstructed there "as far as it could be done with consistency," making, as Bryant explained, "only such changes ... as the additional importance and character of the building seemed to require..."¹¹⁹ 'Plan No. 3' called for demolishing the Bulfinch building to construct a new state house on the same site.

From this textbook triumvirate of preservation, replication, and demolition, the legislators chose preservation, but they did so for purely financial reasons. While even Bryant's minimal Plan No. 1 was estimated at \$375,000, the legislature instead appropriated \$170,000 for an economy scheme of interior rearrangement by which they hoped "the necessities of the government will be met for a series of years, ... until the

¹¹⁸Massachusetts Executive Department, *Report of Commissioners on the Subject of Remodelling or Rebuilding the State House* (1867 Senate doc. 60), 3.

¹¹⁹Architects' description, in Mass. Executive Dept., *Report on Remodelling or Rebuilding*, 28-29.

people shall demand and authorize the erection of a new building.”¹²⁰ As they anticipated, their short-term approach kept the state house usable for only a decade or so.¹²¹

When the question next came up in the mid 1880s, many circumstances had changed. The government had grown, squeezing many departments out of the state house to scattered rented spaces, an arrangement which not only bled the Treasury but defeated some of the efficiency expected of a modern bureaucracy. The state tried consolidating offices as much as possible in the immediate vicinity of the capitol, but the character of the old neighborhood limited them to buying and renting what one suburban newspaper called “disused tenements.”¹²² Neither these buildings, nor any modest changes to the existing state house, could possibly be adequate to the growing apparatus of government. The economy had changed, too. Instead of a burden of Civil War debt and postwar inflation, Massachusetts enjoyed a prosperity which encouraged greater architectural ambitions.

But one more changed circumstance complicated these ambitions: success in saving the Old South and Old State House. These successes made newly poignant the memory of the Hancock House, which began to achieve mythic status as the preservation movement’s martyr, a sort of nineteenth-century equivalent of New York’s Pennsylvania Station.¹²³ Expanding facilities next door at the state house would not be so simple as demanding “a new building.” But if the eighteenth-century capitol remained, how could it accommodate a twentieth-century government?

Various schemes were revived for adding wings to the Bulfinch building, but any such plan had problems. Creating enough space this way was architecturally difficult, and would require radical rearrangement of the existing interior. It meant clearing the most densely occupied and expensive of the adjacent blocks. It was also perceived as a

¹²⁰1867 House doc. 449, quoted in James M. Stone, *The Improvements of the State House. The Investigation Thereof Investigated and Misrepresentations Exposed* (Boston, 1868), 8.

¹²¹See *Massachusetts Acts and Resolves*, 1878, Resolves ch. 43.

¹²²*Salem Public*, reprinted in Sillars, *The State House*, 32; Governor Oliver Ames described the arrangement as “not only expensive but inconvenient.” *Governor’s Address* (Senate doc. 1, 1888), 24.

¹²³E.g., *Boston Evening Transcript*, November 27, 1886: “...the State House is not entirely safe in the hands of a people who could let the old Hancock House go.”

grave threat to the old landmark, in part because land acquisition for wings would be identical to that for a wholly new structure, but also because of what such extensions, if actually constructed, would do to the building's proportions. Governor Oliver Ames, who in his private life was an important architectural patron of H. H. Richardson, explained that wings would "give us an unshapely and inartistic structure in place of one that is symmetrical and in good taste."¹²⁴

The Bulfinch building's appearance might be enhanced, on the other hand, by new state offices in separate buildings designed specifically to give it a deferential setting. One legislator proposed a "handsome colonial building, subordinate in appearance to the State House."¹²⁵ Detached buildings could not entirely solve the inconvenience of scattered offices, however, and the arrangement would do nothing for the cramped legislative chamber itself. In addition, the most eligible sites for such buildings were the same as any wings would occupy, making this plan equally costly.

There were many reasons, therefore, for looking north, behind the building. Construction there would have the smallest visual impact, and it would occupy the least expensive adjacent land. Behind the state house was Mount Vernon Street, the elite spine of Beacon Hill, although immediately across the street the houses were small and unprepossessing. Closing this street was the only way the building could extend rearward "in one solid mass," but it would involve heavy damages unless the plan created some satisfactory new approach to Beacon Hill.¹²⁶

A tempting but problematic solution beckoned from beyond the little houses on Mount Vernon Street: the vacant full-block 'Reservoir lot,' which the City of Boston owned, wanted to sell, and was holding off the market impatiently while the state deliberated how to expand its capitol. But the reservoir lot shared either the difficulties of closing Mount Vernon Street, or else the inconvenience of a detached office building

¹²⁴(Senate doc. 6, 1887), 2; *Boston Evening Transcript*, November 27, 1886.

¹²⁵*Commercial Bulletin*, April 30, 1887 (reprinted in Sillars, *The State House*, 27), writing of Rep. Justin Perry of Natick. The bill Mr. Perry actually submitted a month later made no mention of 'colonial' style, but called for "a plain, three-story building." 1887 House bill 520, 2.

¹²⁶Governor Oliver Ames, (Senate doc. 6, 1887), 2.

- until the state began exploring the possibility of bridging the street to make the new building an 'annex' to the existing state house.¹²⁷

Not everyone had become a preservationist. Many still felt that a proper capitol was a new capitol, on Beacon Hill or elsewhere, and that finances - the only legitimate argument against this solution - no longer prevented it. The whole question was first formally raised by an 1885 petition "that the Commonwealth procure a new State House in some other location," so that the Bulfinch building could be re-used as a new Suffolk County courthouse.¹²⁸ Among the "other locations" mentioned were the Back Bay, Parker Hill (the same eminence to which the city had removed its Beacon Hill reservoir), and the city of Worcester.¹²⁹ People who wanted a new capitol elsewhere provoked a debate over permanence and sacredness of site, like the earlier ones about migrating churches, but even they usually assumed permanence for the old structure. For all the nervousness about threats to the building, few people were willing to advocate destroying it, and accounts announcing a danger of "having the work of Charles Bulfinch removed or remodelled" were making a rhetorical warning about remodelling as much as a real warning about removal.¹³⁰

The legislature in 1886 approved the concept of enlarging the state house, but only after amending the measure to require "that the present state house, and particularly the southern front thereof, be substantially preserved."¹³¹ Over the next two years Governor Ames and the legislature's state house committee worked out a plan to accomplish this, and in 1888 the state took the Reservoir lot to extend the state house northward. The Governor announced a competition to design a 'State House Annex,' the instructions for which stipulated that "the architectural design is to be in harmony with the present building," and required drawings "showing method of connecting

¹²⁷Boston City Council, *Majority and Minority Reports of Joint Special Committee on Sale of Reservoir Lot* (City doc. 96, 1887), 7.

¹²⁸*House Journal*, 1885, 176.

¹²⁹*Boston Evening Transcript*, March 10, 1888, reprinted in Sillars, *The State House*, 26.

¹³⁰*American Architect and Building News*, June 26, 1886: 301.

¹³¹*Massachusetts Acts and Resolves*, 1886, Resolves ch. 87; *House Journal*, 1886, 739. See also account of the act's passage, by Dr. William A. Rust, then member of the House, in Massachusetts General Court, Committee on the State House, *Hearings Mar. 16, 17, 18, 1896, concerning the Bulfinch Front*, typescript, Massachusetts State Library Special Collections, 1:2-4.

proposed building with State House."¹³² Charles Brigham's winning design made the connection by two bridges across Mount Vernon Street, but it was modified before adoption so that the annex itself spanned the street, fusing with the Bulfinch building in a single mass.¹³³ This change would loom important later, but attracted little attention at the time. Three State House Construction Commissioners were appointed to build it.¹³⁴

The commissioners were not sympathetic to the Bulfinch building, an attitude which became especially clear a few years later when their new building stood nearly complete beside it. They hesitated to begin dismantling the old wall to connect the two, they said, because "once inside of it, it would be difficult to know where to stop."¹³⁵ Commissioners and builders reacted to the reality of a new and luxurious building next to an aged and comparatively plain one; legislators faced all their old discomforts plus the new ones of life on a construction site, compounded by the contrast with spacious quarters they could see rising.

In 1893 the commissioners blandly revived the question

whether the whole State House should not be made new. When the extension already authorized is completed, practically nothing of the old part will be left It is some hundred years old. Its outer walls and wooden finish will not be in keeping with what, while called an extension, will really be five-sixths of the whole building. The dome is of wood, subject to the impairment of age, and should be of iron. It is hardly possible that many years will pass before, in any event, this old

¹³²Massachusetts, Governor and Council, *State House Annex* (Boston, 1888), [1]. The competition was advertised November 28, 1888, with a deadline of January 20, 1889. It provoked a nationwide protest among architects, because of its short duration, inadequate prizes, failure to provide for expert evaluation of the entries and failure to promise the commission to the winner (*American Architect and Building News*, Dec. 15, 1888: 273; Dec. 22, 1888: 285; Jan. 19, 1889: 31). Most major architects refused to participate - nor could they effectively, given the time frame. The winner, Charles Brigham, was already intimately familiar with the building from making measured drawings for the state (*American Architect and Building News*, Feb. 9, 1889: 61).

¹³³The modified plan is explained by the architect in 1889 House doc. no. 334 (April 10, 1889), 3. The process by which it was modified is recalled by Brigham in Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 2:39-40. Albert W. Cobb attributes the modified bridge to Carl Fehmer, letter, *Boston Evening Transcript*, February 14, 1895: 6.

¹³⁴Former Governor John D. Long, chairman; William Endicott, Jr.; and Benjamin D. Whitcomb. Subsequent members were Charles Everett Clark and George W. Johnson.

¹³⁵Massachusetts State House Construction Commissioners, *Seventh Annual Report, 1895* (Senate doc. 3, 1896), 7.

and most conspicuous part, facing Beacon Street and the Common, will be made new and of equal quality with the rest.¹³⁶

Bostonians assumed they had won preservation of the Bulfinch state house, but in fact the battle had not yet been fought. Now it was precipitated by the paradoxical conflict between permanence and preservation revealed in this remarkable passage above. The ideal of permanence had triumphed so far that builders, at least, sought a hermetic permanence of materials not "subject to the impairment of age." "The Commissioners have endeavored to bear in mind," they said, "that they are constructing, not for a day or a hundred years, and that such should be the durability of material and solidity of construction, as to insure a building that will stand for centuries."¹³⁷ They could not find this perfection in old buildings.

Those who would get rid of the Bulfinch State House invoked both the lines of argument favoring change, the first of which equated 'old' with 'corrupt.' The building was so universally an object of affection that no one tried to claim it was morally or even stylistically reprobate, but argued instead that it was 'corrupt' in the literal sense of the word: it "consisted mainly of a wooden dome, badly rotted," said the *American Architect*, "and covered with a tin roof, which, as it ... would fall down from decay before long any way, might be dispensed with"¹³⁸

¹³⁶Massachusetts State House Construction Commissioners, *Fourth Annual Report, 1892* (House doc. 6, 1893), 8. The commissioners' proposal not surprisingly brought charges of disingenuousness. "The move for the destruction of the State House has been a covert one....", said Arthur Rotch. "Following the diplomatic tactics of those in charge, the great 'Annex' has crept up in the rear under cover of the old building, and now suddenly asserts itself, and from behind it stabs to death...." (*Save the State House: The Memorial of a Century of Freedom* [Boston, 1894], 28). Alden Sampson speculated that this "plot" was conceived as a way of building a whole new capitol piecemeal to avoid confronting demands that it be moved elsewhere in the state. (letter in *Boston Evening Transcript*, publ., *State House Reconstruction* [Boston, 1894]). Even the *American Architect* thought that "if it had been known that the public was not to be cajoled into giving up the old building," Massachusetts would have picked a different design (*American Architect and Building News*, March 10, 1894: 109). Arthur T. Lyman suggested a different sort of ulterior motive. With restoration estimated at \$375,000, and new construction at \$1,250,000, he quoted "[a] friend from the corrupt city of Philadelphia" who thought that the way to save the building was to raise the restoration price to \$2,000,000. (letter, *Boston Evening Transcript*, April 22, 1896: 6.)

¹³⁷Massachusetts State House Construction Commissioners, *Sixth Annual Report, 1894* (Senate doc. 3, 1895), 15. The *American Architect and Building News* referred to the annex as "the permanent part" of the state house; Dec. 4, 1886: 261.

¹³⁸*American Architect and Building News*, January 14, 1893: 17.

The physical condition of the building would appear to be a factual question, but somehow this seemed impossible to answer. Even after an independent commission of experts investigated it in 1895, legislators were left to choose between wildly different opinions.¹³⁹ Architect William D. Preston described it as a structure of “good old handmade bricks, made honestly in the old times, hard and red and laid in mortar; and the mortar was solid and hard; Those great walls four feet thick, made honestly, would certainly ... carry an eight story building without any strengthening”¹⁴⁰ But Charles Brigham called one of those same walls “the most decrepid [sic] piece of brick construction that you could very well find.”¹⁴¹

Both sides agreed that parts of the building - in particular the dome - had deteriorated, and their disagreement is best understood as a philosophical question: was a hundred years' inevitable aging to be accepted as normal, a healthy subject for restoration, or was it to be seen instead with the disgust connoted by descriptions of decay and decrepitude? Viewed as a practical matter, the building's rehabilitation presented no insurmountable difficulties, “so that if the building is to be destroyed,” said Clement K. Fay, attorney for the Boston Society of Architects, “it will not be because it cannot be saved, but for some other reason.”¹⁴²

The second argument for change - faith in material progress and improvement - provided that other reason for those who wanted to take down Bulfinch's state house, and gave rise to its own conflict between preservation and permanence. If environmental permanence was a desideratum, should it be permanence of what was there now, or of what was about to be built? A still-vital faith in progress led to the answer that there ought to be one last wave of change, to an environment made to be worthy of permanence. This question was increasingly troubling as preservationist attention turned to visual and architectural significance and to ever-larger pieces of the

¹³⁹Appointed March 14, 1895: Charles A. Cummings (President of the Boston Society of Architects), David H. Andrews, E. Noyes Whitcomb; their report, presented April 13, is reprinted in *American Architect and Building News*, April 27, 1895: 39-40.

¹⁴⁰Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 21. See also Walter H. Wentworth, a Boston, mason and builder: “I never saw a better-built wall” (1:32).

¹⁴¹Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 2: 36.

¹⁴²Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 2: 25.

environment. The City Beautiful movement (discussed below in chapter 6) arose at this time as an effort to create a large-scale urban environment visually worthy of the permanence which was by then considered possible. A triumph of the search for permanence need not be a triumph for preservation.

Worthiness was a central issue in this era when most American states built new capitols intended as their respective emblems. This capitol especially, serving a rich and cultured commonwealth from its pride of place on Beacon Hill, the social and topographic pinnacle of the city, should be its architectural pinnacle as well.¹⁴³ Could Bulfinch's "good old handmade bricks" bear this tremendous symbolic weight?

This question made the state house, more than any other preservation controversy so far, a design issue, and a potentially troubling one for the architecture profession. Charles Francis Adams thought it "a curious and somewhat saddening fact" that

the best educated architectural taste the country can command has been at work for the last half-century ... and the Old State House on Beacon Hill still remains infinitely the most dignified and most imposing, the most characteristic, the most perfectly designed and agreeable architectural effort we can boast.¹⁴⁴

Did architects really want to agree that their profession's best work had been done in a previous century? The evolution of architectural taste had reached a particular point where it was possible to ask this question seriously. Architects and their patrons were increasingly rejecting eclecticism and searching for academically-correct roots. Bulfinch's simple Georgian lines were just the antidote for Victorian excess, and Charles A. Cummings, the head of the Boston Society of Architects, denounced as "false progress" the prospect of replacing them with what one newspaper feared would be "some architectural phantasy of the newest new school."¹⁴⁵ For more than a decade,

¹⁴³Construction commission chairman John D. Long, letter in *Boston Evening Transcript*, February 2, 1894: 5. It "might, with such opportunities for effect as the lot afforded, have been made one of the most splendid buildings in the world" (*American Architect and Building News*, Feb. 10, 1894: 61).

¹⁴⁴Speech re Chicago Columbian Exposition, at November, 1893, Massachusetts Historical Society meeting, reprinted in *Save the State House*, 30. Three years later a crowd in Faneuil Hall applauded Mayor Josiah Quincy when he said, "I do not feel like trusting the architects of today to improve upon the work of Bulfinch." *Boston Evening Transcript*, April 21, 1896: 1.

¹⁴⁵*Save the State House*, 15; *Worcester Spy*, reprinted in Sillars, *The State House*, 32. An 1895 appeal by non-architects asked, "At this time of reawakening interest in a noble and severe civic architecture, symbolized by the new Public Library, what more fitting celebration of the centenary of

the Colonial Revival had been taking hold in New England and was beginning to spread elsewhere, and its practitioners grew increasingly rigorous in their adherence to its canon. This led to preservation arguments based not merely on architectural quality but on significance to architectural history, as when one defender explained that Bulfinch's building was "the prototype of nearly all the legislative buildings which have been erected in this country since a type which is quite unique to this country."¹⁴⁶

Architects led the fight to save the Bulfinch state house, a first for the profession in this country. They had been conspicuously silent about both the Old State House and the Old South Church, the replacement for which was designed by Charles A. Cummings, now among the most active and vehement of the Bulfinch building's defenders. "[W]here was his well-developed 'historical sentiment' at that time?" asked one skeptic.¹⁴⁷ If architects had earlier identified their interests with those of clients who commissioned new buildings, now their sympathies clearly lay with Bulfinch as their predecessor, and the emerging profession of restoration architecture demonstrated that preservation, too, could pay.

In 1894, the Boston Society of Architects set up a State House Committee which promoted the building's preservation in two ways. First, it answered doubts about the building's condition and proposed practical methods to preserve it. One member of the committee seized for their cause the mantle of progress by claiming that the state house's preservation had only recently become feasible, because "principles of construction have undergone such revolutionary changes, that what would have been impossible twenty five or fifty years ago is now made comparatively a simple problem

Bulfinch's State House...than to hand down to another century unmoved, this landmark of a century preceding our own?" *Boston Evening Transcript*, February 9, 1895: 9.

¹⁴⁶Edward Robinson, Secretary of the Boston Art Commission, in Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 45.

¹⁴⁷Albert W. Cobb, in Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 2: 12. Cobb himself proposed in 1895 a "design for preserving and extending the front of the Massachusetts Stae House," but the legislature, rather than hiring him to carry out his plan, created the expert commission on which Cummings sat as the sole architect, which may explain Cobb's vehemence. When Cummings later served as consulting architect for the actual restoration, he refused to accept any compensation. *American Architect and Building News*, July 11, 1896: 10.

of the use of steel construction."¹⁴⁸ Second, the architects educated the public, and the legislators, about the quality of the building's design and its place in the history of American architecture.

This involvement by architects, and this focus of public attention on architecture, was part of a more general trend toward seeing preservation questions in terms of visual issues, such as affection for views of the state house and its dome. Such concerns were not heard so much during the controversies over the Old South Church and Old State House, which were treated as historic memorials; the visual emphasis had its precedent instead in defense of the Common.

Ironically, this visual focus worked against the Bulfinch building, leading to the strangest and most significant episode of the story, an officially-endorsed plan to replace the Bulfinch state house with a replica - eventually a larger-than-life replica, as Bryant had proposed twenty-five years earlier. The commissioners, acknowledging the building's architectural significance, "recognized of course that no change would ever be permitted in the now historic and always admirable" design, but their version of permanence did not encompass - it scornfully dismissed - the materials in which the design was realized.¹⁴⁹ As commissioner William Endicott, Jr., asked:

Will a proper appreciation of Mr. Bulfinch require that the building should be carried forward in pine wood and lathe [sic] and plaster finish until it shall burn down? Is it not a truer loyalty to put the idea of Mr. Bulfinch into enduring materials and pass it down the centuries?¹⁵⁰

At a hearing before the legislature's State House committee, Endicott explained that the commissioners' plan would "preserve the structure in new material."

To this Mr. Fay remarked, "I fail to see how you can preserve the building by substituting a new structure."

"We desire to preserve the idea," answered Mr. Endicott.¹⁵¹

¹⁴⁸Clement K. Fay, in Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 3: 17. The committee consisted of Fay, Prof. Warren, William R. Ware (1: 14-15).

¹⁴⁹State House Construction Commissioners, *Fourth Annual Report, 1892*, 8.

¹⁵⁰Letter, *Boston Evening Transcript*, February 2, 1894: 5.

¹⁵¹*Boston Evening Transcript*, February 26, 1894: 1. An opponent quoted the commissioners: "'We would raze the building,' they said, 'in order to preserve it, in order to preserve the idea of which it is

Did Charles Bulfinch produce an “idea” or a particular tangible object? Was his state house a sort of Platonic ideal, a soul which might be reincarnated in a new body? A puzzled commissioner Endicott attempted his own analysis of these questions. “The devotion of the architects to Mr. Bulfinch,” he wrote, “simmered down, seems to be one of two considerations: it must be either the dimensions and form of the wall or the bricks themselves.” He thought he had a solution; he wondered if architects would favor

a new structure, as proposed by the commissioners, of the same outlines and dimensions as the present one, provided the bricks of the present building shall all be used in interior brickwork of the new. It would seem that this should satisfy them in both respects.¹⁵²

It did not satisfy them, but Endicott had hit upon a fundamental dichotomy between a visual concern for preserving “form,” and an archaeological or art-historical interest in preserving “the bricks themselves.” Representative John E. Tuttle, a Boston real estate broker who had worked to protect the Common, saw only a visual issue, and thus favored the commissioners’ plan. “I consider it a great tribute to the Bulfinch style of architecture that we should attempt at this day, a hundred years later, to ... reproduce it.”¹⁵³ Testifying before Tuttle, President Francis A. Walker of M.I.T. expressed the opposite view in terms perhaps directed at Endicott, a trustee (and soon president) of the Museum of Fine Arts: “Anybody can make a copy” he said, but “it takes a master to make an original.”¹⁵⁴

This new awareness of the city as a visual experience also led to the project of honoring the state house by clearing two blocks east of it to extend its park setting and further open views of it (discussed further in chapter 6 below). Far from enhancing the building, however, the demolitions carried out in 1894 gave new impetus to the idea of

the material embodiment” (Alden Sampson letter in Boston Evening Transcript, *State House Reconstruction*).

¹⁵²Letter, *Boston Evening Transcript*, February 17, 1894: 12.

¹⁵³Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 3: 33.

¹⁵⁴*Save the State House*, 24. Even this to some people understated the value of the building: “Bulfinch was great because he built the State House, and not the State House great because Bulfinch built it” (Alden Sampson letter in Boston Evening Transcript, *State House Reconstruction*).

replacing it. “[W]hen the buildings on the east side were cleared away,” wrote the *American Architect*,

and people had a chance to see the east front, it was at once plain that things had, behind the high fence, arrived at a very dubious stage. Taken as it stands, the east front seems to suggest nothing so much as that it was the designer’s original intention to do away absolutely with the old building and to repeat at the south end the treatment employed at the north. Doubtless this may not have been the architect’s real intention, for it could hardly have been known at the time the design was prepared that a park was to be made on the east side which would expose that part, instead of leaving it to the seclusion of a narrow street.¹⁵⁵

The painstakingly created views revealed “a building five hundred feet long with a dome at one end”; “a tender too large for the woodburning locomotive that was trying to pull it up hill”; an enormous tail for a “little dog” (fig. 5.5.).¹⁵⁶ The construction commissioners, recognizing the absurdity of this arrangement, decided to get a bigger dog.



fig. 5.5. The ‘Bulfinch front’ and the completed state house annex. Photograph 1903.

The commissioners’ 1893 report had recommended that “the front should be rebuilt, preserving its present proportions”, but after the unfortunate proportions of the whole became apparent, their bill before the next legislature added that the reproduction should

¹⁵⁵*American Architect and Building News*, March 10, 1894: 109.

¹⁵⁶Fay, in Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 9; *American Architect and Building News*, March 10, 1894: 109.

be made “with the proper increase of width and height.”¹⁵⁷ “Bulfinch originally intended a wider front,” explained Long, “and there is some reason to believe that he contemplated with it a higher dome accompanied by a colonnade....” The commissioners, he said, had no intention “of recommending any other change than the conservative one above suggested.”¹⁵⁸

Although the commissioners’ plan made it through the legislature’s State House Committee, five of its eleven members dissented, including its chairman. Their minority report acknowledged that “the present State House is in a condition where thorough and systematic repair and renovation are necessary.” But, they said, “the way to preserve the State House is to preserve it.” Only this promise had allowed the project to go ahead. “The annex was built to preserve the State House and to harmonize with it. We are told, now, that the State House must be destroyed and rebuilt so that it may ha[r]monize with the annex.” The commissioners proposed “to preserve the ‘idea’ of the State House by destroying the State House itself.” The minority offered instead a bill providing for “so thorough a repairing and fireproofing of the present structure that the question of its preservation will be permanently solved.”¹⁵⁹

[T]he State House can thus be put into a condition almost unexampled among historic buildings for safety and solidity and we desire to repeat that this is the only kind of preservation that is worthy of the name. Reproduction of colonial architecture never can retain the quaintness and beauty of the original. If the State House is once destroyed it is destroyed forever, and putting up a new building of stone and iron does not put it back again.¹⁶⁰

¹⁵⁷State House Construction Commissioners, *Fourth Annual Report, 1892*, 8; 1894 Senate bill 182. Compare with 1893 Senate bill 318 - essentially the same language, without the clause allowing dimensions to be increased.

¹⁵⁸Letter, *Boston Evening Transcript*, February 2, 1894: 5. See Arthur T. Lyman letter, *Boston Evening Transcript*, April 22, 1896: 6: “Even if we had Bulfinch’s original plans, it would be absurd to reproduce them when the building that we have is the building that he erected.”

¹⁵⁹Massachusetts General Court, Committee on the State House, *Views of a Minority ... on the Preservation of the State House* (Senate doc. 189, 1894), 2-3. The minority included Joseph F. Bartlett, E. G. Frothingham, of the Senate; Royal Robbins (chairman of the committee), F. H. Bradford, Henry A. Whitney, of the House

¹⁶⁰Massachusetts General Court, *Views of a Minority*, 3.

Finally, they disagreed that building a new front would improve the appearance of the complex as a whole, and argued that even on these grounds preserving the original was preferable, since

it will serve to emphasize the fact that the State House and annex are in reality two buildings, the former having been specially preserved for the people, and the union of the two will not be subject to the strict criticism to which one modern building would be exposed.¹⁶¹

The committee's minority report, with its discussion of the proper relationship between new and old building fabric, showed the sophistication of public discourse resulting from Boston's two full decades of successful preservation efforts.

If the State House was to be preserved, the scale of the project would raise daunting details of restoration, and thorough public discussion extended even to these details. As Alden Sampson said of the Bulfinch building, "its very faults are not without interest."¹⁶² For example, the facade's columns, modelled on ancient Greek construction of stone, had been executed instead in wood - each one turned from a single tree trunk. Would not Bulfinch's intentions be best respected by making them of stone, as he presumably would have done had it been available? So argued architect and preservation advocate William G. Preston,¹⁶³ echoing Viollet-le-Duc's philosophy of restoration to "a condition of completeness which could never have existed at any given time."¹⁶⁴ Counter-arguments followed the Ruskinian 'anti-scrape' philosophy which favored not restoration but preservation as found. Even if Bulfinch would have preferred stone, which preservationists were by no means willing to concede, "[h]e got

¹⁶¹Massachusetts General Court, *Views of a Minority*, 4. The committee was adopting a position earlier taken by the BSA. see William G. Preston letter, *Boston Evening Transcript*, February 7, 1894: 8.

¹⁶²Alden Sampson letter in *Boston Evening Transcript*, *State House Reconstruction*.

¹⁶³Letter, *Boston Evening Transcript*, February 7, 1894: 8.

¹⁶⁴Eugene Emmanuel Viollet-le-Duc (1875), quoted in Hosmer, *Presence of the Past*, 23.

the value out of wood," said H. C. Wheelwright. "The things that he did have a value that nothing we do in the more complicated days of the present can equal."¹⁶⁵

The Bulfinch state house preservation campaign also brought a redefinition of what, for Massachusetts, would be considered 'historic.' The term had previously applied almost exclusively to the state's heroic period, the Revolution. "There is nothing particularly historic about our present State House," editorialized the *Herald*, "Most of the great events in our local history took place before it was built."¹⁶⁶ Some of the building's defenders nonetheless tried reaching back to the Revolution to find its associations there; Samuel Adams and Paul Revere, they pointed out, laid its cornerstone. Now history leapt forward, as the building's significance was found in the comparatively recent Civil War and the administration of "the great war Governor," John A. Andrews.¹⁶⁷ "We cannot know how precious everything connected with that War" will be, said Edward Robinson, secretary of the Boston Art Commission, "two hundred years from now."¹⁶⁸ The time horizon of historic significance now encompassed living memory in Massachusetts, as it long had in the southern states, even if historic sensibilities in both places were still heroic and primarily martial.¹⁶⁹ Some preservationists even tried to broaden these sensibilities to a more continuous view of history. The Old State House had seen only fifty years in the life of the colony,

¹⁶⁵Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 42.

¹⁶⁶*Boston Herald*, April 8, 1896: 6. Winslow Warren, Vice President of the Massachusetts Historical Society, in a letter to John D. Long, referred to the building's preservation as "destroying the effect of the new for the sake of the not very old." The building had "more an imaginary than a real antiquity," he said. "I confess that with an anxious antiquarian spirit I have endeavored to understand what are the associations connected with the present state house front. It was built by Mr. Bulfinch about 100 years ago. Well, what of it!"

¹⁶⁷Charles A. Cummings wanted to "put it as nearly as possible in the condition it was in when Governor Andrews was here"; Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 10. See also Roe, *The Old Representatives' Hall*, 42; Alden Sampson letter in Boston Evening Transcript, *State House Reconstruction*.

¹⁶⁸Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 44.

¹⁶⁹"We are told," said Alfred Seelye Roe, "that because the years after the revolution to those of the rebellion were days of peace, there could little interest attach to these walls;" Roe, *The Old Representatives' Hall*, 52.

but this one, pointed out Henry Lee, "witnessed the first hundred years of the history of the State. It is all the history there is."¹⁷⁰

Finally, this building raised in yet another way the question of use. As at the Old State House, there were plenty of potential *uses*, but what was the *purpose* of preserving it, and what use would accomplish it? Former Governor John D. Long, chairman of the construction commission, was not unwilling to accept preservation itself as a legitimate use for a building. He was one of the incorporators of the Old South Association in 1877, and was instrumental in guiding that controversial incorporation through the legislature; he remained one of the association's directors even as he was trying to tear down the Bulfinch State House.¹⁷¹ The Old South was a monument, and nothing else; for Long this took it out of any utilitarian calculus. Long had difficulty seeing the State House in the same way, as when Fay, for the Boston Society of Architects, pictured it becoming

not an office or administration building full of busy offices, but rather a show building, an historical relic, not ... to be used as a beehive of industry, but as an impressive entrance to a building that may be put up behind it or on each side.¹⁷²

"The whole nutshell lies just here," replied Long. "We had supposed that the scope of our duty was to regard this as a building, the main purpose of which was utility as a State House." If this was the purpose, he said, "it is a great deal better to tear it down"¹⁷³

Each year the State House Committee agreed with Long, and each year the full legislature granted the building a reprieve. By 1896, with the annex awaiting connection and the old building more or less damaged by the work behind it, some action was becoming imperative. After a series of public hearings dominated by preservationists, the State House Committee nonetheless voted again 6 to 5 in favor of

¹⁷⁰Henry Lee, 'The Value of Sentiment,' reprinted from *American Architect and Building News*, March 9, 1895: 5.

¹⁷¹*Boston Globe*, April 26, 1877: 2; Old South Association, *List of Officers*.

¹⁷²Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 11.

¹⁷³Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 2: 26-27.

demolition and reconstruction, bringing this story to its brief and intense crisis. The Bulfinch State House became both a nationwide cause and a statewide political fight. State Representative Alfred Seelye Roe of Worcester addressed mass meetings at Faneuil Hall and the Old South meetinghouse, trying to establish a rhetorical equivalence among the three monuments. The building's opponents in the legislature complained, to Roe's evident glee, about organized campaigns by which their constituents were bombarding them with letters and petitions.¹⁷⁴

The campaign extended beyond Massachusetts' borders to include agitation around the country, especially in Chicago, where it rivalled that in Boston itself. Chicagoans proposed buying the building and re-erecting it in Illinois. Their earlier threats to move the Old State House there had seemed mere braggadoccio, but looked more serious now because in the meantime, Chicagoans had scoured the country for historic buildings they could bring to the 1893 World's Columbian Exposition, including an unsuccessful attempt to secure Hawthorne's birthplace from nearby Salem. Their efforts served as a stimulus to preservation in the east in the same way that American raids on European historical patrimony catalyzed preservation there.¹⁷⁵

Preservationists won in the full legislature in the last days of the session, when it approved a bill submitted by Roe, providing for preservation of the state house and ensuring the necessary sensitivity to artifact by taking the restoration out of the commissioners' hands. It would be supervised instead by Governor Roger Wolcott, together with the President of the Senate and the Speaker of the House, "friends"¹⁷⁶ of the Bulfinch building, and calculated to outrank the eminent commissioners. The victory was consolidated when these three selected as architects Charles A. Cummings,

¹⁷⁴*Boston Morning Journal*, March 27, 1896: 10; *American Architect and Building News*, Apr. 25, 1896: 33; *Boston Evening Transcript*, May 13, 1896: 7; *Boston Morning Journal*, April 16, 1896: 1; Massachusetts General Court, *Centennial of the Bulfinch State House. Exercises before the Massachusetts Legislature, January 11, 1898* (Boston, 1898), 30.

¹⁷⁵Roe in Massachusetts General Court, *Centennial*, 19-20; see also James Michael Lindgren, 'The Gospel of Preservation in Virginia and New England: Historic Preservation and the Regeneration of Traditionalism' (Ph.D. diss., College of William and Mary, 1984), 92.

¹⁷⁶George P. Lawrence of North Adams and George v. L. Meyer of Boston. Meyer was an investment banker whose sister Helen Meyer was later an important supporter of the Society for the Preservation of New England Antiquities (Lindgren, 'Gospel of Preservation,' 260); "The placing of the work in

Robert D. Andrews, and Arthur G. Everett, each of whom had been active in the preservation campaign.¹⁷⁷

Work was finished in time for the centennial of the building's original opening, "fresh from the hand of the rehabilitator, old yet new,"¹⁷⁸ said Alfred Seelye Roe at its re-dedication. "The results surround us. *Esto perpetua.*"¹⁷⁹

The Bulfinch State House brought together two strains of preservation, one concerned with historical significance and the other with broader visual, functional, and sentimental significance. The first had saved two important buildings, and the second had prevented encroachments on traditional public spaces. At the state house, preservation was more about architecture than history, and it was about architecture evaluated not so much in an academic framework as for its contribution to the visual structure of the city. Across the short side of the Common, next to the Granary burial ground, was Park Street Church, subject of a controversy which flared and then fizzled during two years beginning late in 1902, following close upon the Bulfinch State House campaign and further extending the directions it set. At the state house, the focus on architecture was always balanced by confidence that the building was also of the greatest historical and symbolic significance, a monument in every sense of the word. Park Street Church, on the other hand, was still more recent (1809), and of what even its defenders admitted was limited historical value, but it was a familiar and beautiful building at the most prominent corner in the city.¹⁸⁰ It was a landmark, not a monument. Park Street Church produced the best articulation yet of an aesthetic basis for preservation, and of a philosophical kinship between preservation and the parks movement.

the care of its friends was wholly intentional," said A. S. Roe in Massachusetts General Court, *Centennial*, 27; 1896 Senate bill 253 (as amended Senate bill 259).

¹⁷⁷Massachusetts General Court, *Centennial*, 28.

¹⁷⁸Massachusetts General Court, *Centennial*, 25.

¹⁷⁹Massachusetts General Court, *Centennial*, 17.

¹⁸⁰On the Park Street spire in general, see *American Architect and Building News*, Oct. 31, 1896: 33.

The Park Street Church debate was prefigured in different ways by two episodes, each of which was resolved before it could become a real controversy. The first happened twenty years earlier, when Back Bay residents in 1881 campaigned to preserve the new Brattle Square Church on Commonwealth Avenue, or at least its spire, as the defunct congregation's assets were liquidated. When an auction of the property was announced, J. Montgomery Sears led other Back Bay residents in organizing to save the H. H. Richardson building, then just nine years old. They did not want to see, in the *Evening Transcript's* words, "our most magnificent avenue ... bereft of its most conspicuous ornament."¹⁸¹ The appeal quickly brought pledges of \$30,000, but the organizers expected the building to sell for \$150,000, and so they abandoned the effort. Sears attended the auction out of curiosity, and when bidding ran only half the anticipated sum, he stepped in and bought the property himself for \$81,000, taking it with "a vague idea of utilizing it as a public hall or music hall, or in some other way preserving it."¹⁸² He offered it at cost to any religious body, or at a slight advance to anyone else who would take it subject to the condition that at least the tower be preserved. Lest potential allies think he had made the building's preservation his own private philanthropy, he threatened five weeks after he bought it to demolish the whole thing if a purchaser did not come forward within two months, and two months after this deadline passed he advertised for removal of the building as salvage. George B. Chase, a member of the Old South Preservation Committee, organized a campaign to save the tower alone, calculating that selling off the rest of the lot would leave at most \$30,000 to be raised. Chase had obtained pledges of more than \$20,000, and assurances that the city would fit up and maintain the steeple as a clock tower, when Sears found a buyer, the First Baptist Church, willing to put the whole building back into use and thus end the question.¹⁸³ This six months of sporadic effort was significant for what it reveals about contemporary attitudes toward preservation. Just

¹⁸¹Editorial, *Boston Evening Transcript*, June 16, 1881: 4.

¹⁸²Editorial, *Boston Evening Transcript*, May 11, 1881: 4; May 7, 1881: 2; May 10, 1881: 1.

¹⁸³*Boston Evening Transcript*, October 11, 1881: 4; June 16, 1881: 4; advertisement cited in letter to the editor, *Boston Evening Transcript*, October 11, 1881: 5; [George B. Chase], 'Brattle St. Church Tower' MS subscription book, T. Chase papers, Massachusetts Historical Society. The pledges ranged from \$250 to \$5,000; as the *Springfield Republican* wrote: "The appeal is rather to the wealthy than the sentimental citizen" (quoted in George B. Chase letter to the editor, *Boston Daily Advertiser*, July 29, 1881, clipping in subscription book).

after the Old South and the Old State House campaigns, some people drew from those efforts the general lesson that they need not accept change in any valued part of the environment, whether or not it had already achieved the semblance of permanence through longevity. The Brattle Church tower took its value not from history, but from its place in a larger scheme of urban design.

