

REBUILDING NEW ORLEANS: WHAT LAW CAN LEARN FROM NEW URBANISM, KOBE, JAPAN ... AND ITSELF ...

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No big city in American history has suffered damage as widespread as that which New Orleans has experienced in the wake of hurricane Katrina. The rebuilding effort is inherently complicated by the fact that New Orleans' housing stock was one of the nation's oldest, poorest, and weakly insured before the disaster (and included thousands of abandoned units). Moreover, even if tax money were to completely rebuild the city, no one knows how many of its citizens would want to return. These dilemmas are further overlain by Louisiana's history of political corruption and racial distrust.

How should land use law guide and regulate the rebuilding of the unique city? I propose guidance from the land use principles of New Urbanism and from the related experience of Kobe, Japan, which suffered a similarly daunting rebuilding effort after a disastrous earthquake in 1995.

New Urbanism, as most are aware, suggests that land use law should learn from the cities of the past to encourage a denser, more interactive metropolis. In rebuilding New Orleans, a fine model can be found as close by as the old sections of the city itself (development in the 18th and 19th century was mostly on the relatively high ground near the Mississippi River). New Orleans has been fairly unique among American cities in retaining (1) its most historical section as residential and mixed-use area (the French Quarter), (2) a fairly dense and affluent 19th-century sector of single-family houses (the affluent Uptown area), and (3) an historical vernacular for affordable and popular housing units (the slim "shotgun" house). The old city also boasts, in its famous streetcars, one of the nation's most venerable urban rail systems.

Most of the destroyed sections of the city, however, were developed in the 20th century, along less dense and more automobile-oriented lines. Should land use policy require that these neighborhoods be rebuilt with New Urbanist rules? The most vigorous designer of New Urbanism, Andres Duany, has been active in trying to