The second episode involved St. Paul's Episcopal Church, immediately preceding the Park Street Church controversy and starting as a closely analogous question. Just a few steps away from Park Street, St. Paul's faced the Common on Tremont Street, a granite and sandstone Greek Temple built in 1819 to the designs of Bulfinch's disciple Alexander Parris. In 1901 a real estate syndicate, after negotiating with the congregation's treasurer, offered \$1.5 million for the church property. The proprietors, uneasy about removing the last Episcopal church from the center of Boston, declined this princely sum. The following year a new offer matched that amount and added a \$5,000 individual bonus for each of the 41 proprietors who would vote in favor of the sale. Such blatant bribery evidently offended Brahmin pride; this time the vote against selling was "practically unanimous."¹⁸⁴

Later in 1902, a different syndicate headed by developer John Phillip Reynolds, Jr., approached the 'prudential committee' which managed the worldly business of Park Street Church across the street. Although its lot was only half the size of St. Paul's, they offered \$1,250,000 for it. Park Street was an evangelical congregation, born in the religious revival of 1808, and so its site had come to be called 'Brimstone corner.' Over the past generation attendance had fallen off and in 1895, with chronic annual deficits, the church society altered the building to rent out part of its ground floor as stores. Two years later, while the congregation was drifting without a minister and its debt increasing, the society renewed the store's leases with a new clause "in case of the sale of the Church," for the first time acknowledging this possibility.¹⁸⁵ The deacons brought back a previous pastor, Dr. John L. Withrow, and then determined in 1898

¹⁸⁴*Boston Evening Transcript*, April 1, 1902: 12; William Shand Tucci, *Built in Boston: City and Suburb, 1800-1950* (Boston, 1978), 13; *Boston Sunday Journal*, February 17, 1901: 1, 2; *American Architect and Building News*, Mar. 2, 1901: 66.

¹⁸⁵Quoted in H. Crosby Englizian, *Brimstone Corner: Park Street Church, Boston* (Chicago, 1968), 202.

that “the church should be kept in its present edifice.”¹⁸⁶ A few years later, with their finances unimproved and the church’s mortgage coming due, they were not so sure. The developers’ offer, said Withrow, was “the Lord’s doing.”¹⁸⁷

Moving to the comfortable Back Bay and taking refuge in an endowment might be seen as a departure from the idea of an evangelical church; some members of the society wondered whether it wanted to make such a change in its mission. Framing the question in this way tilted the answer toward preservation, but the practical businessmen who served the church as officers and deacons saw it differently. The society’s property already constituted an enormous endowment which could both pay for a new church and support substantial missionary work; the question was whether to devote it to religious purposes or keep it locked up in architecture. “Are we right in allowing so vast a sum to lie hid in a napkin,” asked Withrow, “when the income of it would do so much?”¹⁸⁸

Withrow’s allegorical “napkin,” however, was a landmark which its admirers said was “seen by more people to-day than any other building in the city.”¹⁸⁹ The corner had always been visible, but its prominence increased markedly with the 1898 opening of Park Street station in the Common across from the church, the most important stop on the new subway. More than thirty thousand people a day, who in the past might have stepped off a streetcar anywhere along Tremont Street, now emerged blinking in the daylight to the sight of Peter Banner’s graceful steeple. “The site is the most conspicuous in the whole city,” according to the developers’ agent, “and there can be no more advantageous position for a retail establishment.”¹⁹⁰ While the corner’s new place on mental maps of Boston made the site more valuable as commercial real estate,

¹⁸⁶Subcommittee of the Prudential Committee, quoted in Englizian, *Brimstone Corner*, 202.

¹⁸⁷*Springfield Republican*, December 17, 1902, quoted in Committee for the Preservation of Park Street Church, *The Preservation of Park Street Church, Boston* (Boston, 1903), 52. The mortgage was due July 15, 1903 (23).

¹⁸⁸Quoted in Englizian, *Brimstone Corner*, 205.

¹⁸⁹Committee for the Preservation of Park Street Church, *Preservation*, 5.

¹⁹⁰Henry Whitmore, in *Boston Evening Transcript*, December 15, 1902; Firey, *Land Use in Central Boston*, 163.

it also made the church's preservation seem more important. The subway in large part made the issue.

Withrow announced the syndicate's offer before Sunday services on December 7, 1902. The deacons set two meetings, the following Thursday and Saturday, for the pew-owners and then the society as a whole to vote on the sale. Withrow's flock followed him, and joined in a unanimous vote of confirmation to affirm the congregation's harmony in its decision. Ten days after the sale was first publicly proposed, the signed agreement was recorded in the registry of deeds.¹⁹¹

The sale quickly aroused opposition, and attorney Prescott F. Hall invited individuals to contact him about organizing to preserve the building. Dr. L. Vernon Briggs asked those interested in the cause to meet at his Beacon Street home on January 14, 1903, to coordinate "the different efforts now being put forth by many persons."¹⁹² Briggs announced that \$100,000 had been pledged already toward an effort to save the church; it was later made public that this came from two individuals offering \$50,000 each.¹⁹³ The Committee for the Preservation of Park Street Church was organized at that meeting, its membership entirely unconnected with the congregation,¹⁹⁴ and it soon announced pledges of \$200,000 and then \$300,000.¹⁹⁵

"The interest in Park Street Church", explained the committee's first circular,

is not due to great antiquity or wealth of historic associations, like the Old South Church, The chief interest lies in the fact that the church is an impressive architectural monument, situated at a strategic point in the landscape of the city and

¹⁹¹*Boston Herald*, December 8, 1902: 12; December 14, 1902: 7; December 18, 1902: 8.

¹⁹²Committee for the Preservation of Park Street Church, *Preservation*, 31; Prescott F. Hall letter, *Boston Evening Transcript*, December 31, 1902 (quoted p. 51).

¹⁹³*Boston Evening Transcript*, January 15, 1903; *Boston Globe*, April 2, 1903 (quoted in Committee for the Preservation of Park Street Church, *Preservation*, 32, 64).

¹⁹⁴Englitzian, *Brimstone Corner*, 205. The three pew-owners who later led the internal opposition, Dr. Fred T. Lewis, William K. Porter, and B. Frank Silsby, did not join this committee (*Boston Globe*, July 1, 1903, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 72).

¹⁹⁵*Boston Evening Transcript*, February 27, 1903: 1; *Boston Herald*, March 7, 1903: 9. The increase from two to three hundred thousand in a week, and the casualness with which these round figures were offered, suggest that they be treated with a certain skepticism.

constituting a beautiful and time-honored feature of Boston, indissolubly bound up with the very thought of Boston in every mind.¹⁹⁶

Like the Bulfinch state house, Park Street Church was valued as a work of architecture, "the finest of the few Wren [style] spires left in America."¹⁹⁷ While the Boston Society of Architects did not take action as an organization, individual architects were again prominent in the preservation effort.¹⁹⁸

The building was valued not only for the details of its design, but even more for its particular combination of architecture and location. "It is essential that a monumental public building of some kind stand on the site of Park Street Church", wrote the Preservation Committee; the church "already stands there, and it will cost less to retain it than to build another monument in its place."¹⁹⁹ "If some one thinks that his instinctive protest is wholly on account of the edifice, and not partly against the desecration of the site," said one letter to the editor,

let him ask himself if his feeling for the church would be the same if it were situated, let us say, on the corner of Washington and Boylston Streets. Or, to put it another way, would not his regret be much less keen if he could be assured that the church would be replaced by some noble work of art or by a beautiful building devoted to public enlightenment?²⁰⁰

According to the building's defenders, Columbus Avenue, the main artery of the South End, had been laid out to create a vista terminating at Park Street Church, one of the only intentional vistas in Boston.²⁰¹

Preservationists' concern was fueled by the church's proximity to other landmarks which had been successfully defended over the past generation. As the preservation committee conceived it, much more than this single building was at stake. The accomplishments of those who had preserved the Bulfinch State House, the Granary

¹⁹⁶Prescott F. Hall, 'Circular of the Preservation Committee,' February 7, 1903, in Committee for the Preservation of Park Street Church, *Preservation*, 35.

¹⁹⁷Committee for the Preservation of Park Street Church, *Preservation*, 10.

¹⁹⁸*Boston Evening Transcript*, February 27, 1903: 1.

¹⁹⁹Committee for the Preservation of Park Street Church, *Preservation*, 4, 6.

²⁰⁰'M.N.O.' letter to the editor, *Boston Evening Transcript*, January 31, 1903, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 60.

²⁰¹"Vistas," Boston Herald (n.d.), quoted in Committee for the Preservation of Park Street Church, *Preservation*, 56.

burial ground, and the Common would all be tarnished, possibly even reversed, by the demise of Park Street Church. The church was “the beginning of the noble approach to the State House,” an effect which would be “ruined,” said architect John L. Faxon, if the church were replaced by a tall structure.²⁰² The Granary burial ground, according to preservation committee organizer Prescott F. Hall, could become “merely a well or backyard for office buildings.”²⁰³ Most important, the church shared in and perhaps contributed to the sanctity of the Common. “A monument on this corner constitutes a part of the beauty of the Common”, wrote the Preservation Committee. “If you do not have a monumental building on this corner, you weaken the hold on the Common, and make it easier for the projected extension of Columbus Avenue and Commonwealth Avenue across the Common.” The committee tried, through these arguments, to increase still further the spatial scale of the building’s significance. “It stands at the head of the Common, and as such, it also stands at the head of our city park system.”²⁰⁴

Park Street Church was associated with the park system not merely by proximity; these preservationists argued the fundamental philosophical kinship of the parks and preservation movements. Joseph Lee, one of the committee’s founders and a nationally prominent recreation reformer, wrote of Park Street Church:

We are spending, and rightly spending, through our City and Metropolitan Park commissions millions of dollars for the sake of preserving or creating beautiful scenery in suburban and out-of-town sections. But the real beauty of a city - the beauty by which it must live in the hearts of its citizens - is not rural but civic beauty; not the beauty of the scenery by which it is surrounded, but the beauty and appropriateness of its own public and business structures and of the civic centres of which they form a part; not the beauty of the woods and fields that you can visit when you leave the city behind, but that which is found in the city itself, in the place where its citizens live and do their work, where its business and social life are carried on.²⁰⁵

²⁰²‘M.N.O.’ letter to the editor, *Boston Evening Transcript*, January 31, 1903, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 60; *Boston Evening Transcript*, February 27, 1903: 1.

²⁰³Prescott F. Hall letter, *Boston Evening Transcript*, December 31, 1902, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 50.

²⁰⁴Committee for the Preservation of Park Street Church, *Preservation*, 5-6.

²⁰⁵Letter, *Boston Evening Transcript*, January 5, 1903: 8; for bio, see Elisabeth M. Herlihy, ed., *Fifty Years of Boston* (Boston, 1932), 771.

Prescott F. Hall said that “[t]here is as much reason for the preservation of a unique building like Park Street Church as there is for preserving notable natural features in the State,”²⁰⁶ and drew the conclusion that the Commonwealth of Massachusetts ought to do both.

These people looked to the government not merely because of the philosophical rationale of the park analogy, but also for pragmatic reasons. The \$300,000 total pledged was more than had been collected by any preservation effort in the nation since the Old South,²⁰⁷ yet it was only a fraction of what Park Street Church cost. Unless some individual of enormous wealth took an interest in the building, only the government had the money to save it. Only the government could forcibly intervene once the agreement of sale was signed, though Reynolds’ syndicate was cooperative enough that such force seemed unnecessary. The state was spending millions and using its sovereign powers for projects which appeared related - a park system, construction and restoration a block away at the State House, and limiting building heights around it on Beacon Hill (see chapter 6). The committee almost immediately resolved to attempt a legislative solution. Offering its pledges as the nucleus of the purchase price, it sought state acquisition of the building either as an addition to the Metropolitan Park system or for conversion to state offices.²⁰⁸

A significant feature of this campaign was its strong, clear commitment to adaptive re-use of the building. It was not meant as an historic shrine. The preservation committee decided early that they were interested solely in the church’s exterior, and were willing to sacrifice the interior to save it. While the committee would have liked to see the building used for assemblies - “an uptown Faneuil Hall” - they also explicitly advocated and worked out the real estate arithmetic of cutting the interior into stores and offices.²⁰⁹

²⁰⁶*Boston Evening Transcript*, February 27, 1903: 1.

²⁰⁷Hosmer, *Presence of the Past*, 146.

²⁰⁸1903 House bill 712; *Boston Evening Transcript*, February 27, 1903: 1.

²⁰⁹Edwin D. Mead and Prescott Hall testimony at legislative hearing, *Boston Evening Transcript*, February 27, 1903: 1.

Despite a complete absence of opposition to preservation at the legislative hearings on February 27, it immediately became clear that the state would not commit the resources to save Park Street Church; from the beginning this option had been pursued as a long shot.²¹⁰ It was also becoming clear by this time, at least to the real estate and finance people on the preservation committee, that tight money markets were making the development, too, unlikely.²¹¹ Early in March the preservationists met at the Parker House to plan a practical new approach adjusted to these changed circumstances.

The first new approach was an offer of a \$350,000 endowment for the Park Street Church society on condition that it remain in its building. This strategy recognized that the largest available sum which could be applied to preserving the church was the expenditure the congregation could avoid if it did not have to buy a site and construct a new building. The endowment offer was, in effect, an effort to separate issues for the society's members - allowing them to decide whether they wanted to move, separately from whether they wanted an endowment. A member of the congregation said at the legislative hearings that the society "does not need all the money and it may be shamed into turning part of it back towards saving the church."²¹² But just as at the Old South, it was difficult for a religious body to decide that architectural preservation was a legitimate explicit use of its resources. Once they thought about moving, the proceeds of the sale became a tangible expectation for which many more spiritual objects competed. Sentimental considerations indeed led many congregations to preserve old buildings which could have been translated into endowments for other purposes, but they most often did this by avoiding framing the question explicitly.

The Park Street society replied to this offer that it would accept such a condition only for an endowment of \$600,000 or more. That the church responded at all was a tacit

²¹⁰*Boston Herald*, March 7, 1903, quoting Winslow Warren at Parker House meeting; *Springfield Republican*, February 10, 1903, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 32. On March 9, three days after the Parker House meeting, the legislature received a negative report on the Park Street church bill from the Committee on the State House, which had held the hearing. *House Journal*, 1903, 542.

²¹¹*Boston Herald*, April 2, 1903: 10.

²¹²*Boston Evening Transcript*, February 27, 1903: 1; Firey, *Land Use in Central Boston*, quoting *Boston Sunday Journal*, March 15, 1903.

acknowledgement that the sale would not be consummated. Their answer embodied the same spirit of rationality in which the offer was made. They could net \$600,000 by moving; in effect, they insisted on the full value of their asset and refused to donate any substantial portion of it to this extraneous cause. To the public at large, however, it appeared that they were being greedy, even that they were holding the building for ransom.

A second proposed preservation strategy was purchase by a 'Civic Memorial Corporation,' to convert more of the building to income-producing uses and lease most of it back to the church. This corporation was conceived in the tenement reform tradition of investment philanthropy; unlike housing schemes, the promoters of which felt an ideological need to offer competitive five-, six-, and even seven-percent dividends, this one proposed a two-percent return, emphasizing philanthropy rather than investment with its two-percent return. This plan too would tap the society's assets, in the form of rents, interior space to be converted, and even direct reinvestment by the society in the Memorial Corporation's bonds. Individual church members also indicated some interest in making such an investment, at least half of which would in effect be donated.²¹³

Then on April 1, 1903, the developers' option officially lapsed; the syndicate missed its first scheduled payment and backed out of the deal. The church's leaders said nothing to indicate that it was not still on the market, but newspapers announced that the building was saved, and contributed to a perception that the congregation would now cooperate in preserving it. During the next two months, the Civic Memorial Association presumably pursued and failed in negotiations with the church; the deacons called a meeting for June 30, 1903, at which the congregation, amid hard feelings, voted to seek another buyer for the property.²¹⁴

²¹³*Boston Globe*, April 2, 1903, quoted in Committee for the Preservation of Park Street Church, *Preservation*, 66; Eugenie Ladner Birch and Deborah S. Gardner, 'The Seven-Percent Solution, A Review of Philanthropic Housing, 1870-1910,' *Journal of Urban History*, v. 7, no. 4 (August, 1981): 403-38.

²¹⁴*Boston Herald*, April 2, 1903; also *Boston Globe*, July 1, 1903, *Boston Morning Journal*, July 1, 1903, both quoted in Committee for the Preservation of Park Street Church, *Preservation*, 71-74.

By the following spring the prudential committee had sifted the options to two, neither of them as financially attractive as the aborted sale had been. One was a proposal by the Boston *Herald* that the church build a five-story headquarters for the newspaper, which it would rent for \$52,000 a year on a 20-year lease. The other, a less radical version of the Preservation Committee's plans, called for further modifications to make more of the ground floor rentable while keeping the church in place upstairs. The prudential committee recommended accepting the *Herald* proposal and building a new church elsewhere.²¹⁵

Preservationists began a new kind of lobbying campaign, aimed not at any public body but at the church members themselves, the group best able to save the building and presumably having the greatest feelings of affection for it. The lobbying proceeded along several lines. Preservationists cited financial analyses showing that renovation of the existing building would produce more income than new construction. As with the endowment offer, this helped to separate issues for the society; if financial security and preservation of the building were not mutually exclusive, then a decision to destroy it required a more compelling rationale. The preservationists brought into question the financial wisdom of accepting the *Herald's* proposal, in particular. A newspaper plant was a specialized property which would be obsolete at the end of the lease, they said, leaving the church without an income. Finally, they aimed to tap the congregation's sentiments to save the building: reverence for the building itself and the congregation's own history in it, and also the same sort of prickly pride which had saved St. Paul's. The *Herald*, not treating the matter as a purely business proposition, had already begun claiming that the popular press was an appropriate successor to the evangelical pulpit. "Shall the church assent to this humiliation?" asked the preservationists.²¹⁶

The congregation supported its deacons' recommendation, endorsing the *Herald* deal by a 68 to 59 vote, but this was a big change from the earlier sale's near-unanimous support, and indicated the effectiveness of the preservationists' arguments. Their

²¹⁵Englitzian, *Brimstone Corner*, 205-06.

²¹⁶Quoted in Englitzian, *Brimstone Corner*, 207.

lobbying continued, and two weeks later, at the pew-owners' meeting to take final action, the deacons withdrew the proposal without putting it to a vote.²¹⁷

Dr. Withrow, unlike Rev. Manning at the Old South, chose to interpret the interest of the congregation and the community as a hopeful sign for the church's religious future; at the beginning of 1905 he urged the society to find him a young, dynamic associate who could work to make the church prosper again at its old location. He may have heeded the *Boston Journal*, which asked, "if Park Street Church cannot make a success on 'Brimstone Corner,' which has been advertised all over the country, where in the city can it make a success?"²¹⁸ For a church committed by its evangelical creed to reaching out for new believers, the most conspicuous corner in the city was perhaps the place to be after all. By the end of the year the congregation found its dynamic new minister in Dr. Arcturus Z. Conrad, and Park Street Church continued to fulminate at Brimstone Corner.

Conrad quickly seized on the preservation committee as a potential ally. He appealed to these citizens, strangers to his congregation, to help him keep the church at its traditional location. He asked \$10,000 for painting and restoring the building. Conrad acknowledged that he was not in a position to guarantee that the church would remain, but promised personally that if it moved despite their aid, the money would be returned. Within a few weeks he had his \$10,000.²¹⁹

By the building's 1909 centennial, six years after the deacons turned down \$350,000 and insisted that \$600,000 was the price for remaining in the old church, they were plaintively appealing to lift a debt of \$35,000 and seeking to raise an endowment of \$100,000, which they would accept, they said, "on the condition of the continuance of worship at the present location." They did not raise the money for many years.²²⁰

²¹⁷Englitzian, *Brimstone Corner*, 207.

²¹⁸Committee for the Preservation of Park Street Church, *Preservation*, 74, quoting *Boston Journal*, July 1, 1903. Englitzian (*Brimstone Corner*, 209) says it is not in that issue of the *Journal*.

²¹⁹Englitzian, *Brimstone Corner*, 211. Other than painting, all the money was spent on the building's interior.

²²⁰Rev. A[rcturus] Z. Conrad, ed., *Commemorative Exercises at the One Hundredth Anniversary of the Organization of Park Street Church, February 26 - March 3, 1909* (Boston, 1909), 27; Englitzian, *Brimstone Corner*, 219.

Conrad, who succeeded Withrow to the pulpit, neutralized any implied threat of removal by treating the church as if it were his associate minister: "The building itself is eloquent. ... Our Church building works with us and for us This temple is religion in brick and mortar. ... a sentinel of God on this conspicuous corner of Boston Common ... it preaches."²²¹

Park Street Church was in a way the culmination of nineteenth-century preservation as a movement to resist change in the urban environment. The significance of preservationists' work for it is not easy to gauge, because unlike the Old South Preservation Committee, its defenders did not ever have to constitute themselves as a permanent entity or produce concrete results. Their aims were achieved indirectly, and mostly out of the public eye, so it is impossible even to say for certain to what extent they resulted from the committee's work. Yet they synthesized significant directions in which the preservation movement was heading, directions it would again take later in the twentieth century.

The effort continued and made fully explicit the concern shown at the Bulfinch State House for architecture and urban views, rather than historic events. It embraced a more explicit and radical idea of adaptive re-use than had yet been articulated, resulting distinctly from the campaign's urban viewpoint: preservationists were concerned only about the church's exterior. It continued the role of architects, both as advocates and as experts, and even added real estate people in the same role, a position they would not often take at this scale for decades to come. It began to place preservation in a constellation of progressive concerns about the urban environment, ranging from the long-established parks movement to the emerging city planning movement. Finally, it urged government action at a large scale. To equate architectural preservation with landscape preservation - the kind being accomplished through the parks movement - implied an ambitious agenda which preservationists would not in fact take up until John D. Rockefeller, Jr., in 1926 began financing restoration of colonial Williamsburg.

Both the values and many of the tactical approaches of the Bulfinch State House and Park Street Church preservationists are familiar in the field today. However, the

²²¹Conrad, *Commemorative Exercises*, 161-62.

movement in Boston, and to a lesser extent in the rest of the country, was soon to head in a different direction which would take it away from these values and methods for several decades.

The institutionalization of the preservation movement

After the turn of the century, preservation changed from a set of ad hoc actions to an institutionalized movement. In the process both its aims and its methods were fundamentally transformed.

When the *American Architect* in 1886 first wrote about the threat to the Bulfinch State House, its editors assumed that Boston already had institutions to look after preservation; “we trust”, they said, “that the Massachusetts Historical Society, the Bostonian Society, and the Boston Society of Architects will” rally to the building’s defense.²²² The unprecedented role ultimately taken by the architects’ society in that campaign was all the more remarkable because the other two groups, though well represented by individual activists, did not consider the issue an appropriate one for institutional action.

The Massachusetts Historical Society, like its counterparts in other states, saw itself as a scholarly clearinghouse, a library, and above all a unique repository for manuscripts - and for artifacts much smaller than buildings. It ordinarily remained aloof from politics, even the politics of preservation. The society’s priority of protecting its collections and making them accessible to scholars gave it little direct use for historic structures; it had shied away from the Old South Church, and in 1898 it moved altogether out of the center of Boston, to a new fireproof headquarters on the Fenway.²²³

²²²*American Architect and Building News*, June 26, 1886: 301.

²²³see Hosmer, *Presence of the Past*, 114-15. The Massachusetts Historical Society was typical; like others, it needed a fireproof headquarters for its manuscript collections.

The Bostonian Society was chartered in 1881 “for the purpose of promoting the study of the history of Boston, and for the preservation of its antiquities.”²²⁴ Its predecessor, the Boston Antiquarian Club, set a preservationist course for itself immediately upon formation when it led the fight to save the Old State House; it incorporated specifically to create a legally responsible institution as custodian and occupant for the building. After this, however, it subsided into a less activist role, defining the ‘antiquities’ it would save mainly as documents, views, and historic bric-a-brac, and its members returned to the old antiquarian habit of lamenting the passing of landmarks as they fell, and reminiscing about them afterwards.²²⁵ The Old State House itself may have played a role in this tactical retreat: preserving this one important building turned out to be a continuing and substantial job. With the building’s condition dependent on the good will of the city and the state, the group may have thought it diplomatic to steer clear of other controversies.

The Bostonian Society limited its intervention in the environment to the placing of tablets marking historic sites, such as the location of the Boston Massacre. When the owners tore down the building on which this tablet was mounted, the Society complaisantly and without comment stored it to remount on a new structure. The afternoon before the Committee for the Preservation of Park Street Church was organized, the Bostonian Society held its annual meeting. President Curtis Guild called attention to the Park Street Church issue, not with a plea for preservation, nor any mention of the next day’s meeting, but with a call for more memorial tablets.²²⁶

A growing number of organizations shared this territory on the periphery of preservation. Increasing preoccupation with pedigree led to the multiplication of patriotic and genealogical societies. The national Daughters of the American Revolution

²²⁴*Proceedings of the Bostonian Society* (1903): [74].

²²⁵John Ritchie, a neighbor of the Bulfinch State House who would later join the preservation committee to save it, said at the 1887 hearings that he was “astounded that the Bostonian Society ... did not appear to enter their plea ...” *Boston Evening Transcript*, March 24, 1887: 1.

²²⁶*Proceedings of the Bostonian Society* (1914), 23; (1903), 6. Of the Park Street committee’s 18 members, the only officer or former officer of the Bostonian Society was William H. Lincoln, president of the Chamber of Commerce.

was organized in 1890, with preservation as part of its agenda; its Massachusetts chapters quickly found an outlet in the Bulfinch State House campaign.²²⁷

Elsewhere in New England, local historical societies and other groups, spurred by the 1876 Centennial and the Old South Preservation Committee's success, set out with increasing frequency to save old buildings in their towns. Most of these were selected for their historic associations, either with illustrious ancestors or with campaigns of the American Revolution. Lexington, Massachusetts, eventually preserved a collection of buildings connected with the battle there; the town even conceived the project as part of its park system.²²⁸ In Ipswich, the historical society in 1898 bought the seventeenth-century Whipple house as its headquarters, not for any historic occupant or events which occurred there, but simply as an artifact inherently interesting on account of its age, "a link that binds us to the remote Past" and its "manner of living," said the society's president.²²⁹ Such concern with material culture was a growing trend eventually embodied in the Society for the Preservation of New England Antiquities.

This trend came to Boston proper in 1905 as a movement to save the Paul Revere house. Revere's conspicuous place in the revolutionary pantheon gave the house conventional historic value, but it was also the oldest remaining structure in the city, dating from sometime between 1676 and 1681. It stood on North Square, fashionable in Revere's day but at the heart of what had since become the Italian North End. Tall brick buildings loomed over it on all sides, and the house itself had been raised one story, subdivided, and converted to a grocery store, tenements, and a cigar factory (fig. 5.6.). Generations of antiquarians and tourists had made the pilgrimage through this strange and threatening district where they endured "the vile odors of garlic and onions"²³⁰ to gaze at the greatly altered structure which sported a commemorative

²²⁷Lewis Barrington, *Historic Restorations of the Daughters of the American Revolution* (New York, 1941), preface; Hosmer, *Presence of the Past*, 131-32.

²²⁸Hosmer, *Presence of the Past*, 109-111.

²²⁹Reverend Thomas Franklin Waters, quoted in Hosmer, *Presence of the Past*, 113.

²³⁰Samuel Adams Drake, *Our Colonial Homes* (1893), quoted in Lindgren, 'Gospel of Preservation,' 233.

plaque and a “variety of signs with Italian names, strangely out of harmony with the memories of its earlier history.”²³¹

The house was surely destined for eventual replacement by a larger tenement building, although it is not clear how immediate this threat ever became. It was effectively saved around 1903, when it came onto the market and was bought for \$12,000 by John Phillips Reynolds, Jr., the real estate developer then trying to tear down Park Street Church, who was coincidentally a descendant of Paul Revere. He

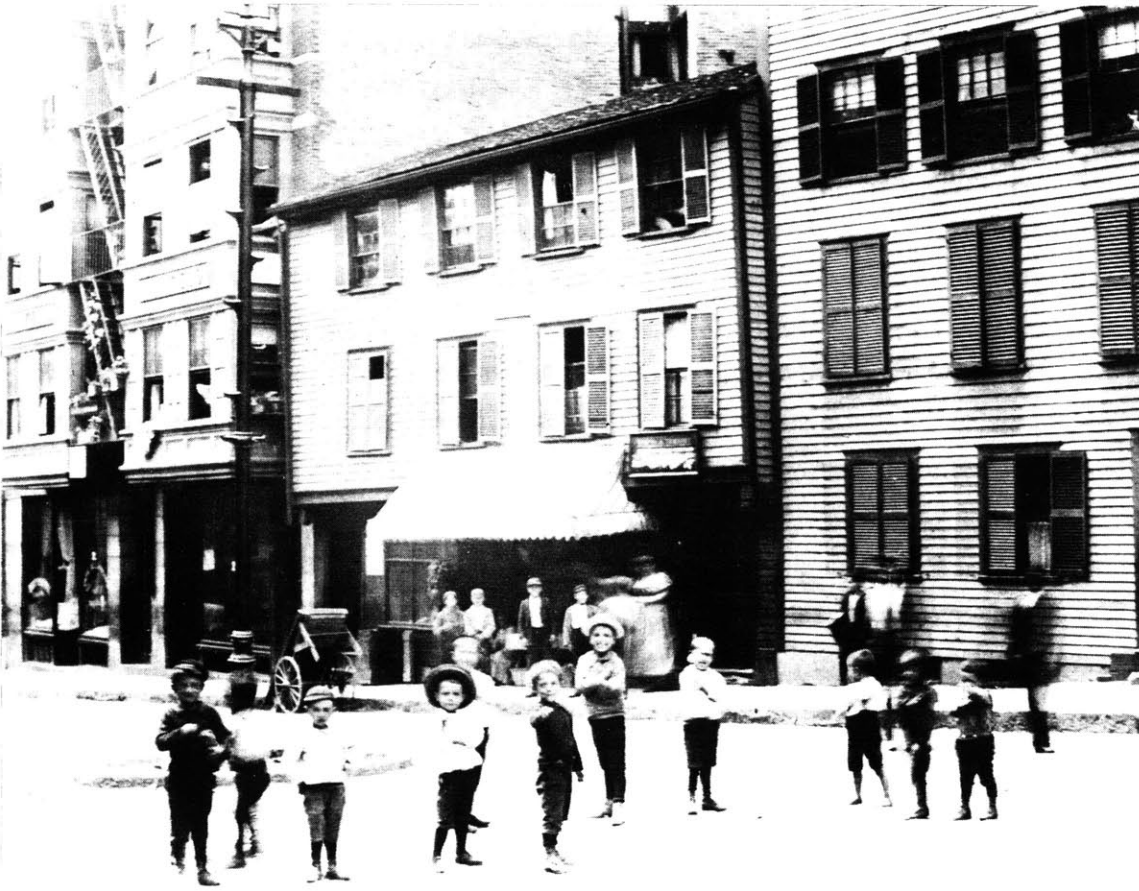


fig. 5.6. Paul Revere House, 1895, before restoration. “[N]eighborhood youngsters,” notes archivist Philip Bergen, “greet the photographer with a timeless gesture.”²³²

²³¹*Boston Globe*, April 11, 1905, in North Square/ Paul Revere scrapbook, SPNEA.

²³²Philip Bergen, *Old Boston in Early Photographs, 1850-1918* (New York, 1990), 25.

and several other prominent men in April 1905 organized the Paul Revere Memorial Association, to raise money to reimburse himself for the purchase, restore the house, and open it "for some historical, educational, or patriotic purpose." Without publicly divulging Reynolds' ownership, their solicitations warned that the structure "is in danger of destruction, and prompt steps are necessary in order to preserve it."²³³ By the early part of 1907 they had raised enough to take title and begin restoring the building.

The Revere house restoration was unlike any other Boston had seen. The Old South Church, Faneuil Hall, and the two state houses were major public buildings, their exteriors and at least potentially their interiors a part of most Bostonians' experience. Their design and the technology of their construction were familiar, and the changes they had undergone were comparatively well documented, so appropriate treatments for them were matters of widespread amateur debate. The Revere house, on the other hand, was outside the daily ambit of its preservers, and had undergone radical and unrecorded changes. As it was agreed in principle that the building, contrary to Ruskinian precepts, ought to be returned "to its original condition," its treatment became not a subject for public discussion but instead a matter for expert investigation, an essentially private question.²³⁴ It was not architecture but archaeology. The work was undertaken by restoration architect Joseph Everett Chandler, whose interest was almost entirely in the original seventeenth-century construction, rather than the period of Revere's tenure a century later, with the result that, as one historian has written, "Paul Revere, were he to return to North Square, would not recognize it as the house in which he long lived."²³⁵ To satisfy the project's patriotic sponsors, the second floor interior was restored to an approximation of its late eighteenth-century appearance. It opened to the public on April 18, 1908, the 133d anniversary of Revere's midnight ride.²³⁶

²³³Printed circular letter (1905); 'Paul Revere's House Saved,' unidentified clipping [1907], both in North Square/ Paul Revere scrapbook, SPNEA.

²³⁴WSA letter, *Boston Post*, June 16, 1905, in North Square/ Paul Revere scrapbook, SPNEA.

²³⁵Walter Muir Whitehill, foreword, in Hosmer, *Presence of the Past*, 13; JEC letter to Walter Gilman Page, Mar. 2, 1907, in North Square/ Paul Revere scrapbook, SPNEA.

²³⁶William Sumner Appleton, 'Destruction and Preservation of Old Buildings in New England,' *Art & Archaeology* 8 (1919): 144; invitation, in North Square/ Paul Revere scrapbook, SPNEA.

The Paul Revere Memorial Association's greatest contribution to preservation, as it turned out, was not restoring this particular house, but rather helping to awaken to his life's work the association's secretary, William Sumner Appleton, Jr., who would found the Society for the Preservation of New England Antiquities and become the country's first full-time preservationist.

In 1905 Appleton was a 31-year-old Brahmin without portfolio, trying to figure out what to do with his life.²³⁷ His Beacon Hill pedigree was impeccable. His grandfather Nathan Appleton moved to Boston from New Hampshire at the end of the eighteenth century, later joined in founding Lowell and propelled the family into the highest stratum of Boston wealth. The next generation used this wealth to devote themselves to culture and philanthropy; Nathan's sons were directors of the Boston Athenaeum and the new Museum of Fine Arts; his daughter Fanny brought culture to the family more intimately by marrying Henry Wadsworth Longfellow.

Sumner Appleton himself (so called to distinguish him from his father, William Sumner Appleton, Senior) grew up at 39 Beacon Street, a mansion built for his grandfather in 1816, facing the Common two blocks from the state house. He believed the house designed by Bulfinch, although it has since been identified as Alexander Parris' first Boston commission.²³⁸ In 1886, when Appleton was twelve, as apartment houses rose nearby and legislators debated tearing down the state house, his father sold the Beacon Street house and moved the family. If Appleton's background gave him this small taste of urban change, it also gave him a more than average introduction to Boston's search for permanence. During his childhood on Beacon Street, his father joined in founding the Bostonian Society and the American Historical Association. His uncle Nathan Appleton had spoken for preserving the Old South Church. His older cousin and good friend, Alice Longfellow (the poet's daughter, "grave Alice") served

²³⁷William Sumner Appleton, Jr.'s background is best described in Katherine H. Rich's 'Beacon,' *Old-Time New England* 66 (1976): 42-60. Other information here comes from Lindgren, 'Gospel of Preservation,' 227-47; Hosmer, *Presence of the Past*, 237-39, and 'William Sumner Appleton, 1874-1947,' *Old-Time New England* 38, no. 4 (April, 1948): 71-72.

the Mount Vernon Ladies' Association as vice-regent for Massachusetts. One of his uncles nearly bought the Hancock house for his home, and did in fact salvage its staircase; Appleton must have been conscious even as a child of the building's site down the street from 39 Beacon.²³⁹

Appleton enrolled at Harvard, and studied with Charles Eliot Norton, the Ruskin disciple who had recently written his *Scribner's* article bemoaning the lack of old houses in America.²⁴⁰ After he graduated, he set out with a tutor on a grand tour of Europe. When he returned he set up in business as a real estate broker, a vocation he pursued in a desultory manner for three years until this career was cut short by what he described as a "nervous breakdown."²⁴¹ Appleton's father died in 1903, leaving his inheritance in a trust which would provide a comfortable if not lavish income for the rest of his life, without allowing him to touch the principal. Appleton then spent several years in a more-or-less aimless existence. He tried managing the family farm. He toyed with becoming a mining engineer in the west. He catalogued his father's coin collection. He lived at his club and spent his time in a vapid whirl of Sunday social calls and dinners with relatives.

Appleton came to the Paul Revere house effort through involvement with the Massachusetts Sons of the Revolution, and his considerable work for the Memorial Association - as its secretary, he took on most of its organizational chores, and was credited by one newspaper as the "architect" of the campaign²⁴² - seems to have been motivated by the house's patriotic associations, together with his own need to occupy time. He had shown no particular interest in architecture or old buildings, but this quickly changed. He enrolled in an architecture course at Harvard, bought a camera, and began touring and photographing the towns of eastern Massachusetts, paying

²³⁸Pamela Fox, 'Nathan Appleton's Beacon Street Houses,' *Old-Time New England* 70 (1980): 111-23.

²³⁹*Proceedings of the Bostonian Society* (1907): 47. Lindgren, 'Gospel of Preservation,' 51, 238, n. 37.

²⁴⁰Lindgren, 'Gospel of Preservation,' 230; Norton, 'Lack of Old Homes.'

²⁴¹Lindgren, 'Gospel of Preservation,' 232.

²⁴²Unidentified clipping, in North Square/ Paul Revere scrapbook, SPNEA.

special attention to their oldest structures. He joined the directors of the Bostonian Society, and met with the Governor and the Mayor as a member of a committee to protect the Old State House from damage by the subway. He drew and publicized park and planning schemes. On a tour of Europe in 1909 he took note of preservation and restoration efforts there.

When Appleton returned, he continued this interest by attempting, as state vice president of the Sons of the Revolution, to intercede in the impending alteration of Lexington's Jonathan Harrington house, the owner of which found it ill-suited for modern living. Harrington, shot in the battle on April 19, 1775, had made it back across the Common to die on his own doorstep at his wife's feet, in one of the Revolution's more romantic vignettes. "This story had always made a strong appeal to me," Appleton recalled later, "and it seemed as though a house having such associations should be safeguarded against all alterations."²⁴³ While Appleton's interest, like earlier preservation efforts, stemmed from patriotic associations, the threat which so incensed him was an architectural one - not demolition but renovation. He was frustrated to find himself powerless to protect the house in any way. "From that moment on my life's work seemed to be cut out for me..."²⁴⁴ He was "ripe" for such a discovery, says a recent biographer:

Sumner Appleton was thirty-six years old, midway in life. He had felt like a failure. He had no occupation, no wife, no child. What he did have was a trust fund which freed his energies. He had some real estate experience, a little formal coursework in architecture, in public speaking, in publication. He had been in society on the hill which spread out to include Harvard - his acquaintance stretched through a vast and well-placed family into an erudite, if occasionally precious, world.²⁴⁵

Appleton put all this background to work as he set out on his mission with a thoroughness and vigor which had not marked his life thus far. During the winter he prepared a charter for a 'Society for the Preservation of New England Antiquities'

²⁴³Harvard College, *25th Anniversary Report of the Class of 1896* (1921), quoted in Rich, 'Beacon,' 56; *SPNEA Bulletin* 1 (1910): 4.

²⁴⁴Harvard College, *25th Anniversary Report of the Class of 1896*, (1921), 14 ff., quoted in Rich, 'Beacon,' 56.

²⁴⁵Rich, 'Beacon,' 57-58.

(SPNEA)* and rounded up a board of directors “selected more for the connections of its members than for their antiquarian knowledge”.²⁴⁶ He enlisted Charles Knowles Bolton, librarian of the Boston Athenaeum, as president, and chose for himself the position of ‘Corresponding Secretary.’ In March of 1910 he appeared alone before a committee of the legislature where he had “fixed it up with Senator Rockwood” that the organization’s as-yet-hypothetical properties should be made tax-exempt.²⁴⁷ In April, eighteen incorporators held the new society’s first meeting, and in May Appleton publicly launched the group’s membership-building phase by publishing the first issue of its *Bulletin*.

The first *Bulletin* was a manifesto which showed that Appleton’s recent years had not been entirely idle, but had produced a well thought out preservation program of unprecedented ambition. On its cover appeared a photograph of the John Hancock house. “Built 1737 by Thomas Hancock. Destroyed 1863,” said the terse caption. “The fate of this house has become a classic in the annals of vandalism.” The next two pages presented more encouraging illustrations: four houses preserved in towns around Boston, including the Whipple house in Ipswich. “Our New England antiquities are fast disappearing,” began the text,

because no society has made their preservation its exclusive object. That is the reason for the formation of this Society.

Historical, ancestral, patriotic, and similar societies have been frequently organized, of whose work that of preservation is only a part. ... Only rarely does one of them save some old building, probably to be its headquarters, and when this is accomplished other local landmarks are likely to be neglected.²⁴⁸

Appleton reflected on his own experience with the Paul Revere house, and other similar ad hoc efforts. “This is splendid as far as it goes, but since the mechanism is

* Appleton himself admitted he had coined an unfortunate mouthful, and his successors are not offended if it is pronounced ‘spi-NEE-uh’.

²⁴⁶Hosmer, *Presence of the Past*, 151, quoting letter to Hosmer from Orcutt.

²⁴⁷Quoted in Lindgren, ‘Gospel of Preservation,’ 242.

²⁴⁸*SPNEA Bulletin* 1 (1910): 4.

elaborate it is seldom used, and it is wasteful because without much more elaboration it can be used to cover the whole field."²⁴⁹

The whole field, to Appleton, meant all six New England states. Nowhere in the United States had preservationists attempted such a regional organization. The closest prototype was the Association for the Preservation of Virginia Antiquities, which Appleton had joined in 1907 and on which he modelled the society's name, but he was not interested in copying APVA's decentralized structure of local chapters. Even more than the Bostonian Society, the APVA valued commemoration over preservation, approving for the 1907 Jamestown Tercentenary a fanciful reconstruction of the settlement's church, built of bricks taken from two genuine Colonial buildings which were demolished expressly for the purpose.²⁵⁰ Two other statewide organizations nominally concerned with historic preservation were the Massachusetts Trustees of Reservations and the American Scenic and Historic Preservation Society, but both of them concentrated on natural areas; American Scenic, despite its name and ambition, was in practice a New York state rather than a national organization.²⁵¹

What Appleton had in mind was a sort of institutional *deus ex machina*:

The situation requires aggressive action by a large and strong society, which shall cover the whole field and act instantly wherever needed to lead in the preservation of noteworthy buildings and historic sites. That is exactly what this Society has been formed to do.²⁵²

He went on to enumerate the sorts of "noteworthy buildings and historic sites" he had in mind: "blockhouses and garrison houses, of which but few are left; the oldest settlers' houses"; "Georgian" houses and "town houses"; battlefields and taverns. "We may also include Indian names, old trails, roadside watering places and other objects of note." Conspicuously absent from the list were public buildings of any sort, including churches. Nowhere did Appleton mention the Old South Church, Faneuil Hall, or

²⁴⁹*SPNEA Bulletin* 1 (1910): 4.

²⁵⁰The project was initiated and carried out by the Colonial Dames; Lindgren, 'Gospel of Preservation,' 103-04. In 1922-23, again at the Dames' instigation, the APVA cannibalized the 1622 ruins of the Jamestown mill to construct a memorial shrine (181-82, note 81). For Appleton on the APVA, see Lindgren, 130-31.

²⁵¹Hosmer, *Presence of the Past*, 94.

either state house. The only Boston antiquities he discussed were the Hancock and Revere houses and the Old Feather Store, three buildings of domestic scale. The society's program was aimed only at such modest structures. "It is proposed to preserve the most interesting of these buildings by obtaining control of them through gift, purchase, or otherwise, and then to restore them, and finally to let them to tenants under wise restrictions...."²⁵³

At the end of a year the society had grown to more than 300 members in 20 states, with local officers in all six New England states, and a treasury of more than \$3,000 - but as yet no antiquities. Three months later, SPNEA bought the 1670 Ilsley house in Newbury, Massachusetts, which "put the Society immediately in the long hoped for position of having actually done something,"²⁵⁴ a position which Appleton knew was necessary for sustaining interest and continuing to build membership. By the end of the society's second year, it owned two houses and was undertaking a fund drive with which it would soon buy a third.²⁵⁵

SPNEA had already established patterns of operation it would follow, with only tactical adjustments, for decades to come. Appleton discussed them in his second annual report as he reviewed the year's ten "completed transactions."²⁵⁶ In addition to the two houses purchased - one of them as a rental investment, and the other subject to a life occupancy which substantially reduced its price - he listed one house promised to the Society as a gift, two for which other groups were found as agents of preservation, three which found their way into sympathetic private ownership, and one which was dismantled for later re-erection. In only one case had the Society's efforts utterly failed.

What it seems to show is this: the mere existence of this Society is a safeguard for all our finest old houses. When one such is in danger of destruction the possibility

²⁵²*SPNEA Bulletin* 1 (1910): 5.

²⁵³*SPNEA Bulletin* 1 (1910): 6.

²⁵⁴*SPNEA Bulletin* 3 (1912): 14.

²⁵⁵The second house was the 1808 Fowler house in Danversport, bought subject to life occupancy by its owners; the third was the 1657 Cooper-Austin house in Cambridge.

²⁵⁶*SPNEA Bulletin* 3 (1912): 18.

of our intervening seems to occur more and more frequently to those whom ties of residence or family bind to the old building.²⁵⁷

The society would never be able to acquire all the properties which came to its attention each year, and Appleton tried to maximize its effectiveness by husbanding resources of both money and energy. He sought local groups to undertake preservation campaigns, organizing new ones where necessary, in order to leave SPNEA as a purchaser of last resort. Even then, the society used its funds only as a catalyst for raising money from townspeople or descendants of a building's occupants. It would soon begin making small grants in aid to other groups' preservation efforts, and increasingly assisted them not with money but by lending SPNEA's well-developed regional fundraising abilities.

SPNEA's third acquisition was the 1657 Cooper-Austin house in Cambridge, but otherwise the society was not especially active in the immediate Boston area for several years. For both the Shirley-Eustis mansion in Roxbury and the Cary house in Chelsea, it spawned separate societies which undertook fundraising on their own. An ad hoc committee including the late Edward Everett Hale had saved the 1773 West Roxbury meeting house and in 1912 sought to turn it over to SPNEA, but the society refused to accept it unless its mortgage were paid and repairs completed. The building was razed the following year.²⁵⁸

Appleton's main Boston venture was the search for a building that could serve as the society's headquarters, which was located first in a shared rented office and then in two rooms of the New England Historic Genealogical Society. In 1913 he tried to find a donor who would present SPNEA with the Parker-Inches-Emery house at 40 Beacon Street, the twin of his boyhood home. The house instead became, with Appleton's grudging approval, the headquarters of the Women's City Club, and he continued his search for "a suitable building somewhere on Beacon Hill."²⁵⁹ In 1916 he found it, just off the hill on Cambridge Street, where the society with the assistance of 15 wealthy

²⁵⁷*SPNEA Bulletin* 3 (1912): 20.

²⁵⁸*SPNEA Bulletin* 3 (1912): 19; 6 (1915): 13.

²⁵⁹*SPNEA Bulletin* 6 (1915): 22; 4 (1913): 2-8; 6 (1915): 13.

donors bought Bulfinch's first Harrison Gray Otis house of 1795. With this single purchase half the organization's assets were suddenly in Boston real estate.

The Otis house was SPNEA's fifth acquisition. Ten years after it was founded, and despite an intervening war and recession, the society owned seven properties in three states, and when Appleton died in 1947 it owned fifty-one.²⁶⁰

William Sumner Appleton may be justly celebrated for his contributions to both preservation and preservationism. As for preservation, he saved a lot of buildings - probably more than anyone else in the country before John D. Rockefeller, Jr.'s patronage of Colonial Williamsburg. He developed methods which became a model for much of what preservationists did during the next fifty years (about which more below). Even more fundamental, however, was his contribution to preservationism - the philosophy of preservation. Appleton made systematic an activity which had been entirely ad hoc.

Preservation is inherently reactive. It seeks to protect buildings and sites from a variety of human and natural threats, and so its tactics must respond to the circumstances of each case. Throughout the nineteenth century, not only the activity but the *objects* of preservation were decided by reaction, whether to a threat, as at the Old South, or an opportunity, as in Reynolds' purchase of the Paul Revere house. The objects fit for preservation were simply those buildings or places which aroused movements in their defense. The list was compiled empirically: Park Street Church was worth fighting for; but if St. Paul's congregation had decided to sell, would Bostonians have fought for that one instead? Were they both worthy of preservation?

SPNEA like earlier ad hoc efforts necessarily responded to immediate threats, but from the very beginning it did so within an intellectual framework postulating a comprehensive and consistent standard of value. Appleton meant to substitute system

²⁶⁰*Old-Time New England* 11 (1920): 6; *Old-Time New England* 38 (1948): 77.

for sentiment. Architect Thomas A. Fox offered an early glimpse of this idea at the 1896 hearings on the Bulfinch state house:

I do not think that the laity in the United States quite understand what constitutes a historical monument. The phrase "historical monument" means a building which is a creditable piece of architecture, which represents [a] certain period of architecture, and which has been made valuable by historical associations.²⁶¹

Appleton's system was more flexible; a building might be worthy of preservation for history, architecture, or even age alone. Appleton viewed the built environment as an expression of material culture, and assigned value mainly according to an art-historical or archaeological approach. He saw buildings not as unique landmarks but as exemplars of types. Each could be ranked relative to others of the same kind according to its adherence to type, or the significance of its departures, and the result further calibrated according to the importance of the type itself and the rarity of surviving examples.²⁶² He valued buildings which could be read as 'documents,' displaying either a cross-section of material culture at a particular time or a longitudinal view of its evolution through time. He did not ignore historical significance - places as loci for events unrelated to the evolution of material culture - but in his descriptions of buildings these associational values usually supplemented their inherent value as artifacts.

A systematic approach to value in the environment meant that worthy objects for preservation could be identified before they were threatened. Appleton's first *Bulletin* began such a process with its list of building types. He soon referred to at least a hypothetical list of particular buildings: "There are in New England several score of houses of supreme interest historically, architecturally, or both, the future of which is wholly problematic."²⁶³ These systematic priorities were meant to govern preservation activity; he closed an article on one building saved in Salem with a list of other candidates which was "the minimum at which Salem should aim."²⁶⁴ SPNEA's first purchase, ironically, would not have been on Appleton's inventory if he had actually compiled one. He had inspected the house and reported that it "lacked sufficient historic

²⁶¹Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 1: 39.

²⁶²See, e.g., *SPNEA Bulletin* 2 (1911): 4.

²⁶³*SPNEA Bulletin* 3 (1912): 20.

²⁶⁴*SPNEA Bulletin* 7 (1916): 14.

association and architectural merit to justify the Trustees in making a purchase," but an offer of substantial financial assistance, together with the Trustees' impatience to "make a beginning with some house"²⁶⁵ led the ever-pragmatic Appleton to relax his standards. Even such compromises he soon reduced to a system:

it must be our policy to pick out the very best houses of each type as the ones for the preservation of which we are to work. Various factors will appear to modify this rule slightly. The very best may be in no danger today, whereas the second best may be doomed unless instantly protected; or perhaps the third best may be offered on such exceptionally good terms as to make it wise to postpone the others for the moment. Such circumstances will not alter the rule; they will be merely the exceptions to prove it.²⁶⁶

He was often delivering the bittersweet verdict that "these are so good that they warrant local effort to save them, but they are not of sufficient importance to interest our Society."²⁶⁷

Preservationists before then had not addressed the abstract question of defining everything in the environment worth saving. Extrapolating from the variety of their efforts - for the Park Street Church and Brattle Church tower, the trees and malls of the Common - by implication they would have selected much more of it than Appleton, and done so without such internal consistency. This variegated list would have included more failures than Appleton was willing to accept. He rejected such an ad hoc approach because it was "wasteful," not only of organizational effort but of buildings themselves; the movement's fragmented efforts saved too little of what was most worthwhile. He was impatient with local historical societies, which spent their efforts on whichever house happened to be threatened at the moment, and then, overwhelmed, neglected other more worthwhile structures.²⁶⁸

The logical extension of systematic preservation was an actual inventory of worthwhile buildings. Architectural historians within the national A.I.A. agitated during the 'teens and 'twenties for such inventories, preferably in conjunction with a

²⁶⁵*SPNEA Bulletin* 3 (1912): 13.

²⁶⁶*SPNEA Bulletin* 7 (1916): 14.

²⁶⁷*SPNEA Bulletin* 5 (1914): 7.

²⁶⁸*SPNEA Bulletin* 1 (1910): 4. For a specific case, in Greenfield, Massachusetts, see *SPNEA Bulletin* 9 (1918): 27-28.

program of graphic recording. In 1914, SPNEA began cooperating with the Boston Society of Architects in listing houses to be measured and drawn by volunteers. Appleton was ambivalent, however, about making public the inventory he carried in his head, since he conceived it mainly as a list of potential acquisitions, and found that divulging his priorities could make negotiations difficult. When the national inventory was finally realized in the 1930s as the Historic American Buildings Survey, Appleton was able quickly to provide lists of eligible structures throughout New England, though he did so reluctantly.²⁶⁹

Appleton's systematic standards, while steering preservation effort away from some directions, significantly broadened it in others. Turning from heroic and patriotic traditions to the study of material culture gave a much more inclusive view of history. While his aristocratic background sometimes made him an elitist in dealings with his contemporaries, he was staunchly egalitarian toward generations which were safely dead. When SPNEA acquired a house built in 1651 to house some of Cromwell's Scottish prisoners of war sent to work the Saugus iron furnaces, he tried to interest potential donors in the history of the common people. "True, the memorial is not one connected with glorious victory," he wrote, "but neither is it to be looked on as one connected solely with defeat. It should become a memorial to the humble beginnings of many Scotchmen ..."²⁷⁰ Perhaps not surprisingly, this chord did not prove resonant.

Preservationists' purview was also broadened by the change from a visual to an archaeological orientation. This produced strange results in the case of Boston's 1679 Province House, the colonial governors' residence, gutted in a nineteenth-century fire and its ruins converted into first a minstrel hall and then a theater. Preservationists had long counted the Province House as one of Boston's losses, usually listing it right after the Hancock house. But Appleton the archaeologist took a new interest in its fragmentary remains.

To many it may come as a complete surprise to know that any part of the old Province House, used by the Provincial Governors of Massachusetts, is still in existence. What is left in place is the entire front or southeast wall minus the porch

²⁶⁹Hosmer, *Presence of the Past*, 205-08; *SPNEA Bulletin* 5 (1914): 23; Lindgren, 'Gospel of Preservation,' 284-86; Hosmer, *Preservation Comes of Age*, 1:173-74.
²⁷⁰*SPNEA Bulletin* 9 (1918): 22.

and steps; practically the entire northeast end wall with its enormous stepped and arched exterior chimney; and a portion, perhaps as much as half, of the southeast wall. ²⁷¹

When the site was to be cleared for a new office building in the 1920s, he tried unsuccessfully to have the chimney incorporated into one of the building's rear walls; he had to settle for photographing and recording the remains during demolition.²⁷²

Appleton's inclusive vision indirectly refocused preservationist attention on periods even earlier than the Bay Colony's heroic 1770s.²⁷³ While he probably would have liked to save every seventeenth-century house in New England, Appleton knew that there were far too many eighteenth-century structures for a 'Colonial' date to automatically guarantee preservation. He referred to one 1774 house as "not very old," and the 1755 extension of another as "containing absolutely nothing of interest."²⁷⁴ But he also helped move forward the chronological threshold of buildings which *could* be considered eligible for preservation. The society's second acquisition was a house built in 1809, and he found it "gratifying" when a local historical society for the first time preserved a house in the comparatively recent Greek Revival style.²⁷⁵ In 1920 he examined an 1854 building near Boston which he thought "would make an ideal period house for the display of mid-Victorian black walnut," but he concluded that "the present is probably fifty years too early for anything of the kind"²⁷⁶

System in setting priorities for buildings naturally extended to system in setting value on different parts of each building's fabric; and it was here that Appleton's archaeological proclivities became most apparent. When he was criticized for restoring

²⁷¹*SPNEA Bulletin* 6 (1915): 8.

²⁷²*Old-Time New England* 11 (1920): 178; 13 (1923): 191; see *Old-Time New England* 62 (1972), no. 4, special Province House issue.

²⁷³In contrast to the period of interest - 1607 to 1861 - set out explicitly in APVA's 1889 charter; Lindgren, 'Gospel of Preservation,' 171.

²⁷⁴*SPNEA Bulletin* 5 (1914): 5; *Old-Time New England* 12 (1921): 178.

²⁷⁵*Old-Time New England* 12 (1921): 182.

²⁷⁶*Old-Time New England* 11 (1920): 173-75. SPNEA accepted a 1904 house in 1921, but it was the building's furnishings rather than the structure itself which was deemed historic. The acceptance had little to do with any system of preservationist value; the house came with a \$20,000 endowment; *Old-Time New England* 12 (1921): 163.

to the Otis house a porch which, though accurate, looked too small even to him, he responded that

“It would have been very easy to have designed a larger and more imposing porch which would have given the house more distinction, but, after all, what is the object of a restoration? ... To ignore the evidence and make what may be more beautiful ... [would be] telling an archaeological falsehood.”²⁷⁷

Except where recent alterations were entirely inappropriate, he felt that buildings should display the visible record of change over time. He cautioned the Lexington Historical Society against bringing the Buckman Tavern back to a static historical moment: “The 19th of April, 1775 is the tavern’s historic day but a great part of the interior finish is more recent, and the house is emphatically one to be preserved about as found, in order to show the evolution of various periods and styles.”²⁷⁸

He promoted “the Society’s thoroughly conservative rule that what is left today can be changed tomorrow, whereas what is removed today can perhaps never be put back.”²⁷⁹ In this he was in agreement with the ‘anti-scrape’ gospel of England’s Society for the Protection of Ancient Buildings; “the spirit of the work of the two societies is almost identical”, he said.²⁸⁰ He boasted privately that “I am ... the most conservative restorer of the entire lot and a building is in the safest hands when I have charge of it.”²⁸¹ His conservatism extended beyond materials themselves to the information embodied in buildings; to the extent possible he made his interventions evident and therefore reversible, and he experimented with methods of marking replacement parts, without which restored buildings would lose “any documentary value.”²⁸²

Systematic preservation as practiced by SPNEA worked to reverse preservationists’ earlier trend toward increasingly general concern with the city. Such a reversal was to some extent inherent in *any* consistent systematic approach to assigning value in the environment, because it replaced subjective reactions which came from experiencing the

²⁷⁷*Old-Time New England* 11 (1920): 166.

²⁷⁸*Old-Time New England* 11 (1920): 176.

²⁷⁹*Old-Time New England* 11 (1920): 167.

²⁸⁰*SPNEA Bulletin* 5 (1914): 19.

²⁸¹Letter to Murray Corse, May 16, 1919, quoted in Hosmer, *Presence of the Past*, 285.

²⁸²*SPNEA Bulletin* 9 (1918): 34; *Old-Time New England* 11 (1920): 168.

city as a topographic whole. But Appleton's particular approach refocused attention even more sharply.

Appleton saw buildings not as parts of the environment, but as objects complete in themselves; his view of material culture did not encompass the city itself as an artifact. When he thought about any scale other than that of buildings, it was usually the smaller scale of furnishings and structural components, not the larger scale of sites and relationships among buildings. Sites were background; he sought additional land around many SPNEA properties so that each could exist as an island apart from the town around it.²⁸³ The scale of Appleton's concerns became further evident in his attitudes toward moving buildings. While he urged preservation *in situ* whenever possible, he did not argue like Joseph Chandler that every old building "is connected with the history of the neighborhood and should remain where it is,"²⁸⁴ nor was he concerned with the archaeological value of the site. He simply wanted to avoid the damage done to buildings in transit, especially the destruction of original chimney cores. The seventeenth-century Becket house in Salem, located "near coal wharves and tenement houses," had already lost its chimney, so he felt "its removal to a more suitable neighborhood is unquestionably a gain for all concerned."²⁸⁵ Similarly, he did not see graveyards as parts of the urban landscape, nor did he view them sentimentally: he described ancestral remains as "a thin layer of slime" with "a few metal buttons." With his concern for material culture, it was the gravestones which were of "permanent value," which he thought could best be protected by moving them into a museum.²⁸⁶

SPNEA's region-wide scope further undermined any concern with the urban environment. The society, said one trustee, could not "successfully be a *neighborhood* concern."²⁸⁷ If Appleton had been inclined to preserve larger pieces of the city, this

²⁸³Campaign for Cooper-Austin corner lot, *SPNEA Bulletin* 3 (1913): 18; Fowler house lots "forever safeguard the setting" of the house, *SPNEA Bulletin* 5 (1914): 4; a list of properties of which "each should have a little more land," *SPNEA Bulletin* 7 (1916): 11; Cambridge Street shops purchased in front of Otis house, *SPNEA Bulletin* 9 (1919): 4-5.

²⁸⁴Joseph Chandler to Appleton, Oct. 8, 1917, quoted in Lindgren, 'Gospel of Preservation,' 326.

²⁸⁵*SPNEA Bulletin* 7 (1916): 13.

²⁸⁶Lindgren, 'Gospel of Preservation,' 398.

²⁸⁷Banker Henry W. Erving to Bolton, April 3, 1916, quoted in Lindgren, 'Gospel of Preservation,' 287.

geographical range would have been impossible. Acquiring buildings one by one was relatively simple compared with the expense of acquiring groups of buildings or the complexity of dealing with planning issues.

Appleton judged buildings in Boston by the same standards as those in towns throughout New England: intrinsic archaeological interest, independent of their contribution to the townscape. Only Beacon Hill was an exception, where Appleton's own subjective attachment to the place was reinforced by finding enough buildings of value to begin viewing them as an ensemble. In his campaign for the Parker-Inches-Emery house, he argued that "the integrity of this house is absolutely essential to the preservation of the stately old-time appearance of Beacon Street as we know it. The best portion of the street is from No. 39 [where he lived as a boy] to No. 45."²⁸⁸ Even so, he listed the building's interior as the most important reason for saving it. Also on Beacon Hill, in an 1914-1917 expansion of the Bulfinch state house (see chapter 6), SPNEA got more involved than anywhere else in an issue involving a major public building, and involving treatment of a site.²⁸⁹

In general, Appleton was willing to give up on much of the urban environment. James Lindgren, in a recent study of SPNEA, attributes this to his reluctance to offend the business interests which he hoped would support the society.²⁹⁰ From Appleton's perspective, with private purchases or gifts as his only tools for preservation, he was simply facing reality. After the Province House was gone he wrote:

It may well be asked how the destruction of such a house could be tolerated and why was its preservation not taken in hand and carried through to success. ... [T]here is no question but that the saving of what was left would have been undertaken except for the prohibitive cost involved. The house stood on some of the most valuable land in Boston, the entire lot, including much that could have been dispensed with, being assessed for \$1,800,000 and worth considerably more. The building was doomed from the moment the contract for the new building was signed.²⁹¹

²⁸⁸SPNEA *Bulletin* 4 (1913): 2-3.

²⁸⁹SPNEA *Bulletin* 6 (1915): 16-17.

²⁹⁰Lindgren, 'Gospel of Preservation,' 313.

²⁹¹William Sumer Appleton, 'The Province House, 1922,' *Old-Time New England* 62 (1972): 91.

But Appleton also sincerely believed, as he advised people throughout his career, that “nothing can be done unless someone will appear to do it. Given such a person everything can be done.”²⁹² He could have chosen the Old South instead of the Hancock house as his urban object lesson, so his abandonment of antiquities in the city must be seen at least in part as a deliberate choice.

This choice reflects a cultural cleavage in early twentieth-century America which produced a rift in preservationist ranks, brought about by growing numbers of ‘medievalists,’ who valued the most primitive rather than the most accomplished architecture. They found medieval virtue in the simple structures of the early colonial period; they equated with Renaissance artificiality the later Georgian and federalist classical buildings which most urban preservationists valued.²⁹³ Medievalists were one group of what T. J. Jackson Lears calls ‘antimodernists.’ Through the Arts and Crafts movement, Gothic Revival architecture, and preservation of folk culture and vernacular building, they reversed the earlier dictum and now declared that what was new was corrupt.²⁹⁴

Appleton’s sympathies lay with the medievalists. SPNEA members who did not share his priorities thought the society concentrated too much of its resources on what one called “those little houses in the country.”²⁹⁵ Even SPNEA’s second acquisition, the 1809 Fowler house, shared the severe simplicity of earlier buildings, and Appleton acknowledged opposition from members who “are apt to be disappointed that it is not ornate.”²⁹⁶ Appleton was most interested in structures like the Old Bakery in Salem, which he described as “almost brutal in its simplicity The whole work is essentially medieval, and the decorative motives are of Gothic extraction.”²⁹⁷ As he elaborated on the theme in private correspondence regarding another building, “to my mind the 17th

²⁹²*SPNEA Bulletin* 7 (1916): 17.

²⁹³Lindgren, ‘Gospel of Preservation,’ 231, 265-66.

²⁹⁴T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York, 1981). The Arts and Crafts movement was represented in Boston by the Boston Society of Arts & Crafts, founded in 1897 with Appleton’s teacher C. E. Norton as its first president; Lindgren, ‘Gospel of Preservation,’ 355.

²⁹⁵Lindgren, ‘Gospel of Preservation,’ 265.

²⁹⁶Appleton to David Bonner, Jr., Aug. 1, 1919, quoted Lindgren, ‘Gospel of Preservation,’ 260.

²⁹⁷*SPNEA Bulletin* 2 (1911): 14-15.

century is the more strictly New England type, or I might say Anglo-Saxon type. The other [Georgian] is after all but an importation from the Latin countries, bringing with it the flavor of Greek and Roman civilization, with which our ancestral lines are not particularly connected.'²⁹⁸ Appleton's catholic tastes, however, together with his usually adroit organizational politics, allowed him to steer a middle course which kept both medievalists and classicists within the fold.

It was this comprehensiveness which made SPNEA the single institutional embodiment of New England preservationism. The chairman of the American Institute of Architects' Preservation Committee, surveying architects' preservation efforts nationwide in 1915, reported that

In New England, where many buildings of historic and architectural interest exist, there seem to be no Chapter committees intrusted with this subject. It is claimed that the necessity is met by the existence of the Society for the Preservation of New England Antiquities.²⁹⁹

By subsuming earlier urbanistic concerns enough to keep their proponents from breaking out into separate institutions, SPNEA thus also limited their expression.

As the field of preservation grew more active in the 'teens and 'twenties, it was ripe for organizing ideas, and Appleton's had particular force because of his unique national position. Not only did he run the largest, most ambitious, and most rigorous preservation organization of the time, but in the *Bulletin* he published (and until 1920 edited and almost singlehandedly wrote) the only American periodical devoted exclusively to the subject. An indefatigable correspondent, he advised countless individuals and groups all over the country, making SPNEA a national clearinghouse for preservation information, and helping to provide a philosophical frame of reference for activists who were often otherwise isolated from one another. They sought his advice because SPNEA's methods worked.

²⁹⁸Appleton to Murray Corse, March 16, 1918, quoted in Lindgren, 'Gospel of Preservation,' 250.

²⁹⁹Proceedings of the 49th convention, AIA, (1915), quoted in Hosmer, *Presence of the Past*, 252.

Appleton's contributions to preservation's methods, like those to its philosophy, were to make them systematic, effectively professionalizing the field. Appleton himself remained literally an amateur, never drawing a salary, but this paradoxically contributed to his professionalization. Appleton's trust fund figured decisively in SPNEA's tactical success, serving as a substantial de facto endowment from the inception of the society. It gave him the luxury and the responsibility of planning for the long term, thinking through not only his philosophy of preservation, but also how he should go about it, knowing that his full-time status was secure.

Systematic priorities brought increased reliance on experts able to evaluate them. SPNEA was aided by, and itself assisted, the emergence of restoration architecture as a distinct profession, following principles that had more to do with archaeology than with design. The society was a continuing source of commissions for established practitioners such as Joseph E. Chandler of Boston and Norman M. Isham of Providence, as well as for newer entrants to the field. Even more important, it served as a sort of continuing, informal professional seminar. "Practically every architectural scholar in New England," says Charles Hosmer, "toured with Appleton at some time."³⁰⁰ He insisted on a rigorous regimen of investigation and recording in the restoration process, laying the basis of a cumulative body of professional knowledge. He made SPNEA an essential institution for the profession, acting as depository for a massive archive of the documentation necessary to support comparative study.

Appleton also elaborated the preservation movement's techniques of private intervention. He was innovative in his means of getting control of properties, seeking and receiving gifts and bequests, buying houses subject to life occupancy, and financing restoration of property in return for reversion of title on the owners' deaths. He originated the now-familiar 'revolving fund,' in effect an organized approach to crisis response. The Helen F. Kimball Emergency Fund was established in 1912, \$1500 on hand which could be used quickly without approval by the trustees, but which had to be paid back in full before the fund could be tapped again. This allowed

³⁰⁰Hosmer, *Preservation Comes of Age*, 1:141.

Appleton to raise money both for the particular building he was saving, as well as for the fund itself as a tool for meeting the next crisis.³⁰¹

Appleton's most significant contribution to preservation technique was to recognize preservation as a continuing rather than a finite action. A choice of phrase is revealing: when a federalist mansion in Providence was bought by an individual intent on saving it, Appleton wrote, "We may well hope that preservation of this splendid example of New England town architecture may be *continued*" [emphasis added].³⁰² The recurrent nature of the threats faced by buildings was a lesson which preservationists had been learning, over and over, since Mt. Vernon. In Boston, the Old South, the Old State House, and the Bulfinch State House each had to be defended more than once.

Continuing preservation required financial endurance. "The most disheartening realization that emerges from a study of the economic side of the American preservation movement," says Hosmer, "is the fact that the majority of people who saved old houses did not understand that the word 'preservation' really meant maintenance of these structures throughout the years that followed."³⁰³ Appleton noted that "[t]he financial weakness of the holding organization" for the Shirley-Eustis mansion "had for a long time endangered the permanence" of the preservation effort.³⁰⁴ The West Roxbury Meetinghouse, 'saved' by its preservation committee, was eventually destroyed after SPNEA refused to accept it without its mortgage lifted. Appleton was even prepared to decline properties offered to the society unmortgaged but without endowments. "The safety of some houses might be jeopardized by this policy, but the security of the Society as a whole would be much increased."³⁰⁵

The security of the society was central to Appleton's vision of preservation. He was deeply skeptical of any scheme other than ownership by some institutional guardian, preferably SPNEA. He was almost insulting in his dismissal of preservation by individuals, no matter who:

³⁰¹SPNEA *Bulletin* 3 (1913): 11; Lindgren, 'Gospel of Preservation,' 293.

³⁰²*Old-Time New England* 12 (1921): 176.

³⁰³Hosmer, *Presence of the Past*, 292.

³⁰⁴*Old-Time New England* 11 (1920): 30.

³⁰⁵SPNEA *Bulletin* 4 (1913): 28.

The two president's [sic] houses in Quincy, although now occupied respectively by the Quincy Historical Society and the Adams Chapter, D. R., cannot with certainty be counted among buildings permanently preserved, since they are still in the hands of the Adams family, and the most casual knowledge of the fate of old buildings shows the uncertainty of such private tenure.³⁰⁶

It was "essential" that historic buildings "be placed in the hands of permanent corporations rather than in those of individuals."³⁰⁷

William Sumner Appleton transformed the preservation movement to one which was better organized and more effective, but with more restricted aims than before. He honed a single existing tool for preservation: ownership by a private group, usually through purchase. It was the most thorough solution where it could be used, but it could not be used often. As we shall see in the next chapter, Appleton did not contribute to strategies for transcending the limitations of this system, partly because of his strong bias toward private rather than governmental action, and partially because he worked the system so well. Having devised a strategy, he spent the rest of his life occupied with tactics. Appleton institutionalized preservation by creating "an enormous operation," says Charles Hosmer, "that maintained many important buildings in a form of historical cold storage. The number of houses lost in New England was remarkably small between 1910 and 1947."³⁰⁸

Preservation was institutionalized in a broader way; it was built into the process of decisionmaking about the built environment. Preservation began to be assumed, although not always in the methodical way Appleton advocated. George G. Crocker as head of the Boston Transit Commission ran what was potentially among the city's most powerful engines of environmental change, but he ran it according to his own preservationist views consistent with his earlier efforts on behalf of the Old South and the Common. Appleton and Crocker were to come into conflict when the Transit Commission sought to expand a subway station in the basement of the Old State

³⁰⁶Appleton, 'Destruction and Preservation,' 155.

³⁰⁷Appleton, 'Destruction and Preservation,' 168-69.

³⁰⁸Hosmer, *Preservation Comes of Age*, 1:178.

House, but this time, significantly, no one suggested that the Old State House should be torn down.³⁰⁹

Another example of preservation's widespread acceptance is the Custom House Tower, proposed by architect Robert S. Peabody in 1909 and constructed from 1911 to 1915. It was criticized for the impracticality and expense of its design, but very little of the criticism questioned the extraordinary basic premise of preserving Ammi Young's 1837 Greek Revival custom house by putting all the new offices in a slender tower perched atop it, rather than clearing the site. Similarly, other buildings simply did not become preservation controversies. In addition to the St. Paul's congregation's decision to stay in their old church, the trustees of the Boston Athenaeum made the more difficult determination that their 1849 building could be made fireproof enough for their irreplaceable collections by renovations, which were carried out in 1913-14.

Preservationists from the earliest days of the movement had argued that historic buildings were an economic benefit to their communities, and by the turn of the century the argument was well accepted by businesspeople. The Providence Board of Trade published a laudatory article on SPNEA in May of 1914, and later that year noted that "Boston, by playing up its historic attractions for several generations, has vastly profited in a commercial way" The Boston Chamber of Commerce agreed: "Preservation ... pays as an investment."³¹⁰

Because preservation by private purchase operated through the market, it did not fundamentally challenge real estate interests. Many real estate developers could see the appeal of the buildings they were destroying, and they saw no contradiction in participating in the preservation movement at the same time. The most conspicuous example was John Phillips Reynolds, Jr., who was buying the Paul Revere house even as he tried to tear down Park Street Church. For another example, Alexander S. Porter was president of the Boston Real Estate Exchange, and put together the syndicate which replaced the Tremont House hotel in 1894, and the one which would have razed St. Paul's Church, yet he took a sympathetic interest even in the buildings he tore

³⁰⁹*Proceedings of the Bostonian Society* (1903): 6.

down, amassing an important collection of antiquarian photographs.³¹¹ He led in organizing the Committee to Preserve Park Street Church, and joined SPNEA shortly after it was founded. Porter evidently felt that tearing down St. Paul's would have been a reasonable way to make a profit, and preserving Park Street Church across the street a reasonable way to spend it; market-based preservation allowed each individual to decide for himself where the line should be drawn against change. Other developers were happy to cooperate with SPNEA in recording structures or offering them to be moved, secure in the knowledge that their fundamental right to clear sites went unquestioned.³¹²

Preservation in Boston went through three distinct generations, from an historical to a visual to an archaeological sensibility, corresponding with and anticipating its phases in the rest of the country. First, it saved monuments such as the Old South and the Old State House, places sanctified by their associations with historic events and valuable to the present for their ability to evoke them. Second, it saved landmarks such as the Common and the Bulfinch State House, important for their visual or architectural role in the urban landscape. Finally, it saved artifacts such as SPNEA's old houses, structures significant for what they revealed about the material culture of the past. These sensibilities did not supplant but added to one another, each of them contributing a new way of looking at what earlier efforts had accomplished, and redefining what still needed to be done. A fourth generation on the national scene was 'area preservation,' looking beyond individual buildings and sites to keeping whole districts intact. Boston began this phase like the others precociously, but as we will see in the next chapter, it eventually gave up its position of national leadership.

³¹⁰*Providence Magazine*, December, 1914, 807; May, 1914, 374-77; *Current Affairs*, March 3, 1924, in SPNEA clipping file.

³¹¹*Boston Herald*, April 28, 1894: 1; *Boston Sunday Journal*, February 17, 1901: 1; *SPNEA Bulletin* 7 (1916): 46.

³¹²E.g. Moses Williams offered the Sun Tavern to SPNEA in 1912; when Appleton declined it for lack of a site to move it to, Williams cooperated in allowing Norman Isham to make measured drawings as the building was taken down (Sun Taven file, SPNEA).

The first two generations of preservation responded primarily to threats of physical change, but by the early twentieth century social change seemed more overwhelming. Just as deed restrictions, first developed to control physical form, were increasingly put to use making social geography durable, so preservation increasingly became part of a matrix of class and ethnic definition. This shift can be seen for example in a change of the intended audience for patriotic education, from 'us' to 'them.' The first generation of preservationists expected the Old South and the Old State House to help convey shared values to the next generation of what they still thought of as an essentially homogeneous population. By the early twentieth century, the second editor of SPNEA's bulletin, George F. Dow, would describe part of preservation's mission as "informing foreigners and less enlightened natives as to American traditions and values."³¹³

The earliest preservation controversies were largely among upper-class Anglo-Saxons. They did not disagree about patriotic and historical significance, which both sides typically acknowledged, but about whether it should have any operational weight against the practical forces which drove change in the environment. By the twentieth century, conflicts were often between Brahmins and other groups. As the Irish and newer immigrants became economically and politically ascendant, white Anglo-Saxon Protestants awakened to a group identity of which they had not been so acutely aware, and they asserted it through the formation of genealogical and patriotic societies. SPNEA was part of this organizational constellation, and at one point stretched its definition of 'antiquities' to take up the issue of "persons changing their family names, ... for the purpose of assuming an old New England name of long and good standing."³¹⁴ Brahmins' loss of power in Boston to an Irish-dominated political machine resulted in their gradual disengagement from the public life of the city during the twentieth century. Many turned their minds instead to more satisfactory bygone days, and to the still comfortably Anglo-Saxon countryside, their residences and preservation attention increasingly following. Thus while SPNEA's emphasis was the immediate product of Appleton's own interest, its popularity and success - and the fact

³¹³Lindgren, 'Gospel of Preservation,' 331.

that no competing organization emerged to complement its deficiencies - resulted from its conformity with its constituency's narrower concentration on its own, more personal past.

This new concern with a smaller scale of building changed the nature of preservation conflicts: instead of confronting governments or quasi-public institutions, preservationists found themselves dealing with individual property owners; in the oldest, often run-down parts of Boston and smaller towns, those individuals were increasingly likely to be Italians, Jews, Poles, or other eastern Europeans. William Sumner Appleton often faced "the difficulties involved in trying to do business with a foreigner, whom fortune had made for the moment the custodian of a really interesting New England antiquity",³¹⁵ and he was by both background and inclination unprepared for the task. At the Saugus house, he told a correspondent, "Our neighbors are callabrian Italians who are not famous for their good behavior."³¹⁶ Appleton's approach to managing properties in ethnic neighborhoods, says Lindgren, "bordered upon a siege mentality," but he had to deal with real vandalism, and saw one seventeenth-century house purchased by a family association only to be destroyed by arson.³¹⁷ Whatever his attitudes, his actions can be explained by sincere concern for physical protection of SPNEA's properties. Other preservationists worried about less tangible threats. Mary Desha, one of the founders of the national D.A.R., called upon that organization in 1898 to keep historic buildings from "passing into the hands of improper people."³¹⁸ The chairman of the Committee to Preserve the Park Street Church was one of the founders of the Immigration Restriction League.³¹⁹

The link between preservation and nativism, however, should not be overdrawn. A resurgence of xenophobia was part of America's cultural mainstream at the turn of the

³¹⁴SPNEA *Bulletin* 6 (1915): 17. See also *Boston Herald*, January 11, 1915, in SPNEA clipping file.

³¹⁵*Old-Time New England* 12 (1921): 177; Lindgren, 'Gospel of Preservation,' 286.

³¹⁶Appleton to Millar, May 6, 1916, quoted in Lindgren, 'Gospel of Preservation,' 298.

³¹⁷Lindgren, 'Gospel of Preservation,' 299; *Old-Time New England* 12 (1921): 180.

³¹⁸Quoted in Hosmer, *Presence of the Past*, 133.

³¹⁹Prescott F. Hall.; *Who Was Who in America* 1, 507.

century; it did not produce the preservation movement but merely tugged at it with its current. Indeed, when SPNEA is considered in the context of the other traditionalist groups in its institutional family, its significance is that it was so steadfastly about buildings and objects, making very little concession to patriotic cant. Curtis Guild, Jr., Lieutenant Governor of Massachusetts and President of the Paul Revere Memorial Association, tried to temper nativist excess when he reminded donors that "Paul Revere, like the children who now play around his venerable home, was himself the son of an immigrant." The house could help teach those children American ways, but it could teach Americanists, too, "as a reminder to the Commonwealth of the services rendered by new citizens and by their children."³²⁰ Appleton could work with non-WASP institutions when that would help preserve a building.³²¹ Most importantly, the preservation movement's broadening of interest to include the ordinary life of earlier generations, even if it was conceived by some adherents as an affirmation of Anglo-Saxon precedence, defined a powerfully inclusive subject matter which, as preservationists' chronological frontier moved forward through the nineteenth century, would embrace the very groups it had earlier excluded, and allow later preservationists to take an interest in workaday parts of the environment their predecessors sought to escape.

Saving the Old South Church was Boston's greatest contribution to American preservation. It was the first time Americans challenged the culture of change head-on and won. Mount Vernon, by contrast, was a movement not to protect a structure from imminent destruction but to create a shrine, and its significance lay in the selection of a genuine relic building as an appropriate monument. But at the Old South, preservationists faced the American condition at its most virulent in the congregation's steadfast preference for new rather than old, combined with the tremendous practical pressures for change in the form of the site's land value. The success of the private effort to save the Old South, coming after the failure of both state and city governments

³²⁰Curtis Guild to PRMA, November 29, 1907, North Square/ Paul Revere scrapbook, SPNEA.

³²¹E.g., the Roman Catholic church, *Old-Time New England* 11 (1920): 35; the Cercle Social Franco-American of Pawtucket, Rhode Island, *Old-Time New England* 13 (1922): 94; the First African Methodist Episcopal Church Society of Boston, *Old-Time New England* 11 (1920): 170-71.

to save the Hancock house, set a precedent of privatism which defined the New England preservation movement for generations, most significantly for William Sumner Appleton, who brought this precedent to its fullest realization but could not transcend it.

The Common and the two state houses, as major public spaces and buildings, were necessarily saved by public action. Park Street Church was private property, and its would-be preservers sought government financial intervention in recognition that the costs of urban landmarks were simply too great to regularly preserve them by private subscription. But Park Street Church, like St. Paul's, was eventually saved not by the state but by the action of its congregation, further reinforcing the precedent of privatism.

William Sumner Appleton was committed to private action and therefore turned away from urban landmarks and launched preservationism firmly toward curatorship of material culture. New Englanders for a generation had been sponsoring archaeological exploration and preservation in the west; now in effect the movement came home. While Appleton developed new tools for private preservation, he did not take up the existing ones for public action. When he wanted a government to do something, he "fixed it up" quietly if he could; he did not organize SPNEA for the sort of serious lobbying carried out, for example, by the D.A.R.

These trends did not represent a general abandonment of the ideal of permanence in the larger urban environment, but rather a new division of labor as new institutions and professions took shape. Some of the concerns of permanence coalesced as a professionalized preservation movement; others became part of the newly-recognized field of city planning, which was pursued by a new generation of architects and landscape architects sensitized to historic buildings and spaces. The shift of preservationist attention from the public environment to private, domestic environments was in part a mark of success; the most important public landmarks were secured, and preservation had indeed become enough of an assumption that planners would exercise at least minimal regard for landmarks. Appleton's systematic approach was essential to the development of modern preservation. Consistency and comprehensiveness were needed for bureaucratic administration, which is more or less what Appleton was doing, and for legal intervention, which he was not, but which others would soon try.

CHAPTER SIX:

Public action

Before the 1890s, attempts to achieve environmental permanence were for the most part private actions. Deed restrictions were a branch of private land law, imposed by one owner in an agreement with another. Preservation operated mainly through private purchase of threatened landmarks.

While all levels of government participated in these efforts in various ways, their involvement did not change this essentially private medium. Units of government generally acted not through their sovereign powers but in a narrow capacity as landowners. Municipalities were leaders in imposing deed restrictions, but they did so in the same way as any other subdivider. Cities, states, and the federal government preserved buildings which they already happened to own. Preservationists claimed that the city of Boston, in its administration of the Common, was not a private owner at all but a special sort of trustee, and they tried to extend this concept to historic public buildings, but their arguments were rhetorical and ethical rather than legal. They were really talking about what kind of private owner the government should be: one which would seek material gain and would thus provoke change, or one which would sympathetically protect its own heritage, as many individuals and certain enlightened religious congregations were doing.

In rare instances cities, states, and even the federal government bought buildings or sites specifically to preserve them. This did not happen in Massachusetts until 1913,

when the town of Lexington purchased the Buckman Tavern.¹ There was long precedent for such action, starting with the purchase of the Hasbrouck House by the State of New York in 1850, but half a century later this governmental role remained embryonic.² In each case it resulted from the same sort of expediency which led Bostonians to ask city and state help to save the Hancock House, the Old South, and Park Street Church. Government was seldom called upon to do anything which private groups could not in theory undertake. It provided funds or served as a permanent custodian; it did not (with very few exceptions) use uniquely governmental powers of coercion such as eminent domain³ or police-power regulation. No government body anywhere in the country took on preservation in any systematic way comparable to SPNEA's private program.

Neither preservation nor deed restrictions challenged the institutions of private property and private control of urban development. Saving landmarks by purchase - whether private or public - operated through the market, and thus real estate developers could be preservationists too without feeling any contradiction. Preservation exempted a few places from developers' rules, but it otherwise followed those rules; it did not change them. Deed restrictions also exempted parts of the environment from the rules of urban change, much larger parts than preservation did, but the exemption was likewise no threat because it was made by real estate developers voluntarily and in response to demands of the market.

By the 1890s, experiences in both preservation and development were leading people to recognize inherent limitations in stabilizing the physical city through the private

¹Hosmer, *Presence of the Past*, 111. Even in this case, like the Park Street Church proposal to the legislature, the catalyst was a private campaign which raised a substantial fraction of the purchase price.

²Hosmer, *Presence of the Past*, 36.

³The legislative act by which the Old South Association was authorized to alter its deal with the church society was technically a delegation of eminent domain power (see chapter 5). Among the earliest major examples of eminent domain used for preservation was the federal government's acquisition of the battlefield at Gettysburg, in part through eminent domain; Hosmer, *Presence of the Past*, 164.

market and private institutions. The limitations they faced arose from a variety of issues but ultimately led them to similar solutions.

Preservation's basic limitation was a lack of available resources. Private subscription and purchase accomplished more in eastern Massachusetts than anywhere else in the country, yet it was clearly inadequate in urban areas even for preservationists' most limited goals. The Committee for the Preservation of Park Street Church, despite its effectiveness at soliciting pledges, had to turn to the legislature if it was to save the building by purchasing it. William Sumner Appleton was unwilling to seek government purchase, so his goals in city centers had to be very modest. John D. Rockefeller, Jr., and Henry Ford each spent over \$25 million on preservation at Williamsburg and Greenfield Village, Michigan, respectively,⁴ and Appleton tried unsuccessfully to interest one of them or their financial peers in creating an endowment for preservation acquisitions elsewhere. Without a fund of such magnitude, private preservation would inevitably remain fragmentary.

Even more important, preservationists' increasingly ambitious concern with whole urban compositions such as the State House, the Common, and the churches and houses around them, brought their attention to a scale at which purchase was almost irrelevant; neither Rockefeller nor the Commonwealth of Massachusetts could buy Boston. While Appleton was willing to retreat from the city, many of the people who worked to protect the State House and Park Street Church remained interested in this large scale. Their interest gave preservationism a kinship with the city planning movement, and an interest in turning to public powers rather than private organizations.

Finally, incentives for public action were reinforced as the preservation movement expanded in a smaller-scale but equally ambitious way with the advent of what is now called 'area preservation,' the restoration of whole neighborhoods. This brand of preservation brought the movement's concerns into close correspondence with the issues of neighborhood stability which were addressed through deed restrictions. Beacon Hill was among the first areas in the country to be touched by neighborhood restoration; no sharp line divided the concerns of its residents from those of people

⁴Hosmer, *Preservation Comes of Age*, 1:75.

grappling with inadequate deed restrictions in the newer Back Bay. Both areas faced similar problems: conversion of houses to multifamily or non-residential use, and new construction of large apartment and business buildings.

Deed restrictions' usefulness over long periods was limited by their lack of flexibility. Their authors had consistently failed to foresee the emergence of new problems, such as apartment houses, garages, or tall rather than short buildings. As circumstances changed, courts interpreted restrictions unpredictably, and the necessity of going to court for an interpretation in each case was itself a fundamental drawback. Flexibility could be built in by creating permanent associations to administer restrictions, but such groups brought their own cumbersome mechanics and social tensions, particularly from the point of view of big developers, or 'community builders,' who typically held parts of their large-scale projects for years after the first lots had been sold, and themselves had to deal with these community organizations. From a developer's perspective, long-term deed restrictions were a marketing tool; if continued policing of land-use conflicts could be handled by the public sector, it would serve just as well and save a lot of trouble.⁵

These were the problems in new subdivisions, where restrictions worked best. Elsewhere, their limitations were even more serious. In older residential plats, restrictions often had become obsolete, or had lain inactive long enough to be of uncertain validity. The expiration of time-limited covenants brought residents an unwelcome awareness of their neighborhoods' new vulnerability; a transition period of changes in ownership and occupancy often began in advance of the expiration date.⁶ Since land in an established neighborhood often increased in value when its restrictions expired, even resident owners might have an incentive to celebrate their passing. Where a consensus did favor continuing the restricted status quo, owners still could accomplish little unless they acted in unison. If a restriction against, for example, apartment houses did not apply to every lot on a block, it merely conferred a monopoly premium on the owners of unrestricted lots. This was an incentive for owners to hold

⁵Ascher, 'Art of Administering Deed Restrictions,' 373-77; Weiss, *Community Builders*, 85-86, 91; see E. H. Bouton, developer of Roland Park, discussion of Nichols, 'Financial Effect of Good Planning,' 112-13.

⁶Weiss, 'Berkeley,' 16.

out from renewing restrictions, and in areas originally subdivided without them, the need for unanimity made them nearly impossible to initiate afterwards.⁷ The only widespread exception was the twentieth-century practice of imposing racially restrictive covenants through 'protective associations' in already-developed areas.⁸ Achieving the necessary unanimity for post-hoc restrictions took the level of paranoia which attended racial issues, a motivation which no merely environmental concern was likely to match.

Public actions to supplement deed restrictions

Deed restrictions, over a long period of practice, had demonstrated the desirability of controlling the use of private property, but they also demonstrated that private controls by themselves were not enough.

In some places the first substantial legislative intervention in land use regulation was de facto elimination of the unanimity requirement for post hoc restrictions, through 'frontage consent ordinances.' This technique was developed further in Chicago than anywhere else in the country; by 1893, ordinances there prohibited locating on residential streets any commercial stables, gas houses, varnish works, saloons, or carousels without the approval of the owners of a majority of the frontage on the block.⁹ In Massachusetts, a similar law passed in 1881 allowed a veto of saloon licenses by abutters; in 1887 the legislature extended the veto to all owners within 25 feet of the premises.¹⁰ This method was used in many American cities, usually to regulate subjects which were already discretionary under the law, such as liquor

⁷There are scattered examples of voluntary imposition of restrictions after land passed into many hands: Rancho Santa Fe, near San Diego, where owners of more than 3500 acres converted 10-year restrictions to permanent ones (Charles H. Cheney, 'Building for Permanency,' 43); Cohasset, Mass., 1937, a voluntary 50-year restriction to residential use around the Common (Lewis Barrington, *Historic Restorations*, no. 17); another in Cleveland (Thomas W. Larwood, Jr. discussion of Nichols, 'Financial Effect of Good Planning,' 107).

⁸See chapter 4, note 40.

⁹King, *Law and Land Use in Chicago*, 231, 253-58.

¹⁰*Massachusetts Acts and Resolves*, 1881, Acts ch. 255, §2; 1887, Acts ch. 323.

licenses or transit franchises. Where frontage consents appeared, they represented an evolutionary link between deed restrictions and modern zoning.

The first Massachusetts legislative action specifically remedying deed restrictions' substantive deficiencies - as opposed to technical shortcomings which made their duration unclear - was an 1893 law enabling cities and towns to establish building lines along public streets. These setbacks could include as much as 25 feet of the front of a lot, and the act drew from familiar deed restriction language to provide that "no structure shall thereafter be erected, placed or maintained between such building line" and the street. Like streets themselves, the lines would be laid out as an exercise of eminent domain. The bill was submitted by Boston's Board of Street Commissioners, and at the request of a Brookline representative the mechanism was made available, at local option, to the rest of the state.¹¹

Alderman Charles W. Hallstram of the South End explained the motive for the act:

Where it affects my constituents most seriously is that up on Columbus avenue, which is a very fine avenue, most of the estates are under certain restrictions as to the building line, but there are three or four lots there on which there are no restrictions and the parties are beginning to build out, thereby annoying the abutters and disfiguring the avenue.¹²

If the offending construction continued, he said, "it will cost the City of Boston a great deal more money than it will at present to abate these nuisances." One way or another, Hallstram assumed, this was a subject for municipal attention.

The building line act had the potential to address problems both of the city's established districts and of newly developing areas. In older areas where restrictions were expiring, it offered a way of making permanent one of their most basic provisions without requiring that owners act unanimously. In new sections, it could give municipal sanction to the setbacks established in deed restrictions (thus neatly avoiding any potential damage award), and provide an enforcement mechanism less cumbersome than private lawsuits.

¹¹*Massachusetts Acts and Resolves*, 1893, Acts ch. 462; 1893 House bill 506 (February 7); 1893 House bill 230 (January 31).

¹²*Proceedings of the City Council of Boston* (1893): 594, Board of Aldermen, August 28, 1893.

During the two and a half years after the act's passage, the Boston street commissioners received only three petitions for building lines, and all three reacted to threats of change in established neighborhoods. The first was from Alderman Hallstram's constituents on Columbus Avenue, where residents complained that "[t]he restrictions are running out," and the avenue "fast becoming a business street."¹³ These petitioners were reacting to one tall building which had already been built; on nearby Warren Street residents asked for a building line to block "a new building that is about to be erected on a lot of land where the restrictions have recently expired."¹⁴ Both Columbus Avenue and Warren Street residents tried to use the new procedure as a response to the beginnings of commercial encroachment, but in both cases the owners of unrestricted estates made it clear that they would expect to receive substantial compensation, and the commissioners therefore declined to act.¹⁵ The first petition they granted was to reinforce the existing building line on aristocratic Beacon Street, where public hearings showed no opposition, and thus no need for compensation.¹⁶ While the legislature had given the commissioners the power to override opponents, it created no new source of funds to make practical the exercise of this power, which probably explains why so few neighborhoods bothered asking them to use it. The procedure's usefulness in newly developing areas was recognized by an 1894 act requiring that it be used to establish building lines in the as-yet-undeveloped parts of the Back Bay; the extension of Boylston Street was immediately laid out this way.¹⁷ The building line act

¹³George W. Pope and Horace G. Allen in *Board of Street Commissioners* 23:223 (December 7, 1893).

¹⁴John K. Berry in *Board of Street Commissioners* 24:274 (December 20, 1894); John Carleton in *Board of Street Commissioners* 23:224 (December 7, 1893).

¹⁵Similarly, in Chicago in 1912 the city council considered ways of preventing business encroachment onto residential streets, and concluded that the best available mechanism was municipally-established building lines (King, *Law and Land Use in Chicago*, 334).

¹⁶*Board of Street Commissioners* 24 (1894): 253, 272, 278-79, 287, 301-04. The building line in Beacon Street's deed restrictions had been upheld and enforced in 1886 in *Payson v. Burnham*, 141 Mass. 547; residents may have wished to avoid the trouble of private lawsuits to enforce it in the future.

¹⁷*Board of Street Commissioners, Annual Report*, 1895. In the next twenty years, Boston imposed municipal building lines in only three more places, all of them streets in the new Back Bay. Brookline, where building was more active, used it enough to have a policy, explained by Philip S. Parker, chairman of the town's Board of Selectmen: "We put a building line on streets which may be widened or where property owners give security against damages. We also put building lines on all new streets accepted" (*Boston Evening Transcript*, May 26, 1915: 14). No matter how drastic the case, the town

set a legal and conceptual precedent for public intervention to address neighborhood land-use issues left unanswered by private planning, but it did not immediately change the ordinary way of doing business.

A separate strain of public actions relied not on eminent domain but on the police power (discussed in chapter 3), to address different kinds of deficiencies in restrictions. These public health and housing reforms, and nuisance-law control of conflicting urban land uses, flowered in Massachusetts by 1870.¹⁸ The building line act responded to expiring restrictions; police power measures addressed problems that were beyond control by deed restrictions, either because they involved conflicts across the boundaries of subdivisions, or because they were not yet anticipated when the restrictions were written. The clearest example of such unanticipated contrasts was automobile garages, unknown before about 1900 and ubiquitous after about 1910. While courts struggled with adapting restrictions on stables to this new functional equivalent, the Massachusetts legislature in 1913 created a second legal tool of control by empowering Boston's Board of Street Commissioners to regulate garage locations. After a public hearing on each application, the commissioners were to weigh the balance between "requirements of public convenience" and the "general character of the neighborhood."¹⁹ The following year the legislature raised the threshold for change by deleting consideration of public convenience.²⁰ This procedure relied on the police power and was analogous to a special exception under modern zoning law; no compensation was involved because property ownership was not deemed to include any inherent right to build garages.

A change even more disruptive than building-line encroachments was the construction of tall new buildings, the common threat which could destroy the visual ensemble around the state house, could replace the old houses awaiting renovation on Beacon

would not impose a line unless property owners posted a bond to indemnify the town. (*Boston Evening Transcript*, May 31, 1915: 3).

¹⁸See Cousineau, 'Tenement Reform in Boston,' 600, re the Tenement House Act (*Massachusetts Acts & Resolves*, 1868, Acts ch. 281); see also *Massachusetts Acts & Resolves*, 1869, Acts ch. 369, 'An act concerning the erection of stables in the city of Boston.'

¹⁹*Massachusetts Acts & Resolves*, 1913, Acts ch. 577.

Hill, and could mar the design of South End avenues and the Back Bay district. Neither deed restrictions nor private preservation efforts held any answer to this threat, so people concerned about these places began to look to public actions, in particular to legislation restricting allowable building heights. Massachusetts had passed the first such height limit in the country in 1891, limiting new buildings in all the state's cities to a maximum height of 125 feet, or about eleven stories.²¹ Height restrictions were one of the police power regulations which served as a precedent for modern American land use and urban design regulation through zoning.

Building height regulation in the United States indirectly grew out of a Boston preservation controversy, at the Bulfinch State House. When the state was arranging its acquisition of the reservoir lot in the 1880s, the city's negotiator was William H. Whitmore, who had fought for and carried out the Old State House restoration; Whitmore suggested that the state ought to limit heights on Beacon Hill to keep new buildings from "dwarfing the [Bulfinch] state house."²² At this time no American city had yet limited building heights; only a few cities on the European continent had done so, all except Paris within recent years. Only one small German city, three years earlier, had limited heights within a particular district as Whitmore was proposing.²³ The editors of the *American Architect* reported Whitmore's "amusing suggestion" with a vigorous defense of private property rights:

we doubt if even the beauty of the Massachusetts State House is worth preserving at the expense of the rights of citizens. ... [I]ts dignity cannot be enhanced by assaults upon the property of its neighbors, or by compulsory humiliation inflicted upon estates near by.²⁴

²⁰*Massachusetts Acts & Resolves*, 1914, Acts ch. 119.

²¹*Massachusetts Acts & Resolves*, 1891, Acts ch. 355; the restriction exempted "steeple, domes, towers, or cupolas erected for strictly ornamental purposes."

²²*American Architect and Building News*, March 26, 1887: 145.

²³Altona, outside Hamburg; Heights of Buildings Commission, *Report ... to the Committee on the Height, Size and Arrangement of Buildings of the Board of Estimate and Apportionment of the City of New York* (New York, 1913), 94-95.

²⁴*American Architect and Building News*, March 26, 1887: 145.

Whitmore's suggestion bore no fruit at the time, but three years later increasingly tall buildings downtown led the city council to ask the legislature for a citywide building height limit to address problems of congestion, shadows, and especially fire safety, which Boston took very seriously. After the Great Fire of 1872, height restrictions had been proposed as a safety measure. On Thanksgiving day, 1887, alarm box 52 once again brought news of a major fire, which destroyed the Ames Building, a modern and supposedly fire-resistant warehouse. After a new Ames Building, an office block on another site, rose to 190 feet in 1889, the first building height restriction in the United States made its way into law with little opposition. "The style came to us from the new prairie cities of the West, as an imported novelty devised by speculative and enterprising people; who being without traditions, are given to the wildest experiments," wrote the editors of the *Transcript*. "We are a parent colony, and are looked to to furnish a conservative example."²⁵

The citywide height limit embodied no preservationist intent, but if anything the opposite: some of its advocates hoped that prohibiting skyscrapers would help spread modern fireproof construction over a larger area, eliminating old 'firetraps.' But in restricting building heights Boston had created a versatile and powerful new tool, which soon looked handy for other purposes. Its recent use downtown made it naturally come to the minds of proponents of environmental permanence - eventually around the Bulfinch State House where it started, but first in the Back Bay.

Developer W. H. H. Newman brought the issue of height restrictions from downtown to this more sensitive location in 1895 with construction of Haddon Hall at the corner of Commonwealth Avenue and Berkeley Street.²⁶ Haddon Hall was an apartment house whose nine generous stories brought it exactly to the 125-foot limit, but this height looked bigger among Back Bay rowhouses than it had downtown (fig. 6.1.). Thirty-five years of public development and regulation of private construction

²⁵*Boston Evening Transcript*, February 21, 1896: 12; see Michael Holleran and Robert M. Fogelson, "'The Sacred Skyline': Boston's Opposition to the Skyscraper, 1891-1928." Cambridge, Mass.: MIT Center for Real Estate Development Working Paper #9, 1987.

²⁶*Boston Real Estate Record and Building News*, July 28, 1894.

had finally produced the large-scale Beaux-Arts cityscape it was intended to, and Haddon Hall did not fit in, especially if it was to be the first example of a new pattern of development. Bostonians were disturbed at the prospect of seeing this urban ensemble lost so quickly, after waiting so long to see it completed.

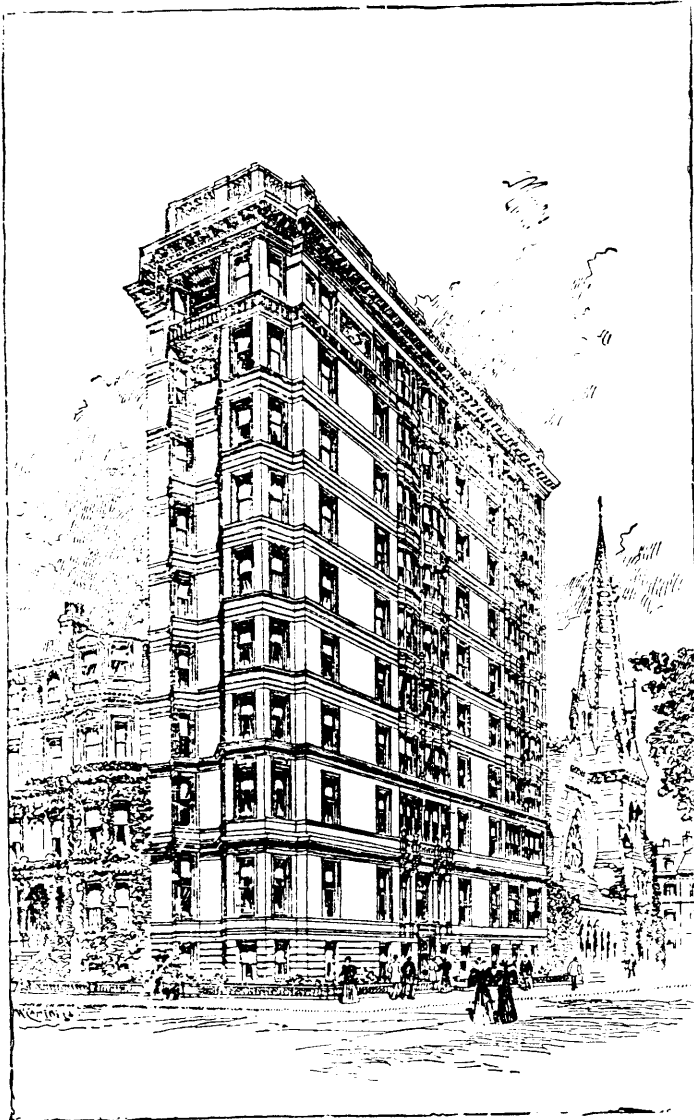


fig. 6.1.Haddon Hall, 1895, J. Pickering Putnam, architect.

The residents of one block banded together to buy a lot at the Public Garden entrance to Commonwealth Avenue, where another tall apartment house was threatened, but this

answer clearly could not work everywhere.²⁷ Nor did private regulation have any tools for this; the Back Bay deed restrictions had not anticipated tall buildings, and could do nothing retroactively. Deeds there specified a minimum height - 3 stories - aimed at preventing temporary structures and helping to achieve the even cornice line so important to the Beaux-Arts aesthetic. When the restrictions were written in 1857, there was no apparent need to specify a maximum. The Hotel Pelham was built that year on Boylston at the corner of Tremont Street, probably the nation's first 'French flats' or apartment house, and at seven stories it was a tall building, but the commissioners evidently did not foresee that such structures would spread to the new land. Starting in the 1870s, they did indeed spread, especially in the Back Bay. As Douglas Shand Tucci says in his architectural history of Boston,

the great height of most early apartment houses (which derived, of course, from the profit motive as well as from the increasing demand for suites) was a problem more easily solved on the inside than the outside, where such buildings seriously marred the established scale of town house streetscapes.... Ironically, if only the French flat fashion had caught on in Boston twenty years earlier, Commonwealth Avenue might have been a Parisian boulevard indeed; but by the time apartments were fashionable the low four-story town house had established a scale unsuitable to blocks of flats.²⁸

Before Haddon Hall, their unsuitability of scale was never quite so apparent. The most common apartment-house heights were six or seven stories; most of them occupied two or more houselots, and these squat masses were architecturally treated not unlike very big rowhouses or groups of rowhouses. Haddon Hall was a bit taller²⁹ and quite a bit narrower than most, so that its proportions accentuated the vertical, and its architect, J. Pickering Putnam, designed the facade to emphasize identical floors stacked one atop another, starkly different from the houses around it.

Haddon Hall's neighbors mobilized to prevent any more such "monstrosities" from invading the district.³⁰ It is tempting, a century after Haddon Hall, to look for social rather than visual causes for such visceral rhetoric, but it is difficult to support such an

²⁷*Boston Evening Transcript*, March 31, 1896: 7.

²⁸Tucci, *Built in Boston*, 106.

²⁹See 'Boston's Tallest Skyscrapers,' *Boston Sunday Globe*, January 14, 1894: 27, which lists and illustrates Boston's 29 tallest structures (down to 103 feet); there are no apartment houses on the list.

³⁰'Vox Populi' letter to the editor, *Boston Evening Transcript*, January 22, 1896: 6.

interpretation. According to Tucci, the luxurious nineteenth century apartment, while it ran against the prevailing evolution from rowhouse to detached suburban villa, "early achieved social parity with the town house, to which it was comparable and in some respects superior."³¹ Apartments allowed successions of reception rooms on one floor, vital for the era's elaborate entertaining and physically impossible in a rowhouse. The argument that apartment life was somehow immoral held little force among the Boston elite, with its francophilic acceptance of Parisian arrangements. Widespread ownership of large second houses in the suburbs or by the shore invoked the London duality of town and country, insulating apartments from any objections from the growing domestic ideology of hearth. Back Bay apartment society was fully as elite as the residents of townhouses, not only financially but socially.

The height restriction campaign was carried out under the auspices of the Twentieth Century Club, a two-year-old organization which spanned the whole range of progressive causes, and which later served as a base for the Committee for the Preservation of Park Street Church.³² In an effort led by George B. Upham, whose efforts to protect the Common had made him "the father of the subway," club members submitted to the 1896 legislature a bill to lower the height limit to 80 feet outside of a "high building district," where it would remain 125 feet. Building heights would be reduced in Beacon Hill, the Back Bay, and the rest of the city except downtown and the adjacent waterfront. Property owners would receive no compensation; like the original 125-foot limit, this new restriction was to be imposed under the police power.³³

The rationale for the original height limit placed it squarely within the police power. It was a fire safety measure, it reduced shading and congestion of the streets, and it applied equally to any building on any street in any city in Massachusetts. Publicly-imposed building lines, on the other hand, might vary from one street to the next, and

³¹Tucci, *Built in Boston*, 106.

³²*Boston Evening Transcript*, February July 1896: 4. Ironically, J. Pickering Putnam, the architect of Haddon Hall, had been one of the club's founders and remained a member. Officially, the club was neutral on this as on all issues, and merely "extended the facilities of its rooms and of its machinery of publicity to any of its members who were fighting any sort of campaign." Twentieth Century Club, *A Survey of Twenty Years* (Boston, 1914), 9.

³³1896 House bill 522.

curtailed private property rights for reasons less readily linked to health or safety, so they used eminent domain powers (even though in practice cities avoided paying compensation for them). The police power too could make spatial distinctions within a city, for example the fire limits within which wooden buildings were prohibited. Was it equally reasonable to reduce allowable building heights in the Back Bay while continuing to permit 125-foot buildings downtown? The editors of the *American Architect* thought so; unlike the Beacon Hill proposal a decade earlier, they saw city-wide districting as a distinction between apartment houses and office buildings for valid reasons of public health:

[C]ontagious diseases do not occur in office-buildings; they are vacated and aired during sixteen hours out of every twenty-four, and they are usually of solid, non-absorbent materials, scantily furnished, and well cared for. With apartment-houses the case is entirely different. The rooms are constantly occupied; they are filled, usually to near suffocation, with furniture ready to be saturated with disease-germs; they are, comparatively, poorly built, with innumerable crevices, to put the air of the different rooms in communication; and they have, as a rule, no ventilation worthy of the name. Commonly, the perfume from the cigar of the lodger in the sixth story, passing up through the pipe-sleeves in the floors, mingles with that of the cigarette of the occupant of the seventh story, while both together ascend freely to the eighth; and so on; the upper stories accumulating a combination of nearly all the different flavors of the house. Where the aroma of tobacco and coffee can pass, the infection of diphtheria and scarlet-fever can pass also...³⁴

The real estate community in general supported the existing height restriction for its stabilizing effect on downtown land values and rents, but it was divided about this new proposal. Most real estate people did not object in principle to some further protection for residential areas; they did find fault with the particulars of Upham's plan. The Boston Real Estate Exchange, representing the largest and most established owners and brokers of both downtown and residential property, met to discuss the bill the day after the House passed it. Alexander S. Porter, who had recently stepped down as president of the exchange, thought the bill's new limits on tall buildings "would go a great deal further than was desired or necessary, and would prevent their erection along the waterfronts of South and East Boston and Charlestown, where there was a legitimate demand for high mercantile structures. The Back Bay was the portion of the city it was

³⁴*American Architect and Building News*, February 1, 1896: 49.

desired to preserve as it is.”³⁵ To this the exchange members had no objection, and they decided to draw their own bill to protect the Back Bay while recognizing that “there were circumstances under which a high building might be erected without injury to the city.”³⁶

Senator Charles F. Sprague of Boston, a young lawyer active in efforts to protect the Common, had introduced his own bill with a more modest and specific response to Haddon Hall. He treated it not as a citywide health or safety issue, but as a local failure of deed restrictions. His bill gave local Park Commissions the power to establish building lines on lots which faced parks or parkways (Commonwealth Avenue had been absorbed into the city parks system in 1894), and provided that where they did, “the extreme height to which buildings may be erected ... shall be seventy feet, or such other height as the city council of a city or the inhabitants of a town may from time to time determine.”³⁷ Like the 1893 building line act this relied on eminent domain; owners of height-restricted property would be eligible for compensation.

Both Sprague’s eminent domain bill and Upham’s police power bill made their way through the legislature to a final vote in the Senate on the same day, April 21, 1896. The Senate passed the parks and parkways bill but at Sprague’s motion tabled the city-wide districting bill; Upham and the Real Estate Exchange were now working together on an improved version. Sprague introduced it for them two weeks later, not as an amendment but as a new bill, so that the earlier version could still be enacted if the modifications were to fail. The Senate suspended its filing deadline and quickly passed the bill, but on May 14 the House Rules Committee refused to waive the deadline and thus killed it. The next day the secretary of the exchange - Frederic H. Viaux, a realtor who had once sued for a commission on the preservation of Old South meeting-house - wrote Sprague that his parks and parkways act made further action unnecessary and asked that Upham’s bill be “quietly dropped.”³⁸ Sprague, not yet aware of the House action and under the impression that the communication came from the exchange and

³⁵*Boston Herald*, April 17, 1896: 5.

³⁶Frederick H. Viaux, in *Boston Herald*, April 17, 1896: 5.

³⁷*Massachusetts Acts & Resolves*, 1896, Acts ch. 313.

³⁸Quoted in Upham letter, *Boston Evening Transcript*, June 20, 1896: 15; *Senate Journal*, 1896, 788 (May 7); *House Journal*, 1896, 1040 (May 14).

Upham working together, did as requested. Upham said he was "left under the impression that I had been 'buncoed' by the Real Estate Exchange."³⁹ Through this idiosyncratic process, Massachusetts chose to pursue height districting of cities through eminent domain rather than the police power. The deed restriction analogy won.⁴⁰

The Parks Commission promptly imposed a 70-foot limit on Commonwealth Avenue. This was the only place they applied the act; like the city's imposition of building lines, its use of this potentially systematic tool was still reactive. No one sought damages for these height restrictions.⁴¹ Back Bay owners generally agreed that this was a reasonable limitation which unfortunately had been omitted from their deed restrictions, but their unanimity may have had a more prosaic explanation. Haddon Hall opened in the midst of a depression and at first paid no dividends, and owners would have had a hard time demonstrating damages from losing the right to duplicate an unprofitable building.⁴² They also may have been confused. There was no precedent for eminent domain taking of air rights, but plenty of precedent for deed restrictions. Restrictions on Commonwealth Avenue originated with the state, and it would have been easy for owners to think of the new limit as a welcome addition to their deed covenants, without inquiring too closely into how such an addition was possible.

³⁹*Boston Evening Transcript*, June 20, 1896: 15; *Senate Journal*, 1896, 875 (May 19).

⁴⁰The next year Upham returned with a police power bill modified to meet many of the exchange's objections (1897 House bill 287); it included a larger area within the high building district, and included a variance procedure modelled on a proposed New York City height law, by which tall buildings could be erected outside the high building district if they were approved by the Mayor, the park commissioners, and the board of health after a public hearing. The legislature's Committee on Metropolitan Affairs reported a version which applied only to Beacon Hill and the Back Bay (1897 House bill 970). The Senate amended it to reduce heights in the whole city - even downtown - to 80 feet, but then failed to pass the bill (*Senate Journal*, 1897, 596). The following year Upham made one more try (1898 House bill 763). The Senate again eliminated the district provision so that the bill would lower heights throughout the city - this time to 100 feet (1898 Senate bill 205) - and once again failed to pass it (*Senate Journal*, 1898, 538).

⁴¹The limit was imposed August 3, 1896. Commission on Height of Buildings in the City of Boston, *Final Report* (City doc. 133, 1905), 14-15; Heights of Buildings Commission (New York), *Report*, 141. No one appeared, either in favor or opposed, at the Park Commissioners' hearing on the restrictions (*Boston Evening Transcript*, July 20, 1896: 1); a claim of damages at this hearing would normally be the first step in seeking compensation under eminent domain.

⁴²*Robert Treat Paine v. Commonwealth*, transcript of hearings, 1902-1903, MS Massachusetts State Library Special Collections.

Classifying this act as a parks measure was not merely a subterfuge to accomplish Boston's first differentiation of height by districts; it initiated a stream of legislation which controlled land and buildings around parks more stringently than the rest of the city. Haddon Hall's offensiveness had come at least in part from Commonwealth Avenue's sanctity as a link in the 'emerald necklace' system of parks. The city had about completed the emerald necklace, and was just setting out to create an even more ambitious metropolitan park system. Bostonians would not tolerate seeing this enormous investment undone by selfish and inappropriate private development that took its value from the parks while ruining their appearance. New parkways being laid out during these years established elaborate restrictions on lots bordering them, addressing everything from where laundry could be dried to the costs and heights of different kinds of buildings.⁴³

Even these detailed restrictions neglected to regulate the most parasitic of private developments, billboards. The Boston Parks Commissioners for several years after 1896 campaigned to expand their powers over adjacent lands to include control over signs. In 1903 they finally received the power to make rules relating to "the displaying of advertisements, and to the height and character of fences,"⁴⁴ after the legislature requested from Massachusetts Attorney General Herbert Parker an opinion as to whether such rules would entitle owners to compensation. Parker replied with an early endorsement of aesthetic regulation under the police power. "Noises and odors have always been treated as nuisances," he wrote. "There is no legal reason why an offence to the eyes should have a different standing from an offence to the other organs." Nor did he see any problem with singling out particular locales for stricter regulation. If the city could spend millions of dollars creating parks, then the public welfare could require special controls "to preserve the effect for which the public money was spent."⁴⁵

⁴³On the Riverway, for example, the Board of Park Commissioners stipulated in 1889 deeds that "No building...shall exceed five stories in height above the basement or cellar, nor shall exceed sixty feet in height from the mean grade of the edgestone or sidewalk in front to the ceiling of the extreme upper story, excepting churches or chapels..." Quoted in *Flynn v. Caplan*, 234 Mass. 516 (1920), at 517.

⁴⁴*Massachusetts Acts & Resolves*, 1903, Acts ch. 331.

⁴⁵1902 House doc. 1305, 3, 5. Parker was articulating an argument which the American City Beautiful movement had recently imported from English anti-billboard activists. The New World branch of the campaign was the American Park and Outdoor Art Association, founded in 1897 and headquartered in Boston; see William H. Wilson, 'The Billboard: Bane of the City Beautiful,' *Journal of Urban History*

Parks, which had been conceived as a way of making certain pleasing kinds of landscape permanently available to city-dwellers, now required a whole range of new public powers to ensure that their effects would in fact be permanent.

Ensuring permanence of urban design effects was even more complicated, and concern for the long-term surroundings of parks was mirrored at this time by concern for the long-term appearance of the city itself, a concern which also turned attention to height restrictions.

The main urban design thinking of the 1890s and the years after the turn of the century was the City Beautiful movement. At its heart, the City Beautiful was about making an environment worthy of permanence. It grew out of a generation of concern with environmental stability; as people began to realize that constant change was not the inevitable fate of all urban fabric, then the design of those portions which would not change became a more serious matter. We have seen an example of this discussion in the question of whether the old Bulfinch State House should be preserved, or a new, more worthy replica should be built for the ages.

In answering what a worthy city would look like, the City Beautiful movement was an outgrowth of the Beaux-Arts principles which governed the Back Bay's plan. They called for an architectural treatment for the whole city, or the largest possible pieces of it; not merely buildings but groups of buildings, whole streets and districts should be consciously designed as harmonious wholes. City Beautiful planning was baroque planning; instead of the infinite adaptability of the grid, the form of the city would embody a symmetry and focus which was inherently permanent, and would be used to express the city's enduring civic and cultural structure. City Beautiful planning was strongly identified with the neo-classical style, which seemed so permanent both in the solidity of its construction and in the timeless simplicity of its design principles. Both

12 (1987): 397. Parker's confidence was premature. The Massachusetts Supreme Judicial Court overturned the law in 1905 (*Commonwealth v. Boston Advertising Co.*, 74 N.E. 601, cited in Wilson, 414), making this just an opening skirmish in a decades-long national fight to control billboards.

City Beautiful planning and neo-classical architecture were popularized by the 'White City' of the World Columbian exposition at Chicago in 1893, but both had nationally-important prototypes in Boston which helped create the public receptivity for the White City's aesthetic.

The Back Bay as a whole was one such prototype; admiration of Commonwealth Avenue, at its center, was increasingly accompanied by praise for Copley Square, at its southern edge. When Trinity Church, the new Old South, and the Second Church relocated to Copley Square and the new Museum of Fine Arts located there, all in the 1870s, the square began to emerge as Boston's new institutional focus, an early, spontaneously-originated prototype for the civic centers which the City Beautiful movement later advocated as planned components for other cities. Various proposals sought to reinforce this role by locating a monumental public building on the square's remaining privately-owned side, perhaps a new city hall, perhaps a new Music Hall so that "there would be surrounding the square and upon its four sides more or less beautiful buildings, symbolizing religion, art, literature and music."⁴⁶ Copley Square began as a grouping of separate buildings each individually designed to endure. Copley Square's buildings, reflecting the period in which they were made, exhibited the greatest variety and exuberance of styles rather than the City Beautiful's ideal of unity, but the monumental neo-classicism which would characterize City Beautiful design made its national debut there in C. F. McKim's Boston Public Library, designed in 1888 and completed in 1895.⁴⁷ By this time the Massachusetts Institute of Technology, Harvard Medical School, and the Museum of Natural History were also located within a block or so.

The library was as ambitious in its programs as in its architecture, and thus consolidated Copley Square as the cultural heart of the city in a way no other institution could have done. "Copley Square is at present, and is always likely to remain the intellectual and artistic centre of Boston, so far as this can be topographically

⁴⁶Otis K. Newell letter, *Boston Evening Transcript*, January 29, 1898: 15; D. Webster King letter, *Boston Evening Transcript*, January 27, 1898: 6.

⁴⁷See William H. Jordy, 'The Beaux-Arts Renaissance: Charles McKim's Boston Public Library,' in *Progressive and Academic Ideals at the Turn of the Twentieth Century*, v. 3 of *American Buildings and Their Architects* (New York, 1976), ch. 7.

expressed,” said the *American Architect* in 1893.⁴⁸ Bostonians became newly and keenly aware of this place as an emblem of their city at the same time that the City Beautiful was giving them a new standard for evaluating such places. Americans returned from Chicago’s White City with critical eyes for their hometowns, and a new awareness of the possibilities of whole ensembles of buildings as architectural compositions. The library spatially redefined Copley Square’s composition with a new emphasis on discipline and horizontal lines. The Boston Society of Architects sought to give the library an appropriate setting by sponsoring a design competition for the square itself, thus far a neglected collection of leftover triangles suspended among the trolley wires of intersecting roadways.⁴⁹

With the exception of the Museum of Fine Arts, each of the institutions facing the square had been forced out of downtown during the past generation, and was thus deeply sensitive to issues of neighborhood change. They intended to make their new locations permanent, to fight change rather than submit to it this time, an attitude evidenced not only in the enormous investments they made in their respective buildings, but also in the activist posture they took toward protecting their new setting. The Old South Church, for example, bought several adjacent lots and resold them with deed restrictions limiting building height to four stories.⁵⁰

This sensitivity was soon challenged by ‘Westminster Chambers,’ Boston’s next tall apartment building, which began construction in August 1897 at the southeast corner of Copley Square. Restriction of heights on Commonwealth Avenue the previous year meant that any new tall apartment buildings would have to be located elsewhere, and Copley Square, long an apartment district, was perhaps the next-most-desirable address. Westminster Chambers was planned as a ten-story building to rise 120 feet directly across the street from Trinity Church and the Museum of Fine Arts. Like Haddon Hall, Westminster Chambers did not fit; one critic invoked the square’s symbolism of art, religion, and education to condemn this addition “representing

⁴⁸*American Architect and Building News*, Mar. 4, 1893: 129.

⁴⁹*American Architect and Building News*, Mar. 4, 1893: 129.

⁵⁰J. H. Benton, Jr., *Argument ... for Legislation to Limit the Height of Buildings on and Near Copley Square* (Boston, 1898), 32.

Wealth, and looking down upon all the others.”⁵¹ The challenge was addressed more quickly here than on Commonwealth Avenue, thanks to momentum from that victory together with Copley Square’s visual and symbolic prominence and the existing organizational framework of its institutions. Their rapid response made this the first height restriction effort to be directed at a building while it was still under construction, and gave the Westminster Chambers fight a bitterness reminiscent of the Old South. Westminster Chambers took on lasting significance as the first case to bring height restrictions before a state supreme court, and ultimately to the U.S. Supreme Court. The case both extended the precedent for restricting building heights through eminent domain, and established that such restrictions could involve real, substantial damages.

Public outcry against Westminster Chambers arose as soon as people learned how tall it was to be. An ad hoc committee of opponents began organizing in mid-October, headed by Frederick O. Prince, president of the library trustees and former mayor. Just as height restrictions on Commonwealth Avenue were meant to protect the city’s investment in parks, on Copley Square these people sought to protect an enormous public and quasi-public investment both in cultural facilities and in urban design. The Boston Society of Architects offered the opinion that 80 feet was the tallest that buildings could rise before they would destroy the square’s proportions.⁵² As the citizens’ committee asked, “[s]hall all that has been done to make [Boston’s] chief square beautiful go for nothing?”⁵³

Could Copley Square be protected through the existing Parks and Parkways Act? The act’s applicability was at best debatable, because the square had not been formally dedicated as a park, and in any case the parks commissioners had not designated a building line there. However, the building line mechanism was not well understood; the lay public and many lawyers thought the act by itself had restricted heights around all parks, and even the parks commissioners seemed confused as to whether they had established lines applying only to Commonwealth Avenue or to parks throughout the city. The city council and parks commission could have cleared up all these questions

⁵¹George E. MacNeill, in *Boston Evening Transcript*, April 3, 1901: 6.

⁵²Cited in David Alan Levy, ‘The Sacred Skyline: The Conflict over Height Restrictions for Copley Square’ (M.C.P. thesis, Massachusetts Institute of Technology, 1985), 35.

by taking new action to invoke the act, but this course was unattractive for several reasons. City officials knew that interfering with a building after its construction had begun would expose the city to liability for heavy damages; the project's opponents, on the other hand, believed that the restrictions were already in effect, and did not want to initiate any action which would call them into question. This combination of fiscal constraints and legal ambiguities led the citizens' committee to seek fresh legislation. Only after new Copley Square height restrictions were before the legislature did the parks commissioners, on January 29, 1898, warn Westminster Chambers' owners that their property was subject to a 70 foot limit.⁵⁴ Two months later the city filed suit to enforce this limit, but as the city law office quickly accepted a verbal assurance that the developers would not build above 70 feet before the legislature took final action, the suit seems to have been intended less to limit the building's height than to limit the city's potential liability.

The Westminster syndicate gave an early indication of just how much this liability might be when, as construction began, they offered to reduce the project's height by two or three stories for the price of \$75,000 per floor.⁵⁵ This proposal, which opponents ridiculed as a "purchase of imaginary lines in the sky,"⁵⁶ may have been the first attempt to set a value on air rights established through public regulation,⁵⁷ but it was taken at the time as mere impertinence. Confusion over the Parks and Parkways

⁵³Quoted in Levy, 'Sacred Skyline,' 30.

⁵⁴*Boston Evening Transcript*, January 24, 1898: 4; Edmund A. Whitman, *Change of Limitation in Height of Buildings in Copley Square: Address ... Opening the Case for the Remonstrants Against the Bills for the Change in the Limitation* (Boston, 1903), 9.

⁵⁵Letter to "a prominent member of Trinity Church," September 23, 1897, cited in Samuel J. Elder, *Limitation of Height of Buildings bear Copley Square: Argument ... on behalf of the Museum of Fine Arts and Massachusetts Institute of Technology* (Boston, 1898), 10-11. In the same letter, the syndicate offered to construct the building with only seven stories and sell it for \$1,085,000, and claimed that it would yield an 8 to 10 % return at that price. Since the price named represented an \$85,000 construction profit for the syndicate on its already-inflated \$1 million capitalization, and apartments were then expected to yield around 6% (*Boston Evening Transcript*, September 20, 1898: 5), the project's opponents used this offer to argue that a height restriction would in fact entail no damages (Benton, *Argument*, 35-36.)

⁵⁶Elder, *Limitation of Height of Buildings*, 11.

⁵⁷As Justice David J. Brewer later put it for the U.S. Supreme Court, "there may be novel questions in respect to the measure of damage, the value of the property that is taken." *Williams v. Parker*, 188 U.S. 491 (1903), at 504.

Act led to an impression that the Westminster syndicate was flouting the law from the beginning, and the syndicate's own actions contributed to the resulting atmosphere of confrontation. Westminster Chambers' walls would block light from M.I.T.'s engineering studios next door; the developers offered to face that side of their building with light-reflecting bricks, but sought concessions from the institute for doing so.⁵⁸ Henry B. Williams, who headed the syndicate, was Boston's third-largest landowner, and some of his opponents remembered him in a similarly provocative role fifteen years earlier. On one of his three hotels, the Kensington, he built projecting windows in violation of Back Bay deed restrictions, and then twice fought all the way to the state supreme court before he was finally forced to remove them.⁵⁹ To many Bostonians the Westminster syndicate in Copley Square looked like Mammon-worshipping barbarians at the inner sanctum of the civic temple; debate started out polarized and stayed that way.

When legislators convened in January, the Westminster's opponents presented nearly 3,000 signatures from all over Massachusetts asking them to prevent what one of their lawyers called "this new Haddon Hall."⁶⁰ By then the building's foundations were in the ground and its steel was beginning to rise. The Boston Public Library led the effort, represented by Col. J. H. Benton, Jr., a library trustee who legislators more often saw as a railroad corporation lawyer. Benton was assisted by Samuel J. Elder, representing M.I.T. and the Museum of Fine Arts. These conservative men spoke for much of the city's establishment. The petition's signers owned an aggregate of \$100 million worth of property, according to Benton, thus as Elder pointed out, "no body of men in this community has more personal interest to safeguard the rights of property than have these petitioners."⁶¹

Yet these solid citizens asked for height restrictions under the police power, without compensation, and among the petitioners was Charles F. Sprague, who had been

⁵⁸J. M. Crafts (president of M.I.T.), letter to the editor of the *Boston Evening Transcript*, in Massachusetts General Court, Committee on Cities, *Schedules to Accompany Petition for Legislation to Protect Copley Square in the City of Boston* (Boston, 1898), schedule H.

⁵⁹Levy, 'Sacred Skyline,' 46; *Attorney General v. Williams*, 140 Mass. 329 (1885).

⁶⁰Elder, *Limitation of Height of Buildings*, 11.

responsible for sending Boston's height restrictions off in the direction of eminent domain.⁶² Their bill would impose an 80 foot height limit on all property within 500 feet of Copley Square.⁶³ The bill's opponents mostly raised questions of fairness. "Many owners of the property threatened by this measure are in the fullest sympathy with the spirit of preserving and adding to the beauty of Copley Square," wrote D. Webster King, who had considered his own tall apartment house on the north side of the square, "but feel that they should not be immolated on the altars of sentiment or aesthetic beauty on account of their ownership of estates within five hundred feet of that square."⁶⁴ A group of these owners protested the bill, but said they would have no objection if its 80-foot limit were applied to the whole city. The Westminster Chambers owners engaged as their representative former state attorney general Albert E. Pillsbury, who argued that if the property were to be restricted at all, it would have to be under eminent domain with provision for compensation. The petitioners agreed to the insertion of a compensation clause, not to protect property rights on the restricted lots but to protect the act itself from being voided if found unconstitutional. Benton argued for a hybrid act which would provide for compensation only if it were judged invalid as an exercise of the police power. "In short," he said, "all the petitioners ask is that you shall leave this question of the right to damages, where it belongs, with the Courts."⁶⁵

The legislature disagreed, and on May 23 gave final passage to Copley Square height restrictions which unambiguously offered compensation both for the restrictions in the abstract and for changes to the one building in the area "the construction whereof was

⁶¹Elder, *Limitation of Height of Buildings*, 3; Benton, *Argument*, 10. Boston's total real estate valuation in 1898 was \$870 million (*Municipal Register* [City doc. 37, 1916], 260).

⁶²Benton, *Argument*, 11.

⁶³1898 House bill 114. Another petition defined its area with an exact boundary, within which it sought a 70-foot limit (1898 House bill 291). George Upham for one last time submitted his city-wide height district bill (1898 House bill 763), with Copley Square and all the rest of the Back Bay in the 80-foot district.

⁶⁴Letter to the editor, *Boston Evening Transcript*, January 27, 1898: 6; Levy, 'Sacred Skyline,' 47 (King's ownership of the corner of Dartmouth and Boylston); Benton, *Argument*, 8 (plans for a tall apartment house there).

⁶⁵Benton, *Argument*, 30. Benton insisted that the Parks and Parkways Act itself was a police power measure (28); Elder, *Limitation of Height of Buildings*, 12.

begun but not completed.”⁶⁶ The act applied only to buildings immediately fronting on the square, and set limits of 90 feet on its south and west sides, including Westminster Chambers, and 100 feet on the north side. At the developers’ request the act specifically exempted Copley Square from the Parks and Parkways Act and its 70-foot restriction.⁶⁷ This was a more-or-less necessary corollary of the new limits, but it meant that the earlier act’s applicability would never be decided, and allowed opponents to go on believing that the building had been illegal from its inception. The new act allowed above the limits “such steeples, towers, domes, sculptured ornaments and chimneys as the board of park commissioners of said city may approve.”⁶⁸ Although the restrictions were imposed by the state, damages were to be paid by the city of Boston.

On the day the act passed, seven stories of Westminster Chambers’ steel framework stood completed, with three more stories sitting on the ground awaiting assembly (see fig. 6.2a.). The developers had their architect prepare drawings of various alternatives for the building’s completion (including a nine-story version which could not possibly have complied with the limit), and met with mayor Josiah Quincy and city officials to consider their options. It was possible to build an eighth story and roof within 90 feet, but not the eighth story and roof which had already been fabricated, nor would the lower building have room for an elaborate terra-cotta frieze and cornice which had been produced to cap it. This was, in effect, the city’s problem, as the act made it responsible for “the actual cost or expense of any re-arrangement of the design or construction” of the building.⁶⁹ The mayor resented this legislative raid on municipal coffers and later challenged its constitutionality, but meanwhile he sought to minimize the ‘re-arrangements’ for which the city might have to pay. The city’s lawyers believed they had considerable latitude in interpreting the act, since enforcement of Boston’s building laws had recently been put in the hands of the city rather than the state, and

⁶⁶*Massachusetts Acts & Resolves*, 1898, Acts ch. 452, § 3.

⁶⁷Whitman, *Change of Limitation*, 10.

⁶⁸*Massachusetts Acts & Resolves*, 1898, Acts ch. 452, § 1; Similar exceptions had been inserted into the Parks and Parkways Act by an emendment the previous year (*Massachusetts Acts & Resolves*, 1897, Acts ch. 379).

⁶⁹*Massachusetts Acts & Resolves*, 1898, Acts ch. 452, §3; Whitman, *Change of Limitation*, 10.

they agreed to a compromise.⁷⁰ The building's eight stories would be built up to the 90 foot limit, where its frieze and cornice would begin, with the roof behind them, rising to 96 feet under a permit from the parks commission as "sculptured ornaments." The park commissioners at first declined to follow this script, instead sending the developers' plans back with a sketch suggesting how the building might be finished within the limit, at seven stories rather than eight. The developers, relying on their arrangement with the city, continued construction.

If all concerned were seeking a reasonable compromise, there was probably no better one available. But few people other than the mayor were interested in compromise. Many of Copley Square's defenders were disturbed even by the prospect of a 90-foot building there - the first witness at the hearings had suggested a limit of 45 feet.⁷¹ The syndicate had tried to get the bill's limit amended to 96 feet, and the legislature refused. The city thus appeared to be conniving with the developers in a clear violation of the law, an impression which deepened in the coming months. Though Boston's municipal government during this period was a model of probity compared with the corruption in many other big cities, the growth of machine politics and patronage led people to interpret its actions in the worst light and led the legislature in Massachusetts as elsewhere to circumscribe municipal prerogatives at every turn, a pattern which the Copley Square height restrictions clearly fit. As soon as the developers' intentions were rumored the art museum's trustees pressed Massachusetts Attorney General Hosea M. Knowlton to sue. The city forestalled this action by filing its own suit, and then let prosecution lapse while the contractors rushed to complete the building. At this point the attorney general, concluding that enforcement by the city was no enforcement at all, authorized the museum to bring suit in his name. The parks commissioners, under new pressure from the city administration, retroactively approved the frieze and cornice on October 31, 1898. A year later, Massachusetts Supreme Judicial Court Justice Marcus P. Knowlton* handed down the decision in *Attorney General v. Williams*: Westminster Chambers was six feet too tall.

⁷⁰*Massachusetts Acts & Resolves*, 1894, Acts ch. 257.

⁷¹Henry L. Higginson, *Boston Herald*, February 1, 1898, cited in Levy, 'Sacred Skyline,' 34.

* only a distant relation of Attorney General Knowlton. See entries in Conrad Reno, *Memoirs of the Judiciary and the Bar of New England for the Nineteenth Century* (Boston, 1901) 2:114, 124.

The most important result of this decision was to establish the constitutionality of height restrictions. "The right to make such regulations is too well established to be questioned," claimed Justice Knowlton.⁷² In fact, this was the first time any state supreme court had ever considered the question. The right was "established" only by eight years of unchallenged operation in Boston, and by more recent regulations in Chicago (1893) and Washington, D.C. (1894), neither of them tested yet in the courts. The decisions cited in *Attorney General v. Williams* all involved more limited powers, concerning particular types of building or types of construction.

The Westminster case itself now moved back to the legislature, where it was re-cast as a campaign for relief of the city and "preservation" of the building's terra-cotta top. "Lawful or unlawful," wrote two of the syndicate's partners, "it is not in the public interest to pull down the frieze and cornice, which is the only effect of this suit, and leave the building, as it will then be left, an object of public reproach and an injury to every building in Copley square."⁷³ The partners repeatedly stated their intention not to mend the appearance of the building in any way if they were forced to remove the terra cotta work. "[D]o you suppose," asked Pillsbury, that the owners

will spend another \$50,000, in addition to all they have lost, to put back the ornaments upon that building, to please the very people who have pulled them off? Never. It is not in human nature to do it. If these fanatics pull off the top of the building, they shall take the responsibility and the consequences.⁷⁴

The legislators of 1900 at first rejected the developers' appeal, but then reconsidered and reversed their vote a day later, a conversion which the *Boston Herald* insinuated was a product of outright bribery.⁷⁵ Governor W. Murray Crane vetoed the act. "In my opinion the vital point involved is not the appearance of the building," he said, "but it is

⁷²*Attorney General v. Williams*, 174 Mass. 476 (1899), at 478.

⁷³Woodbury & Leighton letter to the editor, *Boston Evening Transcript*, March 22, 1900: 10.

⁷⁴Albert E. Pillsbury, *The Truth about Westminster Chambers* (Boston, 1901), 11.

⁷⁵See Massachusetts General Court, House of Representatives, *Statements made by Members speaking to Questions of Personal Privilege in the House of Representatives on Tuesday, May 29, 1900, concerning Newspaper Criticisms of their Votes...* (1900 House doc. 1385)

rather whether the law may be violated only to be excused or condoned."⁷⁶ The Westminster owners returned to the legislature in 1901, 1902, and 1903, and two successive mayors of Boston and a large portion of the city's real estate community argued on their behalf that the case had become silly and vindictive. The 'Copley Square Protective Committee' opposed them each year, invoking Crane's veto by arguing that Westminster Chambers was "not a question of Aesthetics, but of Law and Order."⁷⁷ Williams' Hotel Kensington, according to attorney Edmund A. Whitman, "was a monument to Massachusetts law, and the Westminster Chambers will be another."⁷⁸ Whatever legislators thought of the merits of the case, it was hard for them to find any political benefits in what their constituents would see as the rescue of a rogue real estate syndicate and its accessory before the fact, the city of Boston.

It was mainly the city which needed relief, because it was the city which would have to pay. Under the act the city would pay the cost of changing from a ten- to an eight-story building during construction; it would pay the additional costs which would have been saved if the building had been designed from the beginning to be eight stories tall. It would pay the developers for the two floors worth of rent they lost, and on top of all this it would pay the enormous cost of lowering the roof of an occupied residential building. "[I]f the city authorities have blundered in their interpretation of the law," said Williams, "why should they not be the sufferers?"⁷⁹ Even before the decision, the syndicate had filed suit for damages, but the municipal administration claimed that the act was unconstitutional and the city therefore exempt from liability. The prospect of being caught without anyone responsible for compensation must have been an important motivation in the owners' continuing search for legislative relief. Williams returned to the state supreme court arguing that they should not be made to take any action until some source of compensation was guaranteed. In March, 1901, the court rebuffed him and ordered the building cut down to 90 feet. This was the decision he

⁷⁶1900 Senate doc. 234: "I am unable to give my sanction to a measure inclined to relieve citizens of the Commonwealth from the consequences of deliberate disregard of the provisions of a statute of the General Court."

⁷⁷Future U.S. Supreme Court justice Louis Brandeis argued for the committee that "[t]his is a case where the majesty of the law must be maintained for the sake of its influence upon the community" (*Boston Evening Transcript*, April 3, 1901: 1).

⁷⁸*Boston Evening Transcript*, April 4, 1901: 5.

appealed to the U. S. Supreme Court, which in February, 1903, upheld it and sent it back for the Massachusetts courts to work out the details of compliance and compensation.⁸⁰

An owner of property on the north side of the square, Mollie R. Cole, had sued for compensation even before Williams did. The Superior Court's opinion in *Cole v. City* set a short-lived precedent strongly favorable to this use of eminent domain. A jury decided that Cole was not entitled to any compensation; the height restriction if anything increased the value of her mid-block lot by preventing tall buildings overshadowing it.⁸¹ This precedent was reduced in scope, however, before the Westminster Chambers damages finally came to trial; corner lots were less subject to overshadowing, and their owners won compensation, including \$17,000 - more than the original price of the land - for D. Webster King, who was not immolated on the altar of aesthetics after all.⁸²

After the initial state supreme court decision in *Attorney General v. Williams*, the Museum of Fine Arts withdrew from the case, because its trustees had decided to abandon Copley Square.⁸³ This was no doubt Westminster Chambers' most far-reaching effect on its neighborhood. Although, in the trustees' words, they had "regarded the location on Copley Square as an ideal one and likely to remain the permanent home of the Museum," within months of Westminster Chambers' completion, and even as they were prosecuting its owners, they set up a committee to consider relocating.⁸⁴ The museum was the only one of the square's institutions which had not moved before, and apparently had not developed a corporate instinct to stand its ground. But it acted with a view to prospective permanence, buying the following year

⁷⁹*Boston Evening Transcript*, March 14, 1901: 5.

⁸⁰*Williams v. Parker*, 188 U.S. 491.

⁸¹*Cole v. Boston*, 181 Mass. 374 (1902). The case was filed September 6, 1898, just three and a half months after the restrictions went into effect.

⁸²Whitman, *Change of Limitation*, 15-16.

⁸³Whitman, *Change of Limitation*, 13.

⁸⁴Trustees of the Museum of Fine Arts, *Twenty-fourth Annual Report, for the Year Ending December 31, 1899* (Boston, 1900), 7-8. The possibility was publicly discussed already during 1898 (*American Architect and Building News*, November 5, 1898: 41; November 19, 1898: 57; November 26, 1898: 69); the trustees were nervous about not only Westminster Chambers but also the impending removal of a nearby fire station in order to construct a new Back Bay railroad station.

twelve acres on the Fenway which the museum's trustees found "sufficient for its needs for centuries to come."⁸⁵

The museum's relocation was to be financed by selling its Copley Square property. Before the trustees announced their intention of leaving, they secured from the city the release of a restriction on the original grant of the property that limited its use to "promotion of the Fine Arts."⁸⁶ When city council members learned of the museum's plans, they made an abortive attempt to rescind their release.⁸⁷ Though the museum remained in its old building for several years, Copley Square's magic as a civic center was finished. The trustees signed an agreement of sale with a group of real estate developers in time for Westminster Chambers' final appeal to the legislature in 1903. That year the Westminster owners put their relief petition in the form of a bill to raise the height limit to a uniform 100 feet all around the square, arguing that the museum's departure would remove the logic for lower heights on its south side. Business and real estate people predicted that Copley Square would become a new downtown and therefore needed tall business buildings; the museum's purchasers agreed.⁸⁸ The museum's departure, however, worked in another way against relaxing the restriction. The trustees had allowed a three-year statutory limit to lapse without seeking compensation for the height restriction on their own property and had sold it subject to the 90-foot limit. An increase in that limit would be a valuable gift from the legislature, and it seemed inappropriate to bestow such a gift upon a development syndicate instead of the museum, especially if the developers had cynically anticipated the increase all along.

The legislature let the restrictions stand, and in August, 1903, contractors began the work of lowering the roof of Westminster Chambers. As the owners had warned all along, they made no effort to finish the truncated building (fig. 6.2b.). The city of

⁸⁵Museum of Fine Arts, *Twenty-fourth Annual Report*, 8. The museum's president was William Endicott, Jr., who as a state house commissioner had advocated rebuilding the Bulfinch front in "enduring materials."

⁸⁶Museum of Fine Arts, *Twenty-fourth Annual Report*, 9.

⁸⁷Woodbury & Leighton letter, *Boston Evening Transcript*, March 22, 1900: 10.

⁸⁸*Boston Herald*, March 1, 1903: 10. See also, even before Copley Square restrictions, 'Boston's Fifth Avenue,' an advertisement in the *Boston Evening Transcript*, December 8, 1897: 6; 'Boylston Street as it Was and Is,' *Boston Evening Transcript*, December 9, 1897: 10.

Boston eventually paid them almost \$350,000 in damages.⁸⁹ Ironically, the site is now occupied by the John Hancock Tower (1975), the tallest building in Boston, exactly 700 feet taller than this predecessor which the city paid so much to shorten.



fig. 6.2a and 6.2b. Westminister Chambers before and after removal of its cornice. Trinity Church is at left, the Museum of Fine Arts at right.



⁸⁹Elisabeth M. Herlihy letter, n.d., in Loeb Library VF, Harvard. The total damages under Acts 1898, ch. 452, including those paid to other owners, were \$396,079.72.

During the 1890s, Bostonians figured out that government actions could control change in the urban environment in ways that private deed restrictions could not. They could respond to new problems without having to anticipate every possibility in advance, and without requiring the unanimous consent of property owners. But by the end of the decade, this discovery was still more important in the abstract than for any specific accomplishments it had produced. Citizen activists and their allies in the legislature had found or created new powers which allowed the government to intervene where the city's physical stability was threatened, but they had not yet learned to use these powers well enough for them to have any widespread effects; they had not yet changed the existing pattern of private development regulation. Public powers of enormous potential were being used in the same ad hoc ways which had been appropriate for more limited private responses, and they produced correspondingly limited results.

Public action in the Back Bay succeeded in its specific aim of preventing more Haddon Halls on Commonwealth Avenue. It even succeeded reasonably well in the larger aims of protecting the overall Back Bay streetscape, though in fact it only established height restrictions on one street and building setback lines on two. Its real success may have occurred by reinforcing residents' sense of control over their neighborhood, a sense which had worn thin with the necessity for extreme measures such as buying lots where tall buildings were threatened. Back Bay residents expressed that sense of control emphatically on Copley Square, where they initiated public action that succeeded in its specific and extraordinary aim of determining, against a property owner's will, exactly how high his building could stand. It was not so successful there, however, in its larger goal of ensuring the permanence of Copley Square's architectural composition or its symbolic place in the structure of the city.

In the Back Bay, these tools for public action were used to stabilize the physical environment in a relatively new neighborhood. This was normally the role of deed restrictions, which publicly-imposed height restrictions supplemented and extended. Before this tool had been available long enough for its success to be evaluated, it was put to use in another place, for somewhat different ends. While the Copley Square

restrictions were new, before protracted controversy there strained the consensus which had produced them, the technique spread to yet another area experiencing a similar invasion of out-of-scale buildings; height restrictions came to Beacon Hill, where they had first been discussed. On Beacon Hill, they were an extension not of deed restrictions but of a preservation effort.

Public actions supplement preservation: Beacon Hill II

In October of 1900, Charles R. Ashbee, a representative of Great Britain's National Trust for Places of Historic Interest and Natural Beauty, began touring the United States in an effort to organize an American counterpart to the Trust. In his lectures he described preservation as one in a family of reform movements which touched the urban environment, including park and city beautiful groups, settlement houses, good government organizations, and even the nascent functionalist movement in architecture.⁹⁰ He found receptive audiences in fourteen states throughout the east and midwest, and refined his appeal in discussions with scores of existing organizations. As Ashbee spoke at the turn of the century, his expansive vision of preservation was shared by most of his audience. It was this broad concern with permanence of the whole urban environment which motivated Bostonians working to save the Common and Park Street Church.

These ambitious ideas of preservation implied making use of government powers in several ways, each of which would be explored during the next generation. First, the concern for landmarks' visual relation to each other and to their surroundings suggested public controls to prevent inappropriate development around them. When preservationists turned their attention to whole neighborhoods, then such controls might address inappropriate development throughout those neighborhoods, just as height restrictions were doing in the Back Bay. Second, concern for the settings of

⁹⁰C. R. Ashbee, *A Report ... to the Council of the National Trust for Places of Historic Interest and Natural Beauty, on his visit to the United States in the Council's Behalf* (London, 1901), 7, 11.

landmarks might be carried even further by actively re-arranging their surroundings. Such intervention was inspired by the City Beautiful design philosophy, which demanded landmarks to mark its symmetries and organize its vistas, and sought in these landmarks the sort of civic significance that was often attributed to existing historic buildings. Here was a marriage between preservation and urban design, just as Ashbee suggested, and the City Beautiful brought as its dowry the full range of government powers to which urban designers turned to realize their often grandiose projects. Finally, government powers (of either eminent domain or, much later, the police power) might be used directly to assert public control over privately-held landmarks where they were threatened through the greed or intransigence of their owners.

Private preservation in most cities were not as effective as in Boston. Of the patriotic societies which then dominated such efforts, Ashbee reported after his trip that the “narrowness” of their vision meant that “with one or two noteworthy exceptions, their energies are often at present frittered away in doing comparatively trifling things.”⁹¹ What sorts of broader actions would the proposed ‘American Council’ take? Ashbee’s first example was to “help the architects in their fight” for height restrictions, an answer he repeated time after time in various cities.⁹²

The preservation movement did move off at first in the directions Ashbee sketched for it, although New England preservationists under William Sumner Appleton would soon define their mission more narrowly. The movement’s first essay in making use of uniquely governmental powers was a campaign with which Ashbee was familiar and no doubt had in mind as he wrote: a drive to secure the setting of the Bulfinch state house by restricting the heights of buildings around it on Beacon Hill. Later, preservationists would consider other forms of public action, charting new territory which the movement would continue exploring for the rest of the twentieth century; first they took a legal tool which was handy thanks to the efforts in the Back Bay, and extended its use to another place where it had a clearly preservationist rationale.

⁹¹Ashbee, *Report ... on his visit to the United States*, 5.

⁹²Ashbee, *Report ... on his visit to the United States*, 7.

By the beginning of 1899, the Bulfinch State House was saved, its restoration completed under the direction of the committee appointed by Governor Roger Wolcott. People throughout Massachusetts had rushed to defend the building, and this widespread interest now took on a momentum of its own, travelling along a channel already marked by the Back Bay building height controversies. Governor Wolcott in his 1899 address to the legislature called for Beacon Hill height restrictions to give the state house similar "protection."⁹³ Height restrictions, thus far enacted to preserve the visual character of a neighborhood, and to make permanent the settings of some comparatively new buildings in it, were now invoked as an explicit corollary of preserving a particular historic structure. The logic of using them there sheds light on why the building was valued and preserved: as an icon important not merely for itself, but in its visual relationship with the rest of the city.

The icon was not so much the whole state house as its dome. "The state house dome is the hub of the solar system," said Oliver Wendell Holmes, and by a synechdotic representation of the whole by a part, Boston became known as "The Hub." "As the crowning and most conspicuous edifice of this city," wrote the 1867 State House Commissioners,

its dome has always been the most noticeable feature of Boston in any distant view of this metropolis. Its happy adaptation to the position which it occupies, and its highly impressive outline, in such just and harmonious proportion to the mass of roofs around it, have made it through many years the familiar and recognized landmark of the city. Its overshadowing presence has always conferred an unmistakable character upon Boston and constituted a marked and peculiarly striking feature, towards which the eye of every son of Massachusetts, in approaching her capitol [sic], turns always, with instant recognition.⁹⁴

Unfortunately for the harmonious proportion of distant views, neither the dome, the state house, nor the hill on which it stood was especially tall (see fig. 6.3.). Engravings almost always exaggerated its size, but an examination of contemporary photographs shows that its 'instant recognition' had more to do with familiarity than visual

⁹³*Boston Morning Journal*, January 5, 1899.

⁹⁴Massachusetts Executive Department, *Report on Remodelling or Rebuilding the State House*, 7.

dominance. "With the great extension of the city, however, within the past few years," the commissioners pointed out in 1867, "and the erection of other and loftier structures in its neighborhood, the dome now hardly maintains its relative importance as to height and mass, in comparison with the rest of the city, which it possessed at the time of its erection."⁹⁵

Their answer was a taller dome: 268 feet tall, in Bryant and Estey's design for a new building, compared with Bulfinch's 120 feet.⁹⁶ If the Bulfinch building were to be kept instead, they would at least raise the existing dome by inserting a colonnade under it, and they believed this so "indispensable" that they included it even in their Plan No. 1, the budget alternative which addressed only "the most pressing wants"⁹⁷ of the building. When the legislature took a more parsimonious view, it sought to achieve the same visual prominence instead by painting the dome gold, and then in 1874 by covering it with gold leaf.⁹⁸

By the 1880s, an increase in preservationist sentiment suggested that the problem of the relationship between the dome and its surroundings should be treated not by changing the dome, but by controlling change in the surroundings. This relationship remained, beyond bare preservation of the Bulfinch building, the central problem of the state house. The "most imminent danger" to the state house, wrote the *Transcript* in 1886, was

being dwarfed by high adjacent buildings on either side on Beacon Street. Already the great hotel on the corner of Joy street hides the State House dome from the Back Bay section, and should elevated structures also be erected on the corner of Hancock avenue and upon the lot bordered by Mt. Vernon, Beacon and Bowdoin streets, ... the historical landmark would have lost its chief claim for preservation.⁹⁹

⁹⁵Massachusetts Executive Department, *Report on Remodelling or Rebuilding the State House*, 7.

⁹⁶Architects' description, in Massachusetts Executive Department, *Report on Remodelling or Rebuilding the State House*, 30; *Parker v. Commonwealth*, 178 Mass. 199 (1901), at 202.

⁹⁷Massachusetts Executive Department, *Report on Remodelling or Rebuilding the State House*, 7, 3.

⁹⁸Tucci, *Built in Boston*, 147. The legislature pursued this approach further in 1898 when it had the dome outlined in lights at night (*Massachusetts Acts & Resolves*, 1898, Acts ch. 395).

⁹⁹*Boston Evening Transcript*, November 27, 1886.

In this pre-height restriction year, the *Transcript* endorsed a proposal that the state buy up these critical blocks, to build a low government office building on the downtown side, and simply to hold the buildings on the other side so that “the land could not be built upon in a manner to injure the appearance or outlook of the State House.”¹⁰⁰ Indeed, the legislative committee which first recommended expanding the building contemplated purchasing land “either for use or protective control.”¹⁰¹ Governor Ames’ plan for the capitol, announced in January 1887, included acquisition of all the property facing the state house grounds east and west, “to protect the State House from the danger of injury to its present outlook and appearance by the erection of lofty structures....”¹⁰²

Shortly thereafter, former city council president William H. Whitmore made his suggestion that the state might accomplish this same end by a law restricting the height of buildings. The *Boston Journal* endorsed the recommendation because its editors feared that this purpose would otherwise result in overly-ambitious schemes of land acquisition.¹⁰³ Such land acquisition might be alarming for purely fiscal reasons, but it also troubled preservationists such as Whitmore because it could be the first step in solving the height problem by replacing the Bulfinch state house with a bigger one. Thus four years before height restrictions were enacted anywhere in the country, and eight months before the Thanksgiving Day fire brought attention to them for reasons of public safety, they had already entered public discourse with a preservationist rationale. During the decade between this proposal and Governor Wolcott’s 1899 speech, the Bulfinch state house had been saved without the use of building height restrictions, and Boston had adopted them in other places, by various means, for various ends.

¹⁰⁰*Boston Evening Transcript*, November 27, 1886.

¹⁰¹*Report of Committee on Finance*, 1886 House doc. 457, 2.

¹⁰²1887 Senate doc. 6, 1.

¹⁰³*Boston Journal*, March 28, 1887, in Sillars, *The State House*, 34.

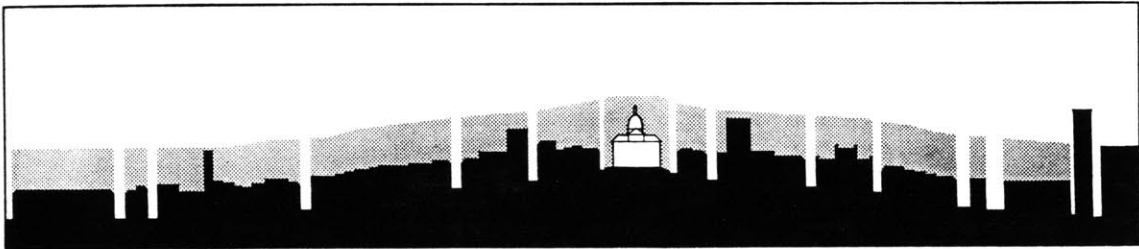


fig. 6.3. Beacon Hill in 1899; vertical dimension exaggerated by 2:1. A block from the state house dome, to the left, is the Hotel Tudor. A block to the right the Hotel Bellevue is under construction. At far right is the 190-foot Ames Building, tallest in Boston; shading shows the heights allowable under the 125-foot limit it inspired.

The issue arose again in 1899 because of two new tall buildings under construction on Beacon Street, the Hotel Bellevue and the Women's Club. The governor's call for height restrictions that year followed logically from the decision to preserve and restore the state house. The state's efforts to make permanent the Bulfinch capitol would be incomplete, even pointless, if they did not also secure the view of its dome upon the hill. As on Commonwealth Avenue and Copley Square, height restrictions would protect a public investment and a civic icon. The fight to save the state house from decay and from the legislature now became a fight to save it from its changing neighborhood, and the same people fought both. They included Governor Roger Wolcott, former senator Alfred Seelye Roe, and the many chapters of the D.A.R. which helped make the earlier campaign a statewide one, and started this one off the same way with a massive petition drive.¹⁰⁴

George B. Upham, who had tried for the previous three years to get the legislature to lower heights in residential districts, represented the petitioners for Beacon Hill height restrictions. The old solution to the problem of tall buildings around the state house was to buy the neighboring property, but now there appeared to be several less expensive alternatives. Upham still believed, as Benton had argued at Copley Square, that a height district could be imposed at no cost under the police power. Even under eminent domain it seemed possible that a restriction might cost little or nothing - the Westminster damages were still years in the future, and only Mollie Cole's ultimately

¹⁰⁴*American Architect and Building News*, Feb. 11, 1899: 41; Massachusetts State Archives, legislative documents, 1899 Acts, ch. 457.

fruitless pursuit of compensation had come before a court. Upham's bill provided for compensation, but did not use ordinary eminent domain language, and evidently was intended like Benton's Copley Square bill to provide payment only if it were thrown out as an exercise of the police power. Louis Brandeis, among others, assured legislators that no compensation would be necessary.¹⁰⁵

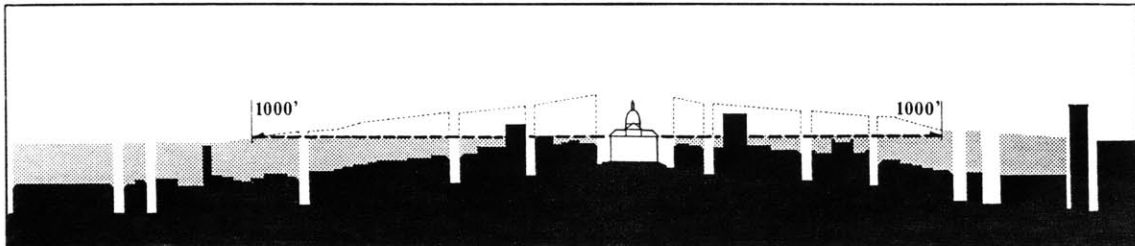


fig. 6.4. George B. Upham's proposal, limiting buildings within 1000 feet of the Bulfinch state house to the height of its main cornice. Topography makes the limit most stringent nearest the state house.

Though the bill's legal rationale was murky, its design intent was clear. All buildings within a thousand feet of the state house would be limited to the height of "the main cornice of the Bulfinch front of the state house" (fig. 6.4.).¹⁰⁶ This language made explicit the bill's essentially aesthetic purpose of maintaining the dome's visibility; its proponents made no attempt to cloak it in traditional police power concerns of health and safety. At the same time, the bill avoided the pitfall of arbitrariness which had thus far worked against height districting under the police power. A thousand feet from the state house in almost every direction, the ground falls away to more than 125 feet beneath the cornice, so buildings there could be built to the existing limit, which simply would no longer follow the topography up Beacon Hill. Buildings would conform to an absolute height limit rather than one relative to the ground; no tall building could look down on its neighbors across a legislated boundary. This new flat ceiling as first written would have reduced allowable heights on several valuable downtown blocks, but Upham quickly retreated from this direction.

¹⁰⁵*Boston Morning Journal*, March 18, 1899: 5.

¹⁰⁶1899 House bill 681, §1.

Many members of the Women's Club petitioned for the restriction, but the Women's Club House corporation retained former attorney general Pillsbury, Westminster Chambers' lawyer, to oppose the bill. Pillsbury argued that the bill's aesthetic purpose made it unconstitutional whether or not it claimed to be an exercise of the police power. "Powers of eminent domain can be extended only to public uses," he said. "To prevent interference with a view of the State House is not a public use."¹⁰⁷

The Hotel Bellevue syndicate opposed the bill through its trustee, William Minot, a lawyer who controlled more Boston real estate than any other individual, and whose widely-reproduced testimony had a greater effect than Pillsbury's on the course of the legislation. Minot was a staunch supporter of height restrictions in general. As a member of Boston's building code commission in 1892, he was responsible for making the limit more stringent on narrow streets, and more recently his support had been influential in passing the Copley Square restrictions. Now he explained why he thought the Beacon Hill proposal was a bad idea.

Copley Square, said Minot, was "unique ... [I]t has been mistaken for a precedent, and as a precedent it is certainly dangerous." He drew a distinction between the design intent of the Copley Square restrictions and those proposed for Beacon Hill. The goal at Copley Square "was to preserve the whole of it, to be seen upon the spot;"¹⁰⁸ regulation of private buildings was essential because they were part of the composition. On Beacon Hill no such composition existed; the whole was being made subordinate to one part of one building, for the aesthetically ill-defined aim of maintaining its visibility from all directions, some of which in fact had good views and some of which were already obstructed. This difference in design intent could be expressed as a public policy question in quantitative terms: at Copley Square the property benefitted was worth ten times as much as the property restricted; on Beacon Hill the ratio was reversed.

William Minot was sympathetic with the goal of protecting and enhancing the Bulfinch state house, but he felt the bill's sponsors were using it as an "excuse."

¹⁰⁷*Boston Morning Journal*, April 4, 1899: 5; *Boston Evening Globe*, March 17, 1899: 4.

¹⁰⁸*Boston Evening Globe*, March 30, 1899: 6.

“[T]hese petitioners, as represented by Mr. Upham, are not interested in the preservation of the state house; they are only interested in the restriction of the height of buildings.”¹⁰⁹ Ironically, Minot advocated Upham’s original, now-abandoned approach, of a general lowering of the height limit in all the city’s residential areas; he even thought, returning to the private medium of deed restrictions, that “in large sections of the city it might be accomplished by obtaining the actual consent of every owner.”¹¹⁰

Most of Minot’s testimony was an attempt to clear up what he saw as confusion or irresponsibility in discussing eminent domain and air rights. But Minot’s own arguments revealed some of these same confusions, and show how slippery these issues were for proponents and opponents alike. “There seems to be a vague sort of feeling,” he said, “that in taking away the right to build to the height allowed by law is not really sequestration of property, but simply the enforcement of a rule which will not entitle the owners to damages.”¹¹¹ “[W]hat is to be taken does not seem like a real thing,” he said, offering a not entirely accurate parallel to make it sound more real:

the hotel Tudor, on the corner of Beacon and Joy [streets], is an eyesore, which has caused universal complaint. It obscures a view of the state house. If it were proposed to remove the upper stories of the hotel Tudor for the purpose of giving a view of the dome, you would not do it. You would be destroying actual property for a purely aesthetic purpose, and you would think it wasteful.¹¹²

As Minot continued, however, it appeared that he himself was not entirely convinced of air rights’ reality. He recommended that the legislature protect the state house by taking abutting land outright, so that the state “will obtain an actual asset for its money.”

The Committee on Cities sent the bill to the legislature with a negative recommendation. Rather than letting the project die, Representative William Schofield of Malden substituted on the House floor a more limited restriction which applied only to the two blocks immediately west of the state house. Unlike the original proposal with its cornice-line datum, the new version specified a 70-foot height measured at each

¹⁰⁹*Boston Evening Globe*, March 30, 1899: 6.

¹¹⁰*Boston Evening Globe*, March 30, 1899: 6.

¹¹¹*Boston Evening Globe*, March 30, 1899: 6.

¹¹²*Boston Evening Globe*, March 30, 1899: 6.

property (fig. 6.5.). Perhaps this change was intended for ease of administration, but it could also make a police power rationale more plausible; the compensation clause remained ambivalent. Schofield intimated that no compensation would be required because the affected owners were "practically all in favor" of the limit.¹¹³ The two blocks did not include either of the buildings under construction which had raised the issue, so the state in any case spared itself the ordeal to which it had subjected the city at Westminster Chambers.¹¹⁴

A competing idea of public action to 'protect' the state house, rather than regulation, was taking and clearing buildings from around it. In Paris, Baron von Haussmann had called this "*dégagement*" - disengaging historic monuments from the urban fabric to make them more visible and thus more monumental. He practised it in the 1850s and '60s as he cleared the blocks around Notre Dame, eliminating the context for which the building had been designed and which made it awesome, in order to make it a freestanding structure visible from across the Seine, looking more diminutive as an object, but serving as a landmark within a greater area.¹¹⁵

Americans practised major urban clearance and reconstruction, especially for new thoroughfares, as early as Haussmann did, but his aesthetic approach came to America later, in the European baggage of the City Beautiful movement. The symmetrical public spaces which the City Beautiful sought to create might be ordered around existing historic landmarks, in part by clearing away less important old buildings around them. This provided an answer to the more general question raised by these structures' preservation, of how they should be treated. Thus the *Boston Real Estate Record and Building News* in 1893, the year of the Columbian exposition, advocated schemes to create new squares around the Old State House, the Old South, and Christ Church (the Old North). These landmarks would be rendered all the more visible when the new squares were linked by a network of new streets and street widenings, including a new

¹¹³*Boston Evening Globe*, May 18, 1899: 2.

¹¹⁴Including the Hotel Bellevue, which was under construction to 39 feet above the Bulfinch cornice. *American Architect and Building News*, March 25, 1899: 89.

¹¹⁵Olsen, *City as a Work of Art*, 306.

approach to the Bulfinch State House which would open a vista by tearing down Park Street Church.¹¹⁶ Twenty years later, SPNEA pursued a similar aesthetic in a more modest way as it tried to buy and clear lots around all its urban properties.

The treatment of Beacon Hill around the state house supports historian Jon Peterson's assertion that the City Beautiful movement took its impetus less from design professionals than as a grass-roots impulse for civic adornment.¹¹⁷ Politicians began a program of acquiring and clearing property around the state house while its extension was under construction early in the 1890s, although the architect of the annex neither initiated nor favored this treatment.¹¹⁸ The state house construction commissioners let clearance lapse after 1894, when criticism of the newly-visible annex coincided with a demand for accommodations in the remaining old buildings by the growing bureaucracy, which could not be accommodated even in the greatly enlarged state house. In 1899, with both the addition and the Bulfinch restoration completed, the legislature's state house committee tried to resolve the treatment of the capitol's surroundings. It approved bills for clearing all the remaining state-owned buildings east of the state house (see fig. 5.5.), and for buying and clearing the block to the west so that the open space would be symmetrical around the Bulfinch front, thus emphasizing the original building rather than the new annex.

Compared with such demolition schemes, building height restrictions were unsatisfyingly passive; they did not appeal to the legislature's men of action. Limiting building height would at best keep Beacon Hill as it was. Clearing, these people believed, would improve it; they were still looking for material progress. They also realized that height restrictions would offer little for them to show their constituents what the state had spent money on. Clearing, on the other hand, was dramatic. To appreciate it required no refined aesthetic sensibilities. Representative Richard Cullinane of Lawrence, for example, brought a simple perspective to the issue: the legislators had

¹¹⁶*Boston Real Estate Record and Building News*, November 18, 1893: 4; November 4, 1893: 4.

¹¹⁷Jon A. Peterson, 'The City Beautiful Movement: Lost Origins and Forgotten Meanings,' *Journal of Urban History* 2 (1976): 415-34.

¹¹⁸Governor Ames' 1887 plan to acquire blocks east and west assumed "the buildings to be removed at such time as shall seem to be for the best interests of the Commonwealth." (1887 Senate doc. 6, 2); *Massachusetts Acts & Resolves*, 1892, Acts ch. 404; 1893, ch. 450; 1894, ch. 532; 1895, House bill 427; Charles Brigham testimony, in *Boston Evening Transcript*, February 10, 1896: 8.

commissioned two war monuments which were nearly finished; now they realized there was no place to put them, so he favored demolishing more of Beacon Hill.¹¹⁹

The state house's longtime friends thought this idea at best misguided. Alfred Seelye Roe did not want to further expose the "homeliness" of the state house annex.¹²⁰ The State House Preservation Committee unanimously opposed the idea. "The low buildings now owned by the State," said member William W. Vaughan (who was also busy fighting Westminster Chambers), "form a most valuable screen - to separate the State House from the buildings beyond which would dwarf it."¹²¹ Clearing them without imposing height restrictions would be an invitation for the construction of tall apartment buildings around any newly-created open space. All of these people favored height restrictions instead.

In addition to aesthetic motives, a pragmatic reason for taking land around the state house was the commonwealth's need for more office space. The only contiguous land was the block west of the state house, and people who felt comfortable with the idea of building an extension attached to the Bulfinch building argued that the land should be acquired before it came to be occupied by expensive new structures. A new state house preservation controversy was brewing over whether such an addition was appropriate; buying the adjacent blocks seemed likely to tilt the decision in favor of the wings. Schofield's height restriction bill offered something to both sides in this incipient controversy, and allowed them to defer the main issue. It protected the Bulfinch front; it also prevented expensive new buildings which could complicate future expansion of the state house, while deferring the cost of actually acquiring property until such time, if ever, as the state was ready to use it. It created a land bank in which the land remained in private hands.

The legislature in 1899 adopted Schofield's bill as a compromise response to demands for a state house park and for Beacon Hill height limits. Because his restrictions applied to only one side of the state house, they left unsatisfied not only the reformers like Upham with ambitions for protecting large areas of the city, but even

¹¹⁹*Boston Morning Journal*, May 19, 1899: 5.

¹²⁰*Boston Morning Journal*, May 19, 1899: 5.

those preservationists concerned only about buildings directly fronting the state house. They continued pressing their case and were rewarded in 1901 with an extension of the height restriction, in an even more narrowly-drawn area. As part of the final scheme for laying out the park east of the state house - the blocks which had been bought early in the 1890s - the legislature imposed a 100-foot height limit on the blocks fronting this park. The restriction did not apply to the whole of the property, however, but only to the front forty-two feet of each lot. Thus this act sought to preserve not distant views of the dome, but the appearance of the state house and its park as seen on the spot. The provision may also have been a cynical attempt to minimize compensation, since owners could claim damages on only half of their property, but were unlikely to build above the limit on the other half. This act also made a final refinement in the drafting of height restrictions under eminent domain, providing that any damages were to be offset against benefits to property owners arising from the whole state house and park project.¹²²

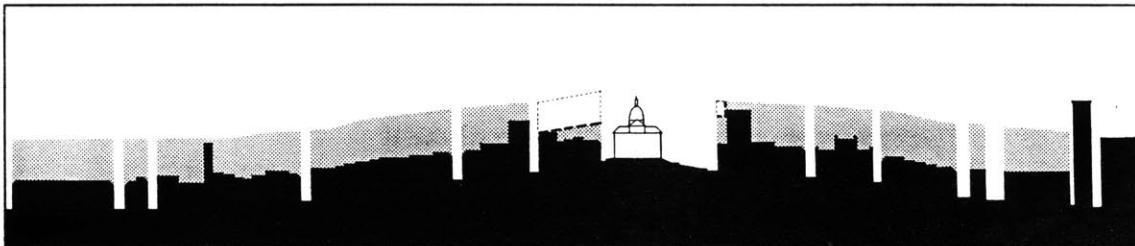


fig. 6.5. The Beacon Hill height restrictions as adopted. Adjacent to the state house, on the left, is the 70-foot limit of 1899. To the right, across the new park, is the 100-foot limit of 1901, applying only to the front of each lot. Distant views of the dome remain in jeopardy.

The Bulfinch state house remained for years a prolific generator of preservation controversies. Their source lay in the conflict between the permanence ascribed to the

¹²¹*Boston Morning Journal*, April 13, 1899: 4.

¹²²Justice Marcus Knowlton, who had to sort all this out in 1906 in *American Unitarian Association v. Commonwealth*, 193 Mass. 470, suggested that the limit might have been the first American height zoning under the police power (at 477). The 1901 Act provided compensation for owners on Beacon and Park Streets (§4), but not those on Bowdoin Street (§3); the provision offsetting benefits against damages, covering all these areas including Bowdoin Street, was not enacted until 1902 (ch. 543). Knowlton used the idea of a police-power district to avoid the otherwise inescapable conclusion that the 1901 act was an error in legislative draftsmanship.

building as icon and as artifact, and the changing and growing functions it served. Even while the annex was under construction, further extensions had been widely discussed. "The State Government is constantly expanding," said Clement K. Fay in 1894, urging the commonwealth to "treat the matter heroically" by expanding still further north with an annex to the annex.¹²³

Instead, a growing sensitivity to environmental symbolism strengthened the impulse to make Bulfinch's dome the focus of some larger urban composition. The legislature's state house committee in 1899 published an elaborate rendering of the Bulfinch state house with symmetrical flanking wings along the Common, "which would be possible" on the expanded state house park.¹²⁴ Some such scheme came to seem increasingly logical. Few people liked the annex well enough to want any more of it. Wings, if treated at the heroic scale which government accommodations would soon require, could hide the annex and restore the sense of Bulfinch's facade as the front, rather than one end, of the building.¹²⁵

When this scheme was finally realized between 1914 and 1917, under the supervision of architects Robert D. Andrews and R. Clipston Sturgis, it gave rise to yet another echo of the Bulfinch front controversy. Members of the legislature overruled the architects' recommendation, and specified that the wings be clad in white marble. Preservationists worried that this would lead to plans for facing the Bulfinch front itself with the same material. They acted through the Boston Art Commission and the new Society for the Preservation of New England Antiquities, which made a rare (and unsuccessful) effort to influence public action. Significantly, the society's uncharacteristic interest in a major public building was motivated by an issue of artifactual integrity, rather than large-scale environmental aesthetics. SPNEA abandoned the fight for reasons of similar philosophical purity, because in William Sumner Appleton's words, "[t]he new wings are in no way antiquities in themselves,"

¹²³*Save the State House*, 7, 6.

¹²⁴1899 Senate doc. 385.

¹²⁵Robert D. Andrews suggested at the 1896 hearings that the entire Bulfinch state house be treated as one pavilion to be symmetrically matched, and he argued that it would be architecturally unfortunate to expand the building with wings. Massachusetts General Court, *Hearings concerning the Bulfinch Front*, 3: 42. Twenty years later, wings were erected under his supervision.

and “[w]hen a direct attack is made on the old work of Bulfinch there will be ample time to rally to its support”¹²⁶ The wings indeed got faced with marble; Bulfinch’s bricks were not replaced but were painted white to match.

As part of the state house expansion project, the commonwealth took the two mansions which had been built on the site of the Hancock house. When Sturgis and Andrews in 1916 drew their plans for the newly enlarged grounds, they proposed that the Hancock house be reconstructed.¹²⁷ Unlike the state house proposals of twenty years earlier, this replica was not to be created at the price of destroying the original. Since the house had been destroyed already, would it not be laudable to build it anew on the site? The governor, who would occupy it as his official residence, endorsed the plan. SPNEA took a keen interest in the treatment of the grounds as the Bulfinch building’s setting, but said little about the Hancock house scheme.¹²⁸ The preservation movement had come full circle; this official acknowledgement of error must have been gratifying, but it now collided with preservationists’ own new standards of archaeological truth. The Hancock house project eventually languished.

While height restrictions were being used as an urban design tool around the state house to accompany its preservation, the hill’s lower slopes were receiving a more unusual kind of attention which suggested a different way of applying this tool to preservation. Height restrictions were aiding a nascent movement - later called ‘area preservation’ - which was ultimately of greater significance to historic preservation. Area preservation grew out of the same concern for the large-scale environment which initially motivated preservationists’ exploration of government powers, and extended this exploration even further.

¹²⁶SPNEA *Bulletin* 6 (1915): 16-17.

¹²⁷‘Plan A’, described in Report of SPNEA Committee on State house grounds, May 3, 1916; see also May 16, 1916 Sturgis to Appleton: this “more conservative plan” is Sturgis’ favorite. Microfiche correspondence archive, ‘State House,’ SPNEA.

¹²⁸Hosmer, *Presence of the Past*, 277; SPNEA appointed a Committee on the State House Grounds, composed of Henry Charles Dean, Joseph Everett Chandler, and Herbert Browne. See their report, May 3, 1916; Microfiche correspondence archive, ‘State House,’ SPNEA.

The state house's immediate neighbors were among the most active proponents of Beacon Hill height restrictions. Many of them made clear that, while they were sincerely concerned about the dome's visibility, they were also happy to have found a way of relieving pressures for replacement of existing old houses by large apartment and office buildings. In later years the neighborhood would repeatedly organize to use height restrictions for resisting change.¹²⁹

Before the advent of height restrictions, the state house had undermined the stability of the Beacon Hill neighborhood. Long uncertainty over the direction and extent of its expansion brought a feeling of tentativeness to the tenure of its neighbors, even those well-to-do owner-occupants who could not be dislodged by more economic land uses. While the Bulfinch building itself was early deemed worthy of preservation, and its surroundings were of increasing concern so they would not detract from it, years passed before there was broad agreement that anything else on Beacon Hill was in its own right worth saving. By the 1880s the neighborhood was perceived as declining. The buildings in it were "old and of but little value," said Governor Ames.¹³⁰ The *Transcript* thought that adopting a definite state house plan and settling the uncertainty would ensure that "property all around must appreciate greatly, whether the hill shall continue a residential locality or shall be given up to professional and business purposes."¹³¹ By the real estate orthodoxy of the time, even if Beacon Hill remained residential, it would improve only by building anew, or reconstructing existing houses so thoroughly as to amount to the same thing.

The turn of the century was Beacon Hill's low point, the culmination of at least twenty years of decline, during which the neighborhood's frontier retreated before both the state house and the growing downtown, and the Back Bay rose as an equally fashionable and much larger district. The height restrictions imposed around the state house in 1899 and 1902 came just at the beginning of Beacon Hill's aggressive response to that decline. The restrictions looked like an end both to the invasion by tall business and apartment buildings and by the expanding state house itself.

¹²⁹Firey, *Land Use in Central Boston*, 129-132.

¹³⁰Oliver Ames, *Governor's Address* (1888 Senate doc. 1), 24.

¹³¹*Boston Evening Transcript*, editorial, March 10, 1888, reprinted in Sillars, *The State House*, 26.

Beacon Hill maintained at all times a core of aristocratic residences and residents. Among them were generations of the Codman family, including real estate broker William Coombs Codman, who led a 1909 suit against a subway extension beneath the hill. While in that suit what he most deeply cared about preserving was the value of commercial real estate behind Beacon Hill,¹³² on the residential hill itself he found a more substantial congruence between preservation and self-interest. Shortly after the turn of the century, Codman began buying, restoring, and reselling old houses on Beacon Hill. He induced many of his friends to move to the district, including architect Frank A. Bourne, who came from the Back Bay and began a prolific practice serving the growing influx of well-heeled Bostonians whose domestic ideal was a completely up-to-date interior surrounded by a quaint exterior on an historic street.

These neighborhood improvers were not necessarily disciplined by Appleton's principles of archaeological truth - their 'restorations' often brought nineteenth-century buildings back to a colonial or even medieval past they had never seen. Yet their attraction to the area was clearly its antiquity; material progress was an ideal only within their walls. On the exterior, they like Appleton were practicing preservation by purchase, solving the financial problems of this approach by taking it out of the realm of philanthropy and into the market, where it could be accomplished by the aggregated housing budgets of many people.

These improvers quickly extended their activities beyond the traditional aristocratic south slope of Beacon Hill to its north slope and to the flats on the river side of Charles Street, areas which had been occupied by the servants and stables of the hill's elite, and by a long-established black neighborhood. The newcomers thought of themselves, in writer Margaret Deland's words, as "redeeming" the area "to something like its old desirability as a residence neighborhood."¹³³ In fact, however, its erstwhile desirability, like its colonial building details, was a modern invention; the area became

¹³²*Codman v. Crocker*, 203 Mass. 146 (1909). See clippings and correspondence with the suit's co-plaintiffs and supporters, W. C. Codman papers, SPNEA.

¹³³[Margaret Deland], 'The regeneration of Beacon Hill: How Boston goes about civic improvement,' *Craftsman* 16 (1909): 92.

more fashionable and more quaint in the twentieth century than it had ever been in the nineteenth.

The area's new and old residents achieved an uneasy alliance at the Charles Street meeting house, occupied by the First African Methodist Episcopal Church, where neighbors raised money for Frank Bourne to restore its exterior. In return the congregation agreed to give SPNEA an option of first refusal in case the building was ever to be sold, a safeguard which later became common practice in preservation grants, but which seems to have been thought up specifically for this case.¹³⁴ The relationship between new and old residents was more often one of simple succession, as in Deland's description of "a pair of tumbledown wooden tenements" occupied by "twelve families, who were speedily induced to seek other accommodations."¹³⁵ These improvers were troubled by few qualms about such displacement, which for Deland seemed the whole point of the architectural exercise; it "brings a most desirable element into a part of the city which badly needs such associations."¹³⁶ In 1922, the neighborhood institutionalized its reasserted identity by organizing the Beacon Hill Association, "to keep undesirable business and living conditions from affecting the hill district."¹³⁷

Similar neighborhood restoration, in cities throughout the United States and in Europe as well, challenged the real estate doctrine of inevitable decline and conversion. In 1915, Edward H. Clement, a former editor of the *Transcript* and one of the Park Street Church preservationists, described the process as it worked in New York:

After the boardinghouse period, that the swell mansions of other days pass through, when at last they are utterly run down and too drear and dirty even for lodging houses, the taste of the artist converts them into something so desirable that the tide of values in the whole neighborhood is often set running in the opposite direction to that in which it has been setting for a generation or two.¹³⁸

¹³⁴*Old-Time New England* 11 (1920): 171.

¹³⁵Deland, 'Regeneration of Beacon Hill,' 95.

¹³⁶Deland, 'Regeneration of Beacon Hill,' 95.

¹³⁷*Boston Evening Transcript*, December 6, 1922, quoted in Firey, *Land Use in Central Boston*, 111.

¹³⁸*Boston Evening Transcript*, May 15, 1915: III/2.

Even the businessmen of the Board of Trade in Providence recognized the rehabilitation of “old favorite residential quarters” as a new “phenomenon of modern city growth.”¹³⁹

Preservationists' relationship with government, especially Boston's city government, was ambivalent. Beacon Hill residents saw that their area preservation efforts required reinforcement through government powers. Height restrictions kept apartment buildings from overwhelming the neighborhood. The street commissioners' regulation of building lines kept commercial uses on Beacon Street from becoming obtrusive. The same commission's review of commercial garage locations was of particular interest because Beacon Hill's boundaries were insecure where the 'revived' neighborhood met its utilitarian surroundings.¹⁴⁰

While Beacon Hill residents relied on these municipal powers, well-to-do Bostonians did not trust the ascendant immigrant political leadership, and they saw their mistrust amply confirmed by the city's treatment of its environmental heritage. The mid-nineteenth century rearrangement of headstones in the Granary and King's Chapel burial grounds provoked fresh outrage generation after generation, and as old families became more isolated from the city's political life, the action came to seem more ominous. One twentieth-century Bostonian pointed out that “every corpse is probably that of an Englishman or of the descendant of an Englishman; whereas, the custodians are almost all of Irish descent. I leave the rest to your imagination.”¹⁴¹

At the apex of Brahmin demonology was James Michael Curley, mayor from 1914 to 1917, and then on and off again until 1949; he and his lieutenants, wrote SPNEA President Charles Knowles Bolton in his journal, were “[s]urely ridiculous rulers of a

¹³⁹‘Old Favorite Residential Quarters, Now Somewhat Down-at-the-Heel, Will Some Day Regain Their Former Dignity./ A Phenomenon of Modern City Growth,’ *Providence Magazine*, January, 1915: 17.

¹⁴⁰See, e.g., the street commissioners' hearing on a garage proposed for Charles Street; *Boston Evening Transcript*, February 23, 1915: 1.

¹⁴¹Anonymous correspondent quoted in Firey, *Land Use in Central Boston*, 168.

million people anywhere but in a democracy run mad."¹⁴² Curley appointed as his building commissioner Patrick O'Hearn, a tenement-builder who threatened to tear down the colonial Shirley-Eustis mansion for building code violations; preservationists appealed to the legislature, which specifically exempted it from the city's code.¹⁴³ When Henry Statler hesitated to build a hotel in Boston in 1923, Curley tried to lure him by having the city's height limit raised from 125 to 155 feet, and announced that if this was not tall enough for a hotel he would return to the legislature to ask for 200 feet. He later attempted to remove the special height restrictions on Commonwealth Avenue.¹⁴⁴ Aristocratic Bostonians could not feel comfortable putting environmental stability in the hands of government while the government was in hands like Curley's.

William Sumner Appleton starkly exemplified preservationist ambivalence toward government. His attitude was both typical and influential. "Action by the nation or states is in America peculiarly difficult of achievement," he wrote in 1918,

and for some reasons not to be desired. That part of the public capable of appreciating a handsome building for the sake of its artistic merit, is small indeed, and the chance of obtaining support from the public treasury is too negligible to notice, except in the case of public buildings of historic interest, like Faneuil Hall in Boston, and Independence Hall, Philadelphia. On the other hand, even if this were not the case, our political system, with its almost total lack of responsibility, as well as its widespread tendency to the spoils system, makes public action extremely dangerous.¹⁴⁵

On the whole, Appleton was faithful to these principles and eschewed the participation of government agencies when he could avoid it, but he was too much a

¹⁴²Bolton, "Note-book," February 23, 1914, quoted in Lindgren, 'Gospel of Preservation,' 219.

¹⁴³*Massachusetts Special Acts & Resolves*, 1915, Acts ch. 306; Lindgren, 'Gospel of Preservation,' 273. O'Hearn was not being arbitrary; on the contrary he systematically enforced building and fire codes for the first time in the city's history, causing the demolition of 654 substandard structures in his first 15 months in office. *Boston Evening Transcript*, May 12, 1915: III/3.

¹⁴⁴*Boston Herald*, March 9, 1923; May 6, 1924; December 26, 1930.

¹⁴⁵Appleton, 'Destruction and Preservation,' 131-183, 179. When Appleton in 1936, under the financial pressures of the Depression, relinquished one house to the National Park Service to become a part of the National Historic Site in Salem, Massachusetts, he complained that "[t]he government, if it runs true to its usual form, will want to receive the property without any conditions of any kind, which will permit it at some time in the future to pull the house down and take it out for re-erection at a World's Fair in Salem, Oregon, if the vote of Oregon senators should be needed to putting something of the kind over, and it is exactly this sort of thing that our Society exists to prevent." Quoted in Hosmer, *Preservation Comes of Age* 1:143.

pragmatist not to at least look longingly at the tremendous resources available to governments. A logical first step in exploring these resources was an attempt to safeguard historic properties that the government already owned. Appleton was fascinated by the log blockhouses which survived from frontier forts in Maine, some of them abandoned and decaying but still in War Department ownership. In 1912 he wrote to Smithsonian Institution Secretary Charles D. Walcott about them.¹⁴⁶

The federal government had begun protecting prehistoric monuments on public lands in the west under the Antiquities Act of 1906, which historian Ronald F. Lee calls "the first national historic preservation policy for the United States";¹⁴⁷ Appleton wondered whether the same authority could permit it to do something similar with surplus properties of historical interest in the east. The answer in fact was yes: the act allowed the President to designate as "national monuments" any "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on the lands owned or controlled by the Government of the United States...."¹⁴⁸ Despite its inclusive language, the act had been conceived and until then had been used only for sites of archaeological or geological interest; all of them in the west.¹⁴⁹ Walcott was not encouraging, and ironically echoed Appleton's frequent bitter pronouncement when he suggested that the blockhouses possessed "a local rather than a National interest or importance."¹⁵⁰ Appleton's concern was systematic preservation of numerous small structures, the same domestic scale of almost all SPNEA's actions. He continued his efforts by writing to the Secretary of the Interior, attempting to invoke a national scope by pointing out that "[t]here must be many more such properties scattered all over the country."¹⁵¹ Such a prospect of endless, piecemeal involvement with local preservation concerns may not have been the best way to woo Washington officials; Appleton did not accomplish anything and eventually returned to private

¹⁴⁶Appleton to Charles D. Walcott, Dec. 2, 1912, Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

¹⁴⁷Lee, *Antiquities Act*, 1.

¹⁴⁸34 Stat. L. 225, §2, in Lee, *Antiquities Act*, 117.

¹⁴⁹Lee, *Antiquities Act*, tables I-III, 94-96.

¹⁵⁰C. D. Walcott to WSA, Dec. 5, 1912; Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

methods to save the blockhouses.¹⁵² The Antiquities Act was not used for any historic - as opposed to prehistoric - landmark until 1924, and then it was applied with a view to supreme national significance, though not necessarily great antiquity; among the first was the Statue of Liberty.¹⁵³ The kind of small-scale local preservation of surplus properties that Appleton had in mind was not put into practice by the federal government until 1944.¹⁵⁴

The strongest possible use of government powers for preservation would be to force preservation over the will of private owners, as historic districts and landmark laws can do today under the police power. Preservationists first explored the possibility of accomplishing this through eminent domain. The idea cropped up several times as an ad hoc response through frustration with intransigent owners: eminent domain powers were in fact granted to the Old South Association, and were discussed as a threat against the Park Street Church developers. When preservationists in 1912 suggested that the federal government use condemnation to gain possession of Thomas Jefferson's Virginia home, Monticello, William Sumner Appleton wrote to the idea's author disapprovingly:

I am a strong believer in buying Jefferson's home for preservation, but as luck will have it I am also an ardent Jeffersonian in my principles, and can't help feeling that Jefferson would turn in his grave at the mere suggestion that the Federal Government should buy his home by right of eminent domain.¹⁵⁵

Despite his mistrust of government, Appleton was serious enough about preservation that five years later he too explored this avenue of action. He began to consider eminent domain as an extension of the cultural patrimony laws by which European nations guarded their tangible heritage against plunder by wealthy and acquisitive foreigners,

¹⁵¹ Appleton to Secretary of the Interior, Dec. 9, 1912; Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

¹⁵² *SPNEA Bulletin* 6 (1915): 7.

¹⁵³ Lee, *Antiquities Act*, 94. The other four designated on October 15, 1924, were Fort Pulaski, Georgia; Castle Pinckney, South Carolina; and Fort Matanzas and Castillo de San Marcos, both in Florida. No national monument was created in New England until 1949 (Saint Croix, Maine).

¹⁵⁴ Stephen W. Jacobs, 'Architectural Preservation in the United States: the Government's Role,' *Curator* 9 (1966): 313.

¹⁵⁵ Quoted in Hosmer, *Presence of the Past*, 167.

often Americans.¹⁵⁶ Great Britain, for example, passed its first compulsory preservation act (relying on eminent domain) in 1913, after Americans began dismantling Tattershall castle in Lincolnshire.¹⁵⁷ Similarly, museums and collectors in New York and other cities were buying and stripping interior panelling and other architectural features from early houses in New England and the South, leading Appleton to consider seeking some sort of cultural patrimony legislation. He saw the removal of building parts, in effect, as raids by foreigners. This regional parochialism, together with disgust for the lower-class and sometimes immigrant owners who allowed their buildings to be broken up, blunted both Appleton's usual conservative regard for property rights and his distaste for government action.

Appleton appeared to succeed spectacularly by incorporating eminent domain in the first preservation amendment to a state constitution:

The preservation and maintenance of ancient landmarks and other property of historical or antiquarian interest is a public use, and the commonwealth and the cities and towns therein may, upon payment of just compensation, take such property or any interest therein under such regulations as the general court may prescribe.¹⁵⁸

Appleton laid modesty aside as he reminisced about the amendment years later:

I thought it up as I was crossing the Common one day as the last Constitutional Convention was in session here and finding the judiciary committee was in session, appeared before it and presented my proposed amendment. They asked what organizations and individuals would appear in addition. I said none; it was my own idea and I was appearing alone. There was nobody in the room but the committee and myself and they seemed very much amused. However, on talking the matter over in committee it seemed to them a good proposition and they commended it to the Convention. There it would have failed excepting that a member from Lexington

¹⁵⁶Lindgren, 'Gospel of Preservation,' 339.

¹⁵⁷Ancient Monuments Consolidation and Amendment Act (1913), 3 & 4 Geo. 5, ch. 32. Nicholas Boulting, 'The law's delays: conservationist legislation in the British Isles,' in Jane Fawcett, ed., *The Future of the Past, Attitudes to Conservation, 1174-1974* (London, 1976), 19; Lowenthal, *Foreign Country*, 394. See also Stephen W. Jacobs, 'Architectural Preservation in Europe: French and English Contributions,' *Curator* 9 (1966): 196-215, 201.

¹⁵⁸Constitution of the Commonwealth of Massachusetts, amendments art. 51 (in *Massachusetts General Acts*, 1919, Act 63). The same constitutional convention put forward, and the voters approved at the same election, a similar amendment defining conservation of natural resources as a public use (amendments art. 49); another permitting the regulation of advertising "on private property within public view" (amendments art. 50); and one permitting land use zoning (amendments art. 60). Jacob H. Morrison, *Historic Preservation Law* (Washington, 1965), 6.

spoke so strongly in its favor that it went through. So far as I know the only article in the Massachusetts Constitution to be put through by a single individual unless John Adams shares such an honor with, Yours very truly.¹⁵⁹

It became Amendment 51 to the Massachusetts constitution when voters approved it on November 5, 1918, by more than 2 to 1 statewide, and more than 4 to 1 in Boston.¹⁶⁰ "I am surprised that you can reach so many people," wrote one convention delegate to Appleton.¹⁶¹

This great preservationist victory turned out to be hollow, at least in part because of Appleton's political naivete which had so amused the convention delegates. Appleton petitioned the next legislature for the enabling 'regulations' needed to make the amendment operational, but he did not even bother testifying for them. "If the people wanted the amendment," he wrote plaintively to the Judiciary Committee chairman as his bill died there, "it seems to me that they are entitled to some act giving the amendment force."¹⁶² After sporadic attempts to revive it, he did not return to the issue again until the mid 1930s. It was not important to him. Both the constitutional amendment and the legislation to make it usable were structural reforms. He could not point to a single specific building which they would save, and their abstractness left him almost apologetic. "It will doubtless take some years ... to determine just what may or should be done under this amendment," he wrote, "but there can be no doubt but that it will justify itself as time goes by."¹⁶³ He gave the amendment only a short notice in the *SPNEA Bulletin*, and of the attempt to secure follow-up legislation he made no mention at all. Significantly, given Appleton's region-wide mindset, he made no suggestion that New England's other five states ought to follow the example.

¹⁵⁹Appleton to Mr. R. Peabody Bellows, December 6, 1935. Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

¹⁶⁰The vote is not easy to interpret, as all thirteen amendments on the ballot passed, most by similar margins, and the high number of blank ballots indicates apathy toward all the referenda; the preservation amendment won without an actual majority of all ballots cast in either the city or the state (unidentified newspaper clipping, Microfiche correspondence archive, 'Preservation legislation,' SPNEA).

¹⁶¹Henry M. Hutchings to Appleton, October 22, 1918, in Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

¹⁶²Appleton to Senator Cavanagh, May 2, 1919, 2; in Microfiche correspondence archive, 'Preservation legislation,' SPNEA; 1919 House bill 767.

Despite the august sound of a constitutional amendment for the protection of antiquities, despite the momentous potential of turning to eminent domain as a tool for historic preservation, the most far-reaching use of government powers for environmental permanence turned out to be building height restrictions. But this precedent was extended not by preservationists, but by a coalition of city planning activists and real estate people interested in more general, widespread neighborhood stability.

Problems with height restrictions and a solution in zoning

Height restriction by districts, as it was being practiced, turned out to have serious problems. The process of solving those problems created a much more versatile and potentially universal system for regulating development, which was directly and quickly shaped into modern zoning.

When Haddon Hall forced consideration of how to regulate buildings in specific locales, the Massachusetts legislature conservatively chose to act under eminent domain rather than the police power. Under eminent domain the state respected vested rights in property, by paying for them. But were 125-foot tall buildings, the statewide limit enacted in 1891, a right or merely a maximum? Members of the Boston Real Estate Exchange and the Twentieth Century Club believed in 1896 that 125 feet was a maximum which might be further reduced according to local conditions. George B. Upham and others, including future U.S. Supreme Court justice Louis Brandeis, continued advocating the police power as a basis for making building height distinctions between different parts of the city. In 1899, when it became clear that the legislature was unwilling to divide the city explicitly into districts, they tried imaginative variations such as the Beacon Hill ceiling projected from the state house cornice.

¹⁶³*SPNEA Bulletin* 10 (1919): 19; Appleton to President, Boston Society of Architects, December 2,

Upham submitted another bill the same year which would set an 80-foot height limit applying only to apartment buildings and hotels, and providing that the mayor after a public hearing could issue exemptions "if satisfied that the location designated is fairly within a business district as distinguished from a residential district."¹⁶⁴ Either of these, if enacted and sustained by the courts, would open the door for citywide height districting without compensation.¹⁶⁵ If Upham and Brandeis were correct, the city and state were paying for rights which did not exist.

The police power appealed to fiscal conservatism, as opposed to the ideological conservatism of eminent domain. Legislators acknowledged this conflict by writing height restrictions that were increasingly ambivalent about what compensation they offered. The Commonwealth Avenue and Copley Square acts in 1896 and 1898 were unambiguous - it was the city of Boston which would have to pay, and since it was citizens of Boston who wanted the restrictions, that seemed fair to legislators who were mostly from elsewhere. But on Beacon Hill the state would have to pay, and legislators began to see the appeal of the police power. In drafting the 1899 Beacon Hill restrictions they were non-committal about compensation; the state would pay only "[i]f and in so far as this act ... may deprive any person of rights existing under the constitution."¹⁶⁶ Since the courts would ultimately decide whether or not police power districting was valid, why not leave the whole sticky issue to them?

Massachusetts Supreme Judicial Court Chief Justice Oliver Wendell Holmes, Jr., however, would not allow the court to be drawn into "the difficulty of fixing a

1935; in Microfiche correspondence archive, 'Preservation legislation,' SPNEA.

¹⁶⁴1899 House bill 668, §2. Mayor Quincy instead requested, and the Committee on Cities once again reported, a bill lowering the citywide limit to 100 feet (1899 House bill 1137); once again it failed to pass.

¹⁶⁵The U.S. Congress passed a similar act that year regulating building heights in the District of Columbia, specifying different limits for "business streets," which were those designated by the Commissioners of the District of Columbia as being in predominantly business use, and for "residence streets," which were all others. The act made no provision for compensation and was thus in effect the first imposition of height districts in any American city under the police power. Congress was under the impression that it was following Boston precedent (55th Congress, 3d session, House Report no. 1704, 2), and Bostonians do not appear to have known of the D.C. regulations. The act was not tested in court. Heights of Buildings Commission (New York), *Report*, 150-51.

¹⁶⁶*Massachusetts Acts and Resolves*, 1899, Acts ch. 457, §2.

constitutional limit by feet and inches." He upheld the Beacon Hill restrictions in *Parker v. Commonwealth*, on March 1, 1901, rejected any interpretation of the act's language as "importing an exercise of the police power so far as the Legislature constitutionally could go, and as saving a remedy for all damages beyond that limit." The act, he said, "treats the limits of the police power as if they were a matter which might be left to this court to fix in the first place without any preliminary exercise of legislative judgement." But the police power by its nature balanced individuals' rights against their responsibilities to others, a balance which Holmes insisted was to be politically decided, not judicially discovered. "[W]hile we can gather that the Legislature was willing to take anything without paying for it that this court should say that it could," wrote Holmes, it nowhere made the explicit judgement of public necessity which would support an exercise of the police power, and the restriction was therefore a taking.¹⁶⁷ Until the legislature could decide for itself where lower height districts were reasonable without compensation, it would have to go on paying for them.

Boston's earlier experience with height restrictions on Commonwealth Avenue, where no owners asked for compensation, and on Copley Square, where Mollie Cole asked but did not receive it, was giving way to a more sobering understanding that damage awards would be widespread and substantial. The Westminster Chambers case was making its way through the courts, while the mayor and the building's owners repeatedly explained how expensive that pointless exercise would become for city taxpayers. Damage awards elsewhere on Copley Square, together with Holmes's decision on Beacon Hill, destroyed any hope that compensation would be limited to this extreme case of cutting down a completed building. The right to build tall could be valued - and was valuable - in the abstract. Restricting building heights through eminent domain was proving prohibitively expensive.

In the evolution of American land use law, Boston's exploration of eminent domain turned out to be a dead end. Although a false step, it may have been a necessary one. It was motivated by the desire to treat different places within the city differently, which at first appeared problematic under the police power. Once freed of this theoretical

¹⁶⁷*Parker v. Commonwealth*, 178 Mass. 199, at 204-05.

constraint, and faced with the prospect of substantial payments for restrictions, it encouraged actions which were very site-specific indeed. This specificity, together with freedom from the police power's strict requirements of a health and safety basis, allowed formulation of regulations from an explicit design viewpoint, without worrying about undermining their validity. Eminent-domain restrictions thus allowed concrete exploration of the potential of site-specific limits, without having to resolve for the moment the difficult ideological questions of private property rights. This exploration was a success; it showed that height districting was not the "special case" which William Minot had thought at Copley Square, but a technique of potentially widespread usefulness in controlling environmental change. At the same time, Boston's experience showed that relying on eminent domain would make the tool too unwieldy to realize that potential.

A combination of events at the end of 1902 and the beginning of 1903 pushed Boston toward ending its experiment with eminent domain while pulling it toward police power regulations. The push began on December 31, 1902, when hearings opened to set the compensation for height restrictions on Beacon Hill. Substantially all the affected owners filed for damages, so many that the Supreme Judicial Court appointed a special commission to evaluate their claims. The first owner heard was Robert Treat Paine, one of the original petitioners for the restriction.¹⁶⁸ Many of his neighbors had sought the legislation and almost all were said to favor it, a circumstance which had seemed to indicate that large compensation payments would not be necessary. Their damage claims now appeared perhaps ungracious, but they followed from the logic of eminent domain. Unlike on Commonwealth Avenue or even Copley Square, there was no pretense on Beacon Hill that restrictions were for the owners' mutual benefit. For almost twenty years various state house plans contemplated taking their property. Now the state was taking part of it, and Paine's attorney suggested that the legislature acted "with a view of so depreciating the value of that section" that it could later pick up the land at bargain rates.¹⁶⁹ The owners sought an average of \$100,000 each, an

¹⁶⁸A map in *Parker v. Commonwealth*, 178 Mass. 199, at 201 appears to show 59 parcels of land affected; the *Boston Evening Transcript* (January 5, 1903: 6 reported "between fifty and sixty" claims. See also *Boston Evening Globe*, March 17, 1899: 4.

¹⁶⁹*Paine v. Commonwealth*, transcript of hearings, 5.

astronomical total of \$5 to 6 million, which would dwarf the cost of the Copley Square restrictions. The legislature passed a new kind of height restriction legislation, authorizing the governor to issue bonds to cover the damages, "to such an amount as may be necessary."¹⁷⁰

Three weeks before these hearings opened, the attractiveness of police power regulations was increased when the governor named Marcus Knowlton the new Chief Justice of Massachusetts' Supreme Judicial Court, to replace Oliver Wendell Holmes, Jr., who had been called to the Supreme Court in Washington. As an Associate Justice, Knowlton had written the 1899 *Attorney General v. Williams* decision upholding height restrictions in general, and the Copley Square act in particular, adding that "it would be hard to say that this statute might not have been passed in the exercise of the police power..."¹⁷¹ Such gratuitous comment was in effect an invitation to the legislature, deflating any claims that such a measure would be found unconstitutional. Holmes's 1901 *Parker v. Commonwealth* decision, in which Knowlton joined, gave legislators further guidance; while the geographical specificity of the Beacon Hill restrictions "would present grave difficulties" under the police power, he discussed other circumstances in which such regulations would be allowable.¹⁷²

Two months later, on February 23, 1903, the U.S. Supreme Court affirmed Knowlton's *Attorney General v. Williams* decision, the first time building height restrictions anywhere had come before the high court. The opinion was not a ringing endorsement of Knowlton's every word: "We have not ... stopped to comment on the suggestion made by the Supreme Court of the State," wrote Justice David J. Brewer, "that this statute might be sustained as an exercise of the police power, or ... that it could be enforced without any provision for compensation."¹⁷³ But the opinion implied, by confining itself to narrow issues without examining Knowlton's sweeping affirmation of height restrictions in general, that states would be allowed wide discretion in settling these questions themselves. With Marcus Knowlton now Chief

¹⁷⁰*Massachusetts Acts & Resolves*, 1903, Acts ch. 234.

¹⁷¹*Attorney General v. Williams*, 174 Mass. 476, at 478; *Boston Herald*, December 11, 1902: 7.

¹⁷²*Parker v. Commonwealth*, 178 Mass. 199, at 205; "...such a law is no less valid when passed to satisfy the love of beauty than when passed to appease the fear of fire" (at 203-04).

¹⁷³*Williams v. Parker*, 188 U.S. 491, at 504.

Justice of the highest court in Massachusetts, discretion there would likely be exercised in favor of the police power.

That summer, Westminster Chambers' roof came down, slowly and expensively, a process which clearly could not be repeated. At least five new structures had risen above 100 feet in the Back Bay since Haddon Hall, maintaining a certain urgency about the issue of tall buildings.¹⁷⁴ The Supreme Court's affirmation of *Attorney General v. Williams* came down too late to initiate action in the 1903 legislature, but at the beginning of the following year's session, a new height districting bill was submitted with broad and distinguished sponsorship and the official support of the Boston Common Council.¹⁷⁵

This new height bill would divide the city into two districts, but it did not delineate them, and thus avoided the legislative wrangling that repeatedly tripped up Upham. Instead, it would create a three member commission to carry out the delicate task of drawing the boundaries, and gave the commissioners a rule by which they were to proceed:

those parts of the city in which all or the greater part of the buildings situate therein are at the time of determination used for business or commercial purposes shall be included in the district or districts designated A, and those parts ... used for residential or for other purposes not business or commercial shall be in the district or districts designated B.¹⁷⁶

In district A, the business district, buildings could still be built to 125 feet, but in district B - most of the city - the allowable height would be reduced to 80 feet.

"The boundaries," said the bill, "... shall be determined for ten years," a period which the committee on cities increased to fifteen years.¹⁷⁷ Assigning a duration to the boundaries, rather than to the restriction itself, implied that the 80-foot limit would

¹⁷⁴Commission on Height of Buildings (Boston), *Final Report*, 18.

¹⁷⁵1904 House bill 507, submitted by petition of G. H. Richards and others; *Boston City Council Minutes*, 1904, 113 (March 24). The minutes include a list of the bill's supporters.

¹⁷⁶*Massachusetts Acts & Resolves*, 1904, Acts ch. 333, § 1.

¹⁷⁷1904 House doc. 507; 1904 House doc. 1250.

continue indefinitely, with only its geographical extent revised after fifteen years. The act, however, made no provision for what was to happen then. As with deed restrictions by this time, the initial development of a tool for ensuring permanence was followed by a realization that the tool was more versatile if used not to freeze change but to exert control over it. Consensus on a permanent shape for the city was difficult to achieve, as Upham had learned; it was easier for people to agree on short-term controls.

The legislature passed the act, inserting a process by which owners might appeal the initial determination of districts. Mayor Patrick A. Collins promptly appointed a commission of three real estate experts to draw the boundaries, including former Mayor Nathan Matthews, whose administration had submitted the original 125-foot bill in 1891, and who had advocated further height restrictions ever since.¹⁷⁸

The boundary they drew did not look at all like modern zoning maps with their convoluted shapes weaving through the interiors of blocks and lots. Instead, the commissioners pieced together from Boston's labyrinth of streets a comparatively straight line across the peninsula, which for most of its length followed within two blocks of Upham's original 1896 proposal. Along every foot of the boundary a building restricted to 80 feet could end up overshadowed by a 125 foot neighbor, an inequity and a potential challenge to the law, and the commissioners aimed to keep that boundary to a minimum. They drew the line cautiously, aware that a court challenge was inevitable, and determined to withstand it. They returned again and again to the act's plain distinction between commercial and residential uses. Beacon Hill was residential, so allowable heights there were lowered, greatly assisting neighborhood preservation, and leaving the two blocks where the state was paying for a 70-foot limit surrounded by blocks on which an 80-foot limit was imposed for free (fig. 6.6.). But the commissioners did not make other preservationist adjustments; they did not attempt to lower heights on the other side of the state house, nor on Park Street, where their line ran right past Park Street Church during its hour of need without offering it any

¹⁷⁸The other two members of the 'Commission on Height of Buildings in the City of Boston,' all appointed June 7, 1904, were Henry Parkman and Joseph A. Conry.

protection. Regulation according to aesthetic criteria was of uncertain constitutionality, they said, so they ignored aesthetics.¹⁷⁹

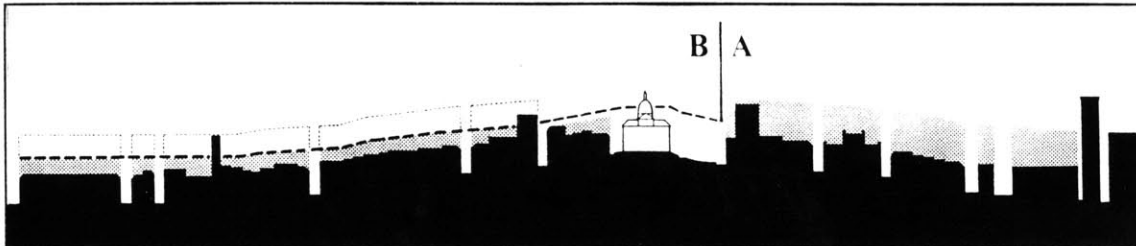


fig. 6.6. The height districts as they applied to Beacon Hill. The 80-foot limit of the B district protected views of the state house dome from all sides on which that was economically feasible; it also prevented further development of tall apartment buildings throughout the residential side of Beacon Hill.

The language of the act gave the commission no guidance as to how big were the 'parts of the city' it should look at, except perhaps indirectly in the requirement that the entire process of holding hearings and drawing the line should take no more than 30 days. The commissioners were concerned that all precedents for small districts included provision for compensation, while police power districts such as fire limits involved some "considerable part of a city," and so they resolved to avoid altogether small districts.¹⁸⁰ They included the whole residential North End in the A district rather than make an island of it. They refused to extend the A district in fingers radiating from the city center along the major commercial thoroughfares, because "it seemed to us that the Legislature could not have intended that we should create districts out of single streets and thus permit the residential sections of the city to be covered like a gridiron by long lines of 125-foot buildings."¹⁸¹ The pressure for small districts came from Back Bay landowners. While the commissioners noted business incursions there, they found the Back Bay as a whole "distinctly residential in character according to the test prescribed by the act... ." ¹⁸² "We were pressed to avoid this conclusion," they reported,

¹⁷⁹Commission on Height of Buildings (Boston), *Final Report*, 17. See also *Boston Evening Transcript*, editorial, December 6, 1904: 12.

¹⁸⁰Commission on Height of Buildings (Boston), *Final Report*, 17.

¹⁸¹Commission on Height of Buildings (Boston), *Final Report*, 20.

¹⁸²Commission on Height of Buildings (Boston), *Final Report*, 19.

by creating separate districts out of particular streets and their contiguous territory; putting, for instance, into the District A a parallelogram consisting of Boylston Street, and, say, 100 feet on either side, and doing the same thing for Massachusetts Avenue, Huntington Avenue, etc. This proposition was opposed by owners of property immediately next to the proposed districts, and seemed to us clearly beyond the scope of our duties as defined by the act.¹⁸³

The Back Bay was both the place that made height restrictions important, and the place that made them difficult, for Upham in the 1890s, and for Matthews and his fellow commissioners in 1904. "When the best residence district is determined, the main growth of the city is quite certain to follow it," wrote New York real estate expert Richard M. Hurd in 1903 in his *Principles of City Land Values*, "as note the movement of retail stores after the best residences ... on Boylston Street in Boston[.]"¹⁸⁴ The axis of Boston's 'best residence district' extended through the Back Bay to Brookline and then Newton, and Boylston Street, almost entirely residential in the late 1880s, had become a commercial district advertised as "Boston's Fifth Avenue" ten years later.¹⁸⁵ These were the years when civic and commercial uses fought for the soul of Copley Square, with Westminster Chambers seen by one side as a trojan horse and by the other as a sacrificial lamb. By the time the commissioners were drawing their boundary line, the *Herald* found many businessmen who believed that "commercial Boston, in spreading outward, would naturally seek Copley Square for its new center."¹⁸⁶ Ambitions for a new downtown in the Back Bay were even higher at the Park Square complex of the Providence Railroad, redundant since South Station opened in 1900, a large, centrally-located piece of land between Copley Square and downtown which could be developed without immediate damage to the existing Back Bay streetscape. The fact that its development lagged for years only increased the determination that the results should be worth the wait.

¹⁸³Commission on Height of Buildings (Boston), *Final Report*, 20.

¹⁸⁴Hurd, *City Land Values*, 81.

¹⁸⁵Advertisement, *Boston Evening Transcript*, December 8, 1897: 6; December 9, 1897: 10.

¹⁸⁶*Boston Herald*, March 1, 1903: 10.

The commissioners heard no objections to their line from the South End or “the suburban parts of the city.”¹⁸⁷ From owners of commercial property in the Back Bay, however,

the opposition ... was so strong and so much of it was directed against the whole purpose of the act, that it was not always easy to distinguish between considerations affecting our action under the act and considerations pointing to a condemnation of the act itself.¹⁸⁸

Within their conservative reading of the act, they saw no way to satisfy this opposition through expedient shortcuts. Nor did they have any inclination to assist in the Back Bay’s transformation; they believed that the act’s purpose was “to prevent the erection of very high buildings in those parts of the city which, unlike the down-town section, are not yet condemned by the number of high buildings already erected to the perpetual toleration of this evil.”¹⁸⁹ Based on the strict criterion of business use, and a slight relaxation of their insistence on straight boundaries, they added a jog to put Park Square and the beginning of Boylston Street in the A district.¹⁹⁰ They also suggested that, as the next legislature “will undoubtedly be asked to amend the Act of 1904,” that it meet the protests by permitting buildings on wide streets in the B district to the intermediate height of 100 feet.¹⁹¹

The *Evening Transcript* endorsed the 100-foot proposal, not because its editors liked tall buildings, but because they thought it would remove any need for future revision of the limits:

there is no reason why the rest of the city should not be protected for all time against sky-scrapers on the Back Bay and in other residential districts. If the character of those districts changes so that in time they become devoted to business

¹⁸⁷Commission on Height of Buildings (Boston), *Final Report*, 19.

¹⁸⁸Commission on Height of Buildings (Boston), *Final Report*, 21.

¹⁸⁹Commission on Height of Buildings (Boston), *Final Report*, 22.

¹⁹⁰Order of December 3, 1904, in Commission on Height of Buildings (Boston), *Final Report*, 9; see map, *Boston Herald*, December 6, 1904: 12.

¹⁹¹Commission on Height of Buildings (Boston), *Final Report*, 21. “[I]f it were not for ... the great number of high buildings already erected in the downtown districts,” they said, “we should recommend a maximum limit for the entire city of 100 feet.” (22)

uses, the limit of 100 feet will permit the erection of buildings which are high enough ...¹⁹²

The commissioners also urged that the district boundaries "should be permanent":

If the limits adopted are satisfactory, we see no reason for holding out any definite expectation of a change. The Legislature has, and will continue to have without express reservation, the power to modify the law, but the existence of a statute expressly providing for modifications at stated periods can only have an unsettling effect on real estate values.¹⁹³

The following year, as the commissioners predicted, scores of real estate owners petitioned the legislature to repeal the act. More than three quarters of them owned property in the Back Bay; more than half of them on Boylston Street and Huntington Avenue alone, the two arteries which met at Copley Square and where owners had every reason to believe that high buildings would be profitable some time in the near future. Their opposition may have been increased indirectly by the damages already paid under the several eminent-domain acts, which helped owners imagine the value of the air above their roofs. The legislature did not repeal the act, but instead passed the commission's recommended amendments - except for the one to make the restrictions permanent - giving these Back Bay owners the right to build to 100 feet.¹⁹⁴

After the 1905 legislature left the A and B districts in force, they were promptly challenged in court. The act included no procedure for appealing the boundaries beyond the commission, so that the only basis for a court challenge was the constitutionality of the act itself. Francis C. Welch, who owned a lot facing the Public Garden at the corner of Arlington and Marlborough Streets, applied to build a 120-foot building there, and when the city denied him a permit, he sued claiming that he had been unconstitutionally denied equal protection under the laws and deprived of his property without compensation. Marcus Knowlton, now Chief Justice, delivered the opinion of the

¹⁹²*Boston Evening Transcript*, December 6, 1904: 12.

¹⁹³Commission on Height of Buildings (Boston), *Final Report*, 23.

¹⁹⁴*Petitioners for the Repeal of Chapter 333 of the Acts of 1904; Massachusetts Acts and Resolves*, 1905, Acts ch. 383. The act again delegated to a commission the details of where and under what conditions such buildings would be permitted; the mayor appointed the same three commissioners. Rather than drawing more boundaries, this time they formulated a rule: on any B-district street more than 64 feet wide, buildings could rise to one and one quarter times the width of the street, to a maximum of 100 feet on streets of 80 feet or wider. Order of July 21, 1905; Commission on Height of Buildings (Boston), *Final Report*, 26.

state's high court affirming the statutes and the commission's proceedings under them.¹⁹⁵ Welch appealed to the U.S. Supreme Court.

On May 17, 1909, Justice Peckham delivered the court's decision, which upheld Knowlton's opinion so enthusiastically that it became an important spur to the development of police power building districting - what came to be called 'zoning' - in this country. The validity of police power measures is a matter of the fit between their ends and means, and the reasonableness with which they balance private rights with the public good, matters which heavily rely on the facts of each case. "This court is not familiar with the actual facts," wrote Peckham,

but it may be that in this limited commercial area the high buildings are generally of fireproof construction; that the fire engines are more numerous and much closer together than in the residential portion, and that an unlimited supply of salt water can be more readily introduced from the harbor into the pipes, and that few women or children are found there in the daytime and very few people sleep there at night. And there may in the residential part be more wooden buildings, the fire apparatus may be more widely scattered and so situated that it would be more difficult to obtain the necessary amount of water, as the residence quarters are more remote from the water front, and that many women and children spend the day in that section, and the opinion is not strained that an undiscovered fire at night might cause great loss of life in a very high apartment house in that district.¹⁹⁶

Judging whether these things were true, and whether they merited discriminating between different parts of the city, required an understanding of local conditions which could be found in legislatures and state courts better than in Washington, Peckham said, so that the high court would not interfere unless these local officials were "plainly wrong." Boston's distinction between districts, far from being wrong, was "reasonable, and is justified by the police power." Peckham concluded by allaying the commissioners' fear of permitting any taint of aesthetics in their criteria: "That in

¹⁹⁵ Welch had not been among the petitioners for the act's repeal, suggesting the possibility that this was a friendly suit designed to establish the act's validity. There is little in the record to support this interpretation. *Welch v. Swasey*, 193 Mass. 364 (decision Jan. 1, 1907).

¹⁹⁶ *Welch v. Swasey*, 214 U.S. 91 (1909), at 107-108. Morrison, quoting this passage, says, "There is no doubt that *Welch v. Swasey* established a judicial pattern of circumvention and evasion where regulations based on aesthetic considerations were concerned" (*Historic Preservation Law*, 23).

addition to these sufficient facts, considerations of an æsthetic nature also entered into the reasons for their passage, would not invalidate them."¹⁹⁷

Even before the Supreme Court decision, a new issue arose which would eventually unravel the A/B line. A 1906 master plan by the Boston Transit Commission noted that streetcar traffic "has practically reached its limit" on Boylston Street, "in which direction the shopping district is extending," and recommended an immediate extension of the subway under Boylston Street to Copley Square or farther.¹⁹⁸ The legislature instead selected one of the long-range proposals in the plan, a 'Riverbank Subway' which would have to be constructed as part of the Charles River Embankment park then in the works.¹⁹⁹ The Boylston Street subway was to be constructed some time later, but since it was parallel to and only five blocks away from the Riverbank subway, its priority could not be high. Boylston Street merchants were not happy to be bypassed, and by 1911 they convinced the legislature to reverse itself and order construction of the Boylston Street line first.²⁰⁰ One member of the transit commission, Horace G. Allen, dissented as he contemplated the uninterrupted run of 4000 feet from Copley Square to the existing downtown station at Tremont Street. "I cannot believe," he said,

that the proposed subway route, with stations as indicated in the report, will satisfy the Boylston street owners and merchants who have been most earnest in their opposition to the Riverbank subway, as it is difficult to see what good such a subway can do business interests on Boylston street between Clarendon and Tremont Streets.²⁰¹

Even before the line opened in 1914, the merchants imagined thousands of passengers a day disappearing from in front of their doors, and they saw Allen's point. They agitated for an intermediate station at Arlington Street. The transit commissioners recommended stations 1500 feet apart in the business district, and this, insisted

¹⁹⁷*Welch v. Swasey*, 214 U.S. 91, at 106-108.

¹⁹⁸Boston Transit Commission, *Twelfth Annual Report*, 1906: 46, 49.

¹⁹⁹*Massachusetts Acts and Resolves*, 1907, Acts ch. 573; see Boston Transit Commission report to the Committee on Metropolitan Affairs, in Boston Transit Commission, *Thirteenth Annual Report*, 1907: 8-10.

²⁰⁰Boston Transit Commission, *Seventeenth Annual Report*, 1911: 5-6; App. B, C.

²⁰¹Boston Transit Commission, *Seventeenth Annual Report*, 1911: 36.

property owners, was a business district.²⁰² They could point to the building height district to prove it: the proposed station was just inside the A district's Park Square jog. "While it now appears an outpost," wrote the *Evening Transcript*, "on the first revision of the boundaries there can be no question but what it will be far more central."²⁰³ The Elevated Railroad Company, which held the rapid transit franchise, opposed the new station, and the legislature in 1914 narrowly rejected it.

The following year station proponents returned better organized, submitting petitions totalling over 20,000 signatures, most of them from commuter suburbs. Mayor Curley's administration supported the measure, no doubt moved in part by property owners' threats to seek tax abatements if they could not get a station. With a view perhaps to increasing rather than abating taxes, the mayor submitted to the legislature his own bill, which would create a new Building Heights commission to redraw the B district boundary even before its fifteen-year life was up.²⁰⁴ The station bill and the district revision bill together were conceived as a clear public policy in favor of change in Boston's urban form, reinforcing the city's recent extension of Arlington Street across the Providence railroad lands in order to encourage expansion of the city's commercial center beyond its narrow State Street and Washington Street confines. The two measures were linked in the public mind, and they passed together.²⁰⁵

The original height districts were not to last through their fifteen-year term, and the act called for the new ones to remain in effect for only ten years.²⁰⁶ Unlike the 1904 act, it specified no standards to define where the lines should be drawn, and so the new

²⁰²*Boston Evening Transcript*, February 10, 1915: 1. The Transit Commission had already announced, with respect to an issue elsewhere, that its "aim should be to facilitate the extension of the business district rather than its contraction." Report to the Legislature on Boylston Street Subway Terminal, May 9, 1913; app. A in Boston Transit Commission, *Nineteenth Annual Report*, 1913: 52.

²⁰³Editorial, *Boston Evening Transcript*, February 8, 1915: 10.

²⁰⁴Boylston Street Owners' Association letter to Mayor Curley, in *Boston Evening Transcript*, March 24, 1915: 3; see earlier rumblings in testimony before legislative committee, *Boston Evening Transcript*, February 10, 1915: 3; 1915 Senate doc. 177.

²⁰⁵*Massachusetts Special Acts & Resolves*, 1915, Acts ch. 297 (Arlington Street station); *Massachusetts Special Acts & Resolves*, 1915, Acts ch. 333 (Building Heights. The members of the commission, ex officio, were the chairman of the City Planning Board (Ralph Adams Cram), the city building commissioner (Patrick O'Hearn), and the fire commissioner (John Grady).

²⁰⁶*Massachusetts Special Acts & Resolves*, 1915, Acts ch. 333. Once again, no mechanism for revision was specified.

height district hearings became not a factual investigation into Boston's geography, but rather an unprecedented forum on permanence and change in urban form, and the idea of a public policy deliberately addressing them.

Experience with deed restrictions provided a powerful analogy for understanding controls on environmental change. The B district's inclusion of a specified duration reinforced the analogy, and led people to express dismay at premature tampering with an arrangement that appeared settled.²⁰⁷ Like deed restrictions, these publicly-imposed regulations seemed to create vested interests in those who had built in reliance on them. W. W. Vaughan, a developer who had campaigned against Westminster Chambers explained that

you have had ten years of building under that restriction, the owners at the time they built not knowing on the face of it that there were any signs of its being changed. You will remember that the present law was supposed to be established for fifteen years. ...

Property owners thought it was to run on indefinitely. We recognized the fact, of course, that in fifty or even one hundred years the city would change, but we did not realize that within ten years' time a law might be passed so that it would all be thrown open again.²⁰⁸

Vaughan, like many of the commission's witnesses, thought "[t]hese laws ought to be as nearly permanent as possible."²⁰⁹ This principle was urged even by people who opposed the restrictions, because they felt the real estate industry demanded certainty. Isaac F. Woodbury, one of Westminster Chambers' developers, advocated eliminating all height distinctions in the city, but agreed with his old adversary enough to oppose piecemeal adjustments to the boundaries, saying, "my idea would be to leave the matter as it is, but leave it there for good -- or else, change the whole business."²¹⁰ John J. Martin, former president of the Massachusetts Real Estate Exchange, explained that the

²⁰⁷See Commission on Height of Buildings in the City of Boston, *Hearings* (Boston, 1916), 98, 127.

²⁰⁸Commission on Height of Buildings (Boston), *Hearings*, 107.

²⁰⁹Commission on Height of Buildings (Boston), *Hearings*, 104.

²¹⁰Commission on Height of Buildings (Boston), *Hearings*, 48.

“present uncertainty in regard to district ‘B’, with the chances of the lines of the District being changed from time to time, retards development.”²¹¹

With no statutory requirement that district boundaries reflect existing land uses, some speakers projected land use trends into the future and asked the commissioners to draw lines around their projections. “[T]he whole of the Back Bay,” said Frederick O. Woodruff, a downtown developer and executive committee member of the Massachusetts Real Estate Exchange, “has got within a few decades to be all business; there will be no residences between Arlington street and Massachusetts avenue and the water. That is coming, and it is only a question of time.”²¹² Architect and developer Clarence H. Blackall agreed: “Why, I believe that Commonwealth avenue is going to be the retail street of this city some day.”²¹³ The commissioners paid attention to these projections, when they thought they were accurate, and took into account “the general and probable trend of business development” in setting the new boundaries.²¹⁴

Witnesses’ accounts of what would be were shaped by their feelings about what ought to be, and some speakers urged the commissioners to go beyond passively identifying trends to selecting among them. “I would like to see that Back Bay district opened up,” said Charles A. Ufford, who had long worked for a new downtown around Park Square.²¹⁵ The height district tool, invented and honed for preventing change, was now being examined as a means of steering development, encouraging particular changes which seemed desirable.

No matter how much developers hoped to promote change, they showed an almost universal acceptance of the idea that some places should be exempt from it. On the first day of testimony, Woodruff advocated eliminating the B district entirely, saying, “I tell you that in real estate this idea of regulating business is a great mistake.” But when chairman Ralph Adams Cram asked if he would continue the restrictions around the

²¹¹Commission on Height of Buildings (Boston), *Hearings*, 31.

²¹²Commission on Height of Buildings (Boston), *Hearings*, 171.

²¹³Commission on Height of Buildings (Boston), *Hearings*, 143. See also 36, 51-52, 140, 171-72.

²¹⁴Commission on Height of Buildings in the City of Boston, *Report* (City doc. 114, 1916), 4.

²¹⁵Commission on Height of Buildings (Boston), *Hearings*, 155; see also 141, App., 155.

State House, he answered, "Yes, I would except that. I didn't think of that."²¹⁶ Everyone who admitted exceptions named Beacon Hill as one of them, but developers, investors, and residents argued about the Back Bay, street by street. George F. Washburn, president of the Massachusetts Real Estate Exchange, reported a poll of its executive committee, which wanted the right to build tall "over every part of Boston," yet asked that the commission

protect Beacon Hill, where the sky line would be noticeable if there was an irregularity of heights along there in the buildings. And from Newbury Street to the water. That would leave Boylston street with the privilege of building to 125 feet except where it passes through Copley Square, which under the law of course would not be affected. ... That reserves the residential section which is held rather sacred by Boston society.²¹⁷

Even these people, whose counterparts fifty years earlier were the prophets and engines of change, had thoroughly internalized the idea that the public policy was to control environmental change, and that control would be exercised both to encourage certain desirable developments, and also, at least in certain agreed-upon places, to prevent change.

The building height commissioners announced their new boundaries November 2, 1916, more than doubling the area of the A district, bringing into it all of the South End and wide swaths of South Boston and the waterfront. The Back Bay proper remained in the B district, but they drew the boundary line down the middle of Boylston street, allowing tall buildings around Park Square and in the vicinity of Copley Square, except where the 1898 limits applied.²¹⁸ After the library trustees and Trinity Church complained, the commissioners put the maximum back to 80 feet in a small area around Copley Square.²¹⁹

²¹⁶Commission on Height of Buildings (Boston), *Hearings*, 15, 17.

²¹⁷Commission on Height of Buildings (Boston), *Hearings*, 160.

²¹⁸Commission on Height of Buildings (Boston), *Report*, 114.

²¹⁹Letter to commission, November 27, 1916; quoted in *Boston Herald*, November 29, 1916. *Boston Herald*, January 13, 1917; Commission on Height of Buildings in the City of Boston, *Order ... Amending Boundaries* (City doc. 45, 1917).

While Bostonians were adjusting the controls they had invented twelve years earlier, public regulation of change in the urban environment was evolving into its mature form elsewhere. That form was comprehensive zoning, more-or-less as it is still practiced today, and its advent was a direct result of Boston's development of height districting under the police power.²²⁰

Elsewhere in the country, districting followed a separate line of development regulating buildings' uses rather than their forms. As early as the 1880s, California courts upheld ordinances regulating the location of potentially offensive land uses, not as in Chicago through frontage consents, nor as in Boston through a permit process, but by dividing cities into districts under the police power.²²¹ In 1908, Los Angeles made an important conceptual refinement to this technique by going beyond regulation of specific proscribed uses to instead designate "residential districts" encompassing most of the city's area, within which any non-residential uses would be allowed only through a special "exception" process. Los Angeles' action came after the Massachusetts high court upheld Boston's residential height districts in *Welch v. Swasey*, but before the U.S. Supreme Court heard the case.

Planning activists in eastern cities were beginning during this period to think about comprehensive systems of building regulations by district, which would bring together height, use, and lot coverage rules. Housing reformers, for example, did not want tenement laws based on slum conditions to determine the form of outlying development. Such concerns were especially strong in New York City, which in 1898 annexed the vast and mostly undeveloped areas of Brooklyn, Queens, and Staten Island; if Manhattan standards were applied to suburban areas within these new boroughs, they would be essentially unregulated. These reformers discovered the German model of building regulation known as the 'zone system,' in which concentric

²²⁰Massachusetts made an early attempt to generalize from Boston's innovation, a 1907 proposal (House doc. 416) which would have given all the state's cities and towns the same right as Boston to establish business and residential districts with different height limits. It failed in the legislature.

²²¹Weiss, *Community Builders*, 81; W. L. Pollard, 'Outline of the Law of Zoning in the United States,' *The Annals of the American Academy of Political and Social Science* 155, part 2 (1931): 19. The first of these ordinances regulated hand laundries, as a means of segregating the Chinese population, but the technique once upheld was applied to more legitimate land use concerns such as livery stables, slaughter houses, and saloons.

rings within each city were subject to different building height and area standards permitting progressively less intense use of land with increasing distance from the city center.²²² One of the zone system's popularizers was Benjamin C. Marsh, executive secretary of New York's private Committee on Congestion of Population, who together with other members of the committee organized in 1909 the first National Conference on City Planning.

The conference opened in Washington four days after the U.S. Supreme Court upheld *Welch v. Swasey*. The first speaker after the welcoming remarks was Henry Morgenthau, a New York real estate operator and chairman of the Committee on Congestion of Population, who devoted much of his talk to the possibilities of building districts. He was apparently under the impression that Boston's 'residence' and 'business' districts were prescriptive rather than descriptive, and announced that "it has been decided by the Supreme Court of the United States that it is within the police powers of a community to restrict the heights of buildings and confine the use of certain parts of a city to residences and of other parts to business purposes."²²³ Other speakers joined him in his call to bring the zone system to America.²²⁴

At the third national conference, two years later in Philadelphia, a Committee on Legal and Administrative Methods presented the first pieces of a proposed uniform code of city planning. Andrew Wright Crawford, Philadelphia's assistant city solicitor, explained that the committee omitted provisions for zoning of building uses because they could not yet find a consensus as to how it ought to work. "We do present an act, however," he went on, "looking to the districting of cities, so far as the height of buildings is concerned; an act that simply enables cities to follow the example of Boston."²²⁵

²²²Frederick Law Olmsted, Jr., 'The Scope and Results of City Planning in Europe,' in *City Planning*, Senate doc. 422, 61st Cong., 2d sess., 63-70; Toll, *Zoned American*, 123-25; Frank Backus Williams, 'The German Zone Building Regulations,' in Heights of Buildings Commission (New York), *Report* (New York, 1913), 94-119.

²²³Senate doc. 422, 61st Cong., 2d sess., 60. The U.S. Supreme Court in fact had not yet ruled on such broad use categories. F. B. Williams, *The Law of City Planning and Zoning* (1922), 288.

²²⁴Senate doc. 422, 61st Cong., 2d sess., 69; 72.

²²⁵Senate doc. 422, 61st Cong., 2d sess., 240.

Ernst Freund, foremost expert on the police power, and a German by birth, approved of this height districting measure but thought it fortunate that the committee was not trying to import the whole German zone system because, he said, "there is a fundamental difference between American cities and German cities."²²⁶ As an example he contrasted New York and Frankfurt, which in the past generation had grown by similar proportions:

In Frankfurt the business district is now exactly where it was; no neighborhood, no quarter of Frankfurt has changed its character - excepting of course the quarter that has been added to the city. New York, as you all know, has profoundly changed. Residence districts have first become business districts; and now they have become factory districts. ... Therefore, the districting power in Germany means that it simply registers conditions that are more or less permanent; in this country, it would mean that the city would impose a character upon a neighborhood which that neighborhood, in the course of time, would throw off.²²⁷

In the discussion following the sessions, conference participants rejected Freund's conclusion, arguing instead that "in a country of rapid changes in the use of property there was all the more need for control."²²⁸

Massachusetts was the first state to act in the spirit of this movement. The legislature in 1912 established indirectly the possibility for zoning Massachusetts cities and towns other than Boston, through an amendment to the fire code act which for forty years had allowed cities to delineate fire limits and regulate construction within them. The amendment added public health and morals to the permissible regulatory purposes, and building heights and uses to the permissible regulations, making them in theory as versatile as the German system. The suburb of Lexington tried to use the law to effectively exclude all manufacturing from the town, but the Supreme Judicial Court ruled that this exceeded even the broad authority granted under the act.²²⁹ If any other municipalities took advantage of the 1912 statute, their actions were not publicized and did not find their way into the courts; Massachusetts provided neither the legal nor the

²²⁶Senate doc. 422, 61st Cong., 2d sess., 245.

²²⁷Senate doc. 422, 61st Cong., 2d sess., 245.

²²⁸Senate doc. 422, 61st Cong., 2d sess., 258.

²²⁹Heights of Buildings Commission (New York), *Report*, 39; *Massachusetts Acts & Resolves*, 1912, Acts ch. 334; *Kilgour v. Gratto*, 224 Mass. 78 (1916).

practical precedent the zoning movement needed.²³⁰ Several states and cities across the country passed versions of districting in 1913, including one which applied to New York state's smaller cities, but all of these involved use regulations alone.²³¹

The movement's national precedent came, much more conspicuously and with greater deliberation, in New York City's formulation and adoption of a comprehensive zoning ordinance. New York's zoning resulted in large part from an unusual quest for environmental stability, a crusade by the Fifth Avenue Association to fix in place once and for all the fashionable retail district. It had been migrating northward at the rate of twenty blocks each generation, advancing by displacing the homes of the wealthy, and being chased from behind by the garment industry, which sought proximity to its retail customers. The association sought to thwart not commercialization but industrialization; the high-class shopping district had itself become a valued and threatened icon. The industry's looming loft buildings shaded sidewalks, and its immigrant workforce crowded them, both of which disrupted what one association representative called the "sensitive and delicate organism" of a luxury retail street.²³² Merchants had already begun the next uptown march, to the forties and fifties, but many feared that this was only the beginning of another self-defeating cycle. Like the Back Bay's residents and Copley Square's institutional directors, they resolved to stand their ground and fight, and they found that their Boston predecessors had provided a weapon for them. The Fifth Avenue Association lobbied hard for a height district there in which buildings would be restricted to 125 feet, which merchants hoped would make further construction of manufacturing lofts uneconomical.²³³

New Yorkers had struggled for decades with the need to regulate buildings which rose much taller than those in Boston, creating development expectations that made impractical a citywide ceiling like Boston's original 125-foot limit. The Supreme Court's affirmation of the A and B districts in *Welch v. Swasey* offered wide latitude

²³⁰For example, Lawrence Veiller, 'Protecting Residential Districts,' *Proceedings of the Sixth National Conference on City Planning, Toronto, May 25-27, 1914* (Boston, 1914), 92-111, makes no mention of Massachusetts in an otherwise exhaustive survey.

²³¹Heights of Buildings Commission (New York), *Report*, 38-42.

²³²Heights of Buildings Commission (New York), *Report*, 269; Toll, *Zoned American*, 93-116, 158-59.

in using the police power, and made a more complicated set of regulations seem possible for the more complicated conditions in New York. In 1913 the city set up a commission to consider regulating the "height, size, and arrangement" of buildings - their uses were not yet part of the formula - by dividing the city into "zones."²³⁴ These New York City commissioners took the unusual step of holding a public hearing in Boston, and on the steamboat which brought them back home they discussed what they had heard about that city's experience with height districts and concluded, as commission vice chairman Lawson Purdy recalled, that this was indeed "the answer" for New York.²³⁵ When they later decided that district regulations ought to encompass not only buildings' forms but also their functions, they laid the groundwork for the first American comprehensive zoning ordinance, which would dictate with great specificity the height, use, shape, and siting of buildings throughout the city.²³⁶

The commission endorsed the proposed Fifth Avenue height limits, with the further recommendation that the area also be put off limits to manufacturing uses, because "[t]he preservation of that thoroughfare as a high-class shopping center is essential to the business prosperity of the entire city."²³⁷ As Seymour Toll points out in his history of New York's zoning, the Fifth Avenue Association was not quite the defender of tradition that it made itself out to be.

The fact is that the drive to get law onto Fifth Avenue was really not a struggle to preserve a tradition at all. ... The retailer and many of the landowners were only the latest of Johnnies-come-lately. The struggle was actually about getting some kind of public control under which an urban tradition - this one happened to be the elegant shopping boulevard - might now begin with some assurance that it could continue.²³⁸

After the commission presented its recommendations, debate in New York tipped decisively in favor of zoning because of a single extraordinary structure then under

²³³Toll, *Zoned American*, 146.

²³⁴Heights of Buildings Commission (New York), *Report*, 1.

²³⁵Lawson Purdy, quoted in Toll, *Zoned American*, 167.

²³⁶Heights of Buildings Commission (New York), *Report*, 71-75.

²³⁷Heights of Buildings Commission (New York), *Report*, 72, 51-53.

²³⁸Toll, *Zoned American*, 159-60.

construction. This was the new Equitable Building, the largest office building in the world, filling an entire block of lower Broadway straight up from the sidewalk to the height of 496 feet. Commercial tenants nearby, most of them on the short leases then customary, fled its shadow after it was completed in 1915, and eventually the city had to reduce real estate assessments for four blocks northward.²³⁹ This was an eloquent demonstration of real estate's financial reliance on environmental stability, and a powerful concrete argument for public regulation to achieve it. On July 25, 1916, New York City enacted its zoning ordinance.²⁴⁰

Zoning spread rapidly to other cities throughout the United States. It was generally supported by the larger and more established developers, brokers, and investors in each place, who increasingly valued stability of investment over potential speculative gain.

Zoning could promote stability at two different scales. First, at the small scale of individual neighborhoods it protected individual lot owners from inharmonious structures or uses nearby. Zoning was the culmination of the search for public controls to make up for the shortcomings of private deed restrictions, stabilizing neighborhoods by protecting them from encroachments. Duncan McDuffie, the largest developer in northern California, advocated a zoning ordinance for his hometown of Berkeley because it would "give property outside of restricted sections that protection now enjoyed by a few districts alone and will prevent deterioration and assist in stabilizing values."²⁴¹ McDuffie used deed restrictions in his own subdivisions, and zoning could extend similar controls to adjacent land he did not own.²⁴² The commission drawing New York's zone boundaries was besieged by requests from homeowners who wanted their property included in the most restrictive district so that it would remain protected after deed covenants expired.²⁴³ George B. Ford, who headed the New York

²³⁹Paul Goldberger, *The Skyscraper* (New York, 1981), 13; Heights of Buildings Commission (New York), *Report*, 64; Stephen Zoll, 'King Kong in New York,' *Space & Society* 18 (1982): 16.

²⁴⁰Toll, *Zoned American*, 180.

²⁴¹Quoted in Weiss, 'Berkeley,' 13; Toll, *Zoned American*, 196-97.

²⁴²Weiss, 'Berkeley,' 16.

²⁴³Edward M. Bassett, discussion of Veiller, 'Districting by Municipal Regulation,' 162.

commission's staff, believed that "about two thirds of the whole city has been set aside for all time for strictly residential use."²⁴⁴

Second, at the scale of the entire city zoning could protect investment from decline due to unpredictable shifts in urban structure. It would accomplish this by freezing the character of districts, an imposition of will on the city which Freund felt could not work in America, and for which his audience so yearned. This anti-speculative function of zoning was in fact less evident in Boston, where conservative real estate trustees kept much of the business development to a small downtown area, than in places with a more speculative real estate tradition, such as New York and Los Angeles. The uptown march which once symbolized progress to New Yorkers, especially those with any interest in real estate, became a problem when significant numbers of people found themselves losing money on it. Los Angeles' downtown real estate community used zoning in an unsuccessful fight against the decentralization of business onto Wilshire Boulevard.²⁴⁵

The year after New York passed its zoning ordinance, a Massachusetts constitutional convention proposed what would become the first state constitutional amendment for zoning. Before the New York ordinance, many reformers had assumed such amendments would be necessary to put zoning into effect, and other states, including New York, considered such action to resolve doubts about this expansion of the police power. In view of Massachusetts courts' friendliness to the police power, an amendment there was perhaps an excess of caution, but no court had yet affirmed the 1912 zoning statute, lawyers were skeptical that California precedents would carry much weight in the east, and the convention already in session was a one-time opportunity.²⁴⁶ Voters in 1918 passed the amendment by a nearly 2 to 1 margin statewide and by an even larger margin in Boston, at the same election in which they approved Appleton's preservation amendment and several other environmental

²⁴⁴Discussion of Veiller, 'Districting by Municipal Regulation,' 165.

²⁴⁵Robert M. Fogelson, *The Fragmented Metropolis: Los Angeles 1850-1930* (Cambridge, Mass., 1967), 261-62. Duncan McDuffie argued for zoning in Berkeley to "protect the business districts of the city against the competition created by scattering stores through residence districts" (quoted in Weiss, 'Berkeley,' 13).

²⁴⁶Toll, *Zoned American*, 173; Lawrence Veiller, 'Districting by Municipal Regulation,' 153.

measures. The legislature took more interest in zoning than it did in Appleton's cause, and in 1920 passed a zoning enabling act.²⁴⁷ During the next three and a half years, a dozen Massachusetts cities and towns adopted zoning ordinances.²⁴⁸

Both Boston and Los Angeles, having pioneered early districting measures, were slow to adopt comprehensive zoning, feeling less urgency than in cities where development was completely unregulated. The Boston City Planning Board had been asking for zoning since 1915, but did not begin to get it until 1922, when Mayor Curley appointed representatives of various constituencies to a zoning advisory commission which was to work with the board in preparing a zoning ordinance. The project was directed by Arthur C. Comey, working with consultant Edward M. Bassett, the lawyer who had prepared New York's ordinance. The planning board decided to submit Boston's zoning to the legislature because it was not clear, even with the zoning enabling act, that a city ordinance could supersede the legislature's many special enactments on building construction and heights for Boston. The city's bill passed and took effect on June 5, 1924.²⁴⁹

There was a direct relationship between Boston's various districting regulations and the explicitly preservationist causes which had first brought them into being, but the relationship gradually grew weaker over the years. Preservationists supported the A and B height districts. Of fifteen "distinguished gentlemen" cited in City Council debate as backers of the 1904 measure, at least nine had been publicly involved in one or more

²⁴⁷Frederic H. Fay, 'The Planning of a City,' in Herlihy, ed., *Fifty Years of Boston* (Boston, 1932), 50; Massachusetts constitution, amendments, article 60: "The general court [the legislature] shall have power to limit buildings according to their use or construction to specified districts of cities or towns." The amendment's brevity proved problematic, as it made no provision for the legislature to delegate this power to cities and towns. Action in the 1919 session was stymied by the attorney general's insistence that such delegation would be unconstitutional (*Opinions of the Attorney General* 5 [1917-20]: 362-65), but the Supreme Judicial Court contradicted him in an advisory opinion (*Opinion of the Justices*, 234 Mass. 597 [1920]), so the measure was enacted the following year: *Massachusetts Acts and Resolves*, 1920, Acts ch. 601, "An Act to authorize cities and towns to limit buildings according to their use or construction to specified districts."

²⁴⁸Boston City Planning Board, 'Growth of the Zoning Movement,' January 15, 1924 (typescript at Loeb Library, Harvard), 4.

²⁴⁹Boston City Planning Board, *Zoning for Boston: A Survey and a Comprehensive Plan* (Boston, 1924), 9-10; *Massachusetts Acts and Resolves*, 1924, Acts ch. 488.

preservationist campaigns, including those to protect the Old South Church, the Bulfinch State House, Park Street Church, the Paul Revere House, and the Common. Of the 84 petitioners to repeal the districts the following year, only one had joined in any of those causes, while four had remonstrated to the legislature against assisting the Old South effort. Twenty years later, while the creation of Boston's zoning was in no sense dominated by preservation activists, a representative of the the Beacon Hill Association appeared before the legislature to support the bill.²⁵⁰

The relationship between zoning and preservation was acknowledged not only by preservationists but by planners as well. While zoning in many cities benefitted outlying areas of suburban character while providing little or no protection to old residential areas near the city center, Boston's zoning did protect many close-in neighborhoods, and did so with an explicitly preservationist rationale. "A direct benefit of zoning," said the planning board as it explained the new zoning law, "which is perhaps of more value in Boston than in any other city in the United States, will be the protection and preservation of old historical buildings and sites," such as the "famous Beacon Hill district."²⁵¹

Neighborhood preservation efforts soon did their work through zoning. Significant new development now required zone changes, and the Beacon Hill Association set up a 'Zoning Defence Committee' to fight them, led by restoration architect Frank A. Bourne and realtor William Coombs Codman. They went beyond defense to initiate zone changes which would reduce allowable density and, they hoped, prevent further apartment construction on the hill.²⁵² In the Back Bay, the future form of which was a less settled issue, development proposals also became zoning controversies. Beacon Hill activists joined Back Bay residents in fighting them, both to protect the hill's views across the Public Garden and to help a neighborhood which they saw as being in the same position as their own had been a generation earlier. They lost significant battles in

²⁵⁰*Boston City Council Minutes*, 1904, 113 (March 24); Boston City Planning Board, *Zoning for Boston*, 29.

²⁵¹Boston City Planning Board, *Zoning for Boston*, 34.

²⁵²*Boston Herald*, October 2, 1926; Beacon Hill Association, Zoning Defence Committee, *The Menace to Beacon Hill* (Boston, 1927); *Boston Herald*, June 22, June 29, 1929; *Boston Evening Transcript*, March 8, 1933; *Boston Herald*, April 7, 1933.

the Back Bay, such as a zone change which allowed the 190-foot Ritz-Carlton Hotel on Arlington Street, so that zoning came to seem a threat from which they needed defense, as well as a means of defense from other threats.²⁵³

If zoning was about environmental stability, could it be written in a way which would make it explicitly a tool for historic preservation? Historic district zoning was the natural synthesis of all the branches of the search for environmental permanence, combining development controls, which had evolved into zoning, and preservation which had evolved toward area restoration. This synthesis appeared first not in Boston but in southern cities.

Even as Boston was adopting its conventional zoning in 1924, New Orleans was preparing an historic district preservation measure, although it was not enacted until after a state constitutional amendment passed in 1936.²⁵⁴ Charleston, South Carolina, enacted the first American historic district zoning ordinance in 1931. Within the officially mapped 'Old and Historic Charleston' district, no exterior alterations could be carried out until a Board of Architectural Review granted a 'certificate of appropriateness.'²⁵⁵ Boston eventually became the first northern city to enact historic district zoning, for Beacon Hill, but did not do so until 1955, two decades after these southern pioneers and after a number of other southern cities had followed their example.²⁵⁶

²⁵³'Zoning, Autos, and Subways,' W. C. Codman letter to the editor, *Boston Evening Transcript*, n.d. (clipping in W. C. Codman papers, SPNEA); *Boston Herald*, October 30, 1926.

²⁵⁴There is some confusion in the record about what New Orleans actually did in the mid-1920s. Jacob H. Morrison, the nation's foremost authority on preservation law and a New Orleans resident, wrote that the city passed an historic district ordinance in 1924 "[b]ut it was never put into effect" (*Historic Preservation Law*, 17, n. 11). Charles Hosmer in his first history of preservation wrote that New Orleans architects in 1926 and 1927 worked on "the first effort to create a municipal historic preservation law in the United States" (*Presence of the Past*, 205), but in the sequel to that work he said they "evidently failed. There is no evidence that any ordinance actually came up for consideration at this time." (*Preservation Comes of Age* 1:294). However, he cites "a weak law in New Orleans," extant in 1929, as the sole precedent for Charleston's historic district zoning (1:239).

²⁵⁵Hosmer, *Preservation Comes of Age* 1:240.

²⁵⁶Morrison, *Historic Preservation Law*, 12-14. The historic district campaign on Beacon Hill was led by John Codman (Jacobs, 'Architectural Preservation in the United States,' 328), son and business successor of William Coombs Codman ('Retires as Head of Firm of W. C. Codman & Sons,' October 1, 1932 clipping in W. C. Codman papers, SPNEA).

Why did southern cities arrive first at this synthesis of preservation and zoning, when both movements had been active so much longer in Boston? This paradox holds its own explanation, for longer experience with these movements made northerners first of all less likely to think it possible for zoning to encompass preservation, and second, less likely to think it necessary or even desirable. Northern cities' practice of planning and zoning had already produced a mobile corps of smart lawyers and sophisticated consultants sensitive to legal nuances. They were concerned, especially before the U.S. Supreme Court in 1924 upheld a zoning ordinance in *Euclid v. Ambler*, about dubious regulations which might bring down their whole constitutional house of cards. They thought of preservation as a special case of aesthetic control, and cited *Welch v. Swasey* as authority that aesthetics alone would not support use of the police power.²⁵⁷

Southerners were less aware of legal precedent and ordinary practice - Charleston mayor Thomas P. Stoney cheerfully acknowledged himself "incompetent to judge how a city should be zoned" - and their comparative inexperience left them free to improvise.²⁵⁸ Charleston still had no zoning in 1929, as its citizens were becoming concerned about business incursions into the city's historic Battery district. The preservation impulse preceded organized city planning there, and citizens assumed that planning and zoning must be available to gratify it. Mayor Stoney created a temporary City Planning and Zoning Commission of city officials, charged with reviewing applications for commercial construction. When the commission refused permission for a proposed gas station in the old part of Charleston, the city was impelled to create a legal framework that would legitimize an action already taken on its behalf. For years afterwards, Charleston emphasized persuasion and compromise in order to keep its historic district decisions out of court and instead, apparently assuming that any test case was likely to overturn it.²⁵⁹

²⁵⁷Morrison, *Historic Preservation Law*, 21. The main branch of aesthetic control, around which most litigation centered, was billboard regulation.

²⁵⁸Quoted in Hosmer, *Preservation Comes of Age*, 1:239.

²⁵⁹Hosmer, *Preservation Comes of Age*, 1:241.

While experience with zoning made northerners less apt to think historic districts possible, experience with preservation made Bostonians in particular less likely to think them necessary. Hosmer attributes their origins in the south to the recognition that cities there could not afford to save whole urban landscapes piecemeal. But Boston had already done just that. It had saved its Common and Bulfinch State House, kept both from being overwhelmed by skyscrapers, and held a large and moneyed enough elite that all of fashionable Beacon Hill could be restored and even expanded. Surrounded by such successes, Bostonians saw no need for radical measures, and the politics of a northern city made municipal control over matters of architectural taste seem more radical there than in the south.

If preservation's means came more easily in Boston, preservation seemed more important as an end in southern cities. Not only did people look more longingly to the past in the former Confederacy than elsewhere, but historic ambiance in the present took on an economic importance there, through tourism,²⁶⁰ which it could not have in big northern cities whose historic fabric was threatened by intensive development which was clearly of great economic importance itself.

New England preservationists' most striking contrast with their southern counterparts was their inability to grasp even the abstract desirability of historic zoning. When Charleston was first considering how to protect the Battery district, preservationist Samuel G. Stoney wrote to William Sumner Appleton for advice: "Has any attempt been made in New England communities to regulate such affairs through municipal government?"²⁶¹ "As I understand it you are not asking for any advice concerning the preservation of any particular house," replied the puzzled Appleton in a long letter which evidently meant to be helpful but nowhere touched upon Stoney's question.²⁶² Why did public regulation so elude Appleton's understanding? First of all, he was blinded by a conservative aversion to the use of government powers, compounded by mistrust of government personnel such as the legislators whose inaction left his

²⁶⁰Morrison, *Historic Preservation Law*, 39, 41-42.

²⁶¹Stoney to Appleton, March 21, 1929, in Microfiche correspondence archive, SPNEA; Hosmer, *Preservation Comes of Age*, 1:237.

²⁶²Appleton to Stoney, March 26, 1929, 2, Microfiche correspondence archive, SPNEA

contitutional amendment inoperative. Appleton was even more conservative about property rights than were the many property owners and investors who were embracing public regulation, because his conservatism was defined by principle while theirs stemmed from the more flexible calculus of self-interest. Appleton had no faith in any preservation technique except ownership by an organized society, preferably his own. He expressed skepticism about the idea of private restoration and resale, even though it had been working in Boston for a generation and in Charleston for at least a decade.²⁶³

Second, and more important for the schism it opened between preservation and planning, was Appleton's archaeological and art historical definition of the field. He saw houses as antiques. He was more interested in small than in big things, a view that by the 1920s helped uncouple preservation's tentative link with the parks movement, which itself had changed emphasis to focus on playgrounds and active recreation rather than saving landscapes. Appleton considered neighborhood restoration a local issue, a distraction from his regional view. As professional preservationists gained the academic perspective to evaluate individual historic structures more or less objectively, they lost some of the resident amateur's ability to see them subjectively together, 'tout ensemble,' as New Orleans preservationists put it. Appleton's consistency and comprehensiveness were essential for developing the systematic preservationism that would make historic districts permissible under the police power, but the motivation for attempting them was the earlier subjective appreciation which had saved so much of the center of Boston. These two branches of the preservation movement had separated and not yet come back together.

A few Bostonians did make the arguments which would later form the basis for landmark regulation. They had argued that Park Street Church, and the Old South before it, belonged to the public. Their proprietors were in preservationist eyes trustees, just as the city of Boston was in holding the Common for the people. Similarly, owners of property on Commonwealth Avenue, in Copley Square, and around the Bulfinch State House had responsibilities toward the urban ensemble from which their land took much of its value. Preservationists articulated an ideal of private stewardship in which

²⁶³Appleton to Stoney, April 4, 1929, Microfiche correspondence archive, SPNEA.

restrictions on each of these places would meet the police power test of reasonableness because it was unreasonable to build for selfish gain at the expense of community icons. Such views did not seem radical when they were first urged in the 1880s and 1890s; their most forceful proponents included a city council president, a mayor, a state attorney general, a justice of the Supreme Judicial Court, and some of the city's biggest property owners. By the end of the first world war, these ideas were in the mainstream of discussion about city planning, but they were no longer in the mainstream of preservationism as it was being led by Appleton and peopled by genealogical and patriotic zealots. The philosophy and personnel of the preservation movement had undergone a shift which kept it from coalescing during this period around some consensus for public action, even as action was becoming possible.

Preservationism grew increasingly irrelevant to Boston's urban landscape. Brahmins' nineteenth-century involvement in civic affairs waned as the city government was increasingly taken over by the kind of machine politics which had existed for decades in other big cities. As the old aristocracy became less effective, it also became less interested in the public environment, retreating to safely Anglo-Saxon suburbs or to constricted orbits within the city. Preservationists continued defending the landmarks they had already saved, but they took few new initiatives; their purview had continually expanded from the 1870s to the 'teens, but now for a generation or so they paused and consolidated.

By the early twentieth century, the search for permanence produced a rapidly expanding set of tools for public control of environmental change. They were powerful tools which completely reformed the way urban development worked. Their very power left them to be explored, shaped, and expanded by people who, unlike Boston's Brahmins, were still willing to wade into the public arena. Some were reformers motivated by altruism, others such as the real estate industry were motivated by self-interest; few were necessarily concerned with environmental permanence.

Conclusion

By the 1920s, environmental change had come under control to a degree nearly unimaginable in America fifty years before, and, equally surprising, this had been accomplished largely by public rather than private methods.

The three strands of efforts to control environmental change began from a single source, and they led to a single destination, though they followed different routes getting there. Their origin was a widespread and largely undifferentiated rejection of the culture of change in the urban environment. As Americans searched for an alternative environmental culture, specific concerns elicited specific responses. To build for permanency in new parts of the city, they invented the private planning mechanism of deed restrictions. For valued places which seemed permanent but in fact had no guarantees of survival, they formulated a range of preservationist tactics. As these techniques were explored, their shortcomings led people to a third class of efforts: public controls on environmental change. At first a bewildering variety of them, often quite specific, resolved particular situations in particular places. Eventually they matured into zoning, a single, systematic and nearly all-encompassing form of regulation which asserted public control over most significant physical change in the city.

Zoning absorbed both the rudimentary public height and use regulations which had preceded it, and also much of the tradition of private planning through deed restrictions, which lay behind the early public controls. As we have seen, most simple land use controls were applied with complex ends in mind, such as the attempts to use front-

yard setbacks to thwart conversion of residential avenues to shopping streets. Comprehensive zoning addressed such issues more directly, and better matched their complexity. Zoning itself grew more complicated as planners' understanding grew more sophisticated, and as expectations rose about what it could accomplish. Deed restrictions continued to be used for many purposes, but their main original aims were answered by zoning, and at least a few observers thought at first that zoning would render them entirely obsolete.

Zoning and city planning also absorbed much of the broad and eclectic preservation movement which C. R. Ashbee had found on his visit to America at the turn of the century, the ad hoc campaigns by which Bostonians had defended increasingly large pieces of the city center, until they defined whole districts as historic fabric and took steps to keep it in place. William Sumner Appleton and SPNEA, concerned not with large-scale environments at all but with a limited and scattered set of ancient houses, foreordained the split in which purist preservationists would fail to be integrated into this movement which subsumed the other two branches of search for permanence. They also helped accomplish the split, by driving people with those broader concerns elsewhere: the preservationist movement as it was first becoming institutionalized did so in a constricted manner, just as the city planning movement, also newly organizing, was expanding the purview of its engineering and landscape architecture forebears to encompass all aspects of the urban environment.

If zoning was the single culmination of these various campaigns, then historic district regulation was an integral part of it. Charleston's naive view of zoning was a natural view, as it was fundamentally about controlling change, and historic districts were the places where such control was most essential. From this perspective, northern preservationism heading off on its own was a departure from first principles, and the nationwide spread of historic district zoning, which finally took place in the 1950s and '60s, was not the innovation it has usually been seen as, but rather a belated family reunion.

In the process of subjecting environmental change to conscious communal will, the ideal of permanence which motivated people at first had lost much of its appeal, and

had been replaced by the more modest and pragmatic ideals of stability and control. In two generations, Americans in their cities had moved from celebration of change, first to an ideal of permanence, and then to a reality of controlled change.

Permanence had been attractive because it was the opposite of change; once change began to seem controllable, it ceased to be so frightening. By the 'teens, the permanence of Boston's urban form seemed alarming rather than reassuring. When Bostonians first set out to pursue this goal in the 1870s and '80s, the same environmental changes which made people yearn for stability also provided evidence of the city's vitality - the enormous Back Bay landmaking, the annexations which multiplied the city's area. A generation later, however, Bostonians could read many signs giving opposite indications. They were acutely aware of their cramped little business district; they lacked a modern skyline because of their own building height restrictions; surface congestion continually worsened around the sacrosanct Common, where almost every street improvement scheme in fifty years had come to nothing; and though the metropolitan area was still growing apace, it did so in suburban towns which the city was utterly unable to annex. By the 'teens Boston's stability looked like stagnation, and this made change, if properly channelled, look more attractive than permanence.

The principal of permanence was largely abandoned by the 1920s. City planners concerned themselves with controlling rather than preventing change. Modernist architects promulgated a new incarnation of the idea that old is corrupt. Even most preservationists agreed, when the 'old' in question was the late Victorian excess which surrounded them and which had erased so much of what they revered, and so these preservationists could accept radical change so long as it respected the few islands they valued.

Within their own sphere, too, preservationists had moved beyond the simple notion of permanence. Appleton indeed wanted his houses to last forever, but he understood that permanence was not a status to which a building could simply be elevated; it was a result which had to be accomplished. Appleton wanted permanence, so he worked for control.

Even if physical permanence were possible, shifting ideas could make it as undesirable in preservation as in other physical aspects of the city. Preservationists have become Ruskinians through the sobering experience of re-restoring earlier restorations; the depredations of time have often been more kind to their physical materials than to their scholarly basis. Whitmore's work on the Old State House had been repudiated even in his lifetime, without detracting from his credit for defending it. Restoration architects have come to embrace reversibility as a first principal governing their actions; in effect preservationists value control over permanence.

The steps beyond permanence to control have been recognized by an increasingly sophisticated movement, in James Marston Fitch's definition of preservation as "curatorial management" of the environment, an ongoing activity rather than a discrete act of salvation. Even if it were possible to freeze time at a particular moment, as some early restorers set out to do, the result smelled of embalming and was hardly satisfactory to people who had learned to appreciate the continuity of living historic neighborhoods. In the urban environment, such an approach leads preservationists to managing rather than blindly resisting change; this philosophy together with their ever-expanding purview has once again removed the barriers between preservation and planning.¹

Area restoration is the most far-reaching example of preservation as a process of managing rather than resisting change. The idea that change could be good, could return things to a desirable prior state, not only at the scale of a restored building but at the larger urban scale, was tremendously powerful, and greatly expanded the fraction of the environment with which preservationists might concern themselves. It was more potent still in its effects on planning in general. Edward M. Bassett, reflecting in the mid-1920s about New York's experience with zoning, noted that "*No blighted districts have begun in this city since the zoning was established*, but on the contrary, some that had begun have been redeemed."² Real estate theory, lagging behind practice once again as it had with deed restrictions, debated during the 1930s and 1940s whether it

¹See Eugenie Birch and Douglas Roby, 'The Planner and the Preservationist: An Uneasy Alliance,' *Journal of the American Planning Association* 50 (1984): 194.

²Edward M. Bassett, quoted in Toll, *Zoned American*, 193. Italics original.

was really possible for neighborhoods to improve without being physically reconstructed, whether all the ones that had been doing it for forty years were somehow special cases to be disregarded.

Control of change does not necessarily lead to stability; in the mid-nineteenth century, abuse of the limited controls then in existence was one of the irritants which led people to question the culture of change. Human nature had not changed since then, and the increased powers over the physical environment were explored by all kinds of people, many with greed in their eyes and some with larceny in their hearts.³ Speculation depends on anticipating change, and any expansion of controls on change offered expanded speculative possibilities.

The simplest speculative subversion of zoning was 'overzoning,' the classification of far more land in intense use categories than the market was likely to allocate for them, so that a zoning ordinance served not as a limitation on development, but as boosterism for opportunists.⁴ Marc Weiss, in *The Rise of the Community Builders*, chronicles Los Angeles' adoption of zoning and the real estate industry's adaptive response in which "the 'rabid speculator' who at first balked at zoning soon found it to be a very congenial ally ... zoning became the ultimate promotional device, a form of government-subsidized free advertising."⁵ William B. Munroe, a contemporary expert on municipal administration, observed that "the signs went up on vacant lots: 'Zoned for business,' or 'Zoned for apartments,' with the definite implication that such action on the part of the public authorities had resulted in giving the property a higher and more assured value than it would otherwise have."⁶

Other manipulations of zoning could also enrich speculators at the expense of environmental stability. Zone changes, variances, and exceptions, intended as

³Toll, *Zoned American*, 207-210.

⁴Weiss, *Community Builders*, 96-105; Toll, *Zoned American*, 206-07.

⁵Weiss, *Community Builders*, 98-99. Quote refers to Huber Smutz, Los Angeles Zoning Administrator (re 1921 zoning revision): "It was either a proposition of zoning the rabid speculator's property for the purpose for which he was holding it or having no zoning at all and hence no protection for residential districts."

⁶William B. Munroe, 'A Danger Spot in the Zoning Movement,' *Annals of the American Academy of Political and Social Science* 155, part 2 (1931), 203.

refinements of public control, could also become methods of achieving publicly-enforced land-use monopolies. "Unlike deed restrictions," notes Weiss, zoning offered additional opportunities for speculation because "zoning classifications and regulations could easily be changed by a majority vote of the City Council. Real estate values could therefore be manipulated by acquiring property with one zoning designation and having it changed to another, or by selling property with the implied promise that its current zoning designation could be changed."⁷ These practices pointed to one advantage of deed restrictions over public controls - within the limits of their specific provisions and durations, deed restrictions provided reliable if cumbersome protection, with enforcement in the hands of the aggrieved neighbors. Zoning provided more flexible control, but the flexibility was in the hands of municipal officials, who might or might not respond to neighborhood concerns. Subdividers continued imposing restrictions, both to control matters that were beyond the reach of the police power, such as architectural style, minimum cost - and the race of occupants - and to provide long-term buttressing of neighborhood character independent of municipal caprice.⁸

Planners campaigned against these perversions of zoning. Overzoning, they argued, kept supply out of balance with demand in the land market, thus contributing to rather than relieving uncertainty in urban development. Many of zoning's original advocates were unpleasantly surprised by the frequency and deviousness with which the variance, exception, and zone change mechanisms were used. They had conceived these as escape valves to be used for making infrequent adjustments in keeping with the original spirit of districts, or for recognizing substantially changed conditions. Instead they swiftly became the most frequently invoked portions of zoning ordinances, used not to carry out but to undermine their original intentions.⁹

⁷Weiss, *Community Builders*, 99; Weiss, 'The Real Estate Industry and the Politics of Zoning in San Francisco, 1914-1928,' *Planning Perspectives* 3 (1988); Toll, *Zoned American*, 207-210.

⁸See Lawrence Veiller, 'Districting by Municipal Regulation,' 156.

⁹Weiss, *Community Builders*, 102; Fogelson, *Fragmented Metropolis*, 255-57, 261-62. Boston's experience was less disturbing. From the organization of the Board of Zoning Adjustment in 1924, through the end of 1930, 64 petitions for zone changes were granted out of 219 applications (Fay, 'The Planning of a City,' 52-53).

But plannerly dismay at these phenomena missed the essential difference from old ways: the context for speculation now was a public policy of control over environmental change. By its very existence, zoning indicates a presumption in favor of stability, continuity, and preservation. And, while public regulation might in practice be ineffective in preventing change, since zoning supplemented rather than supplanted deed restrictions, if it offered any protection at all it was protection in addition to the private methods which remained available.

One conclusion we can easily reach about Americans' turn-of-the century search for permanence in the urban environment is that it worked. Metropolitan Boston has changed as much in the sixty years since 1930 as it did in the sixty years preceding. Yet almost all of the icons which those Bostonians set out to save remain saved.

The center of the city has been remade almost completely, but it has been remade around its landmarks, all of the ones identified by nineteenth-century preservationists, and many more which have been added to the list. The Old South Church, the Old State House, Faneuil Hall, Paul Revere's House - all remain, and now make up parts of the Boston National Historical Park. The Bulfinch State House, Park Street and St. Paul's churches, and the Athenaeum all stand in their familiar places, still put to their original uses. The street numbers on the Granary and King's Chapel burial grounds remain unused.

The structures and places newly built for permanence have mostly achieved it, by all indications so far. At Copley Square, Richardson's Trinity Church faces McKim's Public Library; each has surely achieved its intended immortality.

Neighborhoods built for permanence, and neighborhoods resolutely defended, mostly retain their intended qualities after a century. In the 1870s there was no urban residential district in the country of which that could be said. But today Beacon Hill west of the state house remains almost exactly as it was, and the apartments which first provoked height restrictions there remain the tallest buildings on its Beacon Street skyline. The Back Bay, too, is now an historic district, and most of the buildings which survived the 1920s have lasted to the present. Olmsted's deed-restricted

Brookline subdivisions, and many others of their type, remain among the most attractive and prized residential locations in the Boston area, and the same story can be found in cities around the United States, at Llewellyn Park outside New York, Roland Park in Baltimore, and Shaker Heights outside Cleveland, where the century-long restrictions are still in force. These neighborhoods, designed for permanence, have in fact been the places where American city-dwellers stood their ground and most closely achieved it.

The Common remains, as do fights about it. In the 1960s Bostonians again argued over the sanctity of the space beneath it, as they decided to put a parking garage there; in the 1980s they even replayed the subway imbroglios, as they expanded Park Street station and fretted over its effect on the trees. Boston's Common, like New York's Central Park, will remain fertile ground for controversy because each in its respective city is the litmus test for commitment to environmental permanence; they are the screens on which people project their images of stability.

The triumph over the culture of change has not been limited to conspicuous symbolic locations, but has permeated the way we make and re-make cities. Even at the growing edges of metropolitan areas, we seldom find anything quite like the wide-open frontier of nineteenth-century suburbs, with their miles of paper streets outlining neighborhoods which might become mansions, or tenements, or factories, or all three. Instead, even where change is admitted to be inevitable, it is usually tightly confined by as-of-right zoning, and where developers wish to depart from these marked channels their neighbors look to government with every expectation that it will protect them from unwanted surprises. For every exception to the pattern - Urban Renewal and its modern-day Poletown equivalents, organized sell-outs in which neighborhoods use their zoning to profit from land use conversion - there are many more examples of no-growth opposition to all change, a contemporary quest for permanence. These modern anti-development constituencies want to keep it the way it was, the same rallying cry as a hundred years ago, but applied now to a far more encompassing environment than any nineteenth-century obstructionist would ever have dared.

We face the same issues of change, permanence, and control, and we debate them in terms that were at least sketched out then. We fight many of the same battles, often with weapons forged then. We have created some new ones of our own - police-power regulations applied to individual historic landmarks; growth controls which in some cases directly regulate not only the substance but the rate of change. But most of what we do in regulating ordinary development today would have been understandable to anyone familiar with the development world of the 1920s, while that world would have been largely incomprehensible to a developer from fifty years earlier. Everything that we have added since then has been refinement on a basic premise first agreed upon by that generation: change in the urban environment is not an unalloyed good but rather a necessary evil, and it is the public's right and responsibility to control it.

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Biographical note

Michael Holleran graduated from Brown University in 1979 with an independent concentration in Human Environment. He earned his M. C. P. from M. I. T. in 1985. He has practised as a planning consultant in Providence, and has taught urban history and planning in the Architecture division of the Rhode Island School of Design since 1988. In fall 1991 he will join the faculty of the University of Colorado at Denver as Assistant Professor of Urban and Regional Planning. He is married with two children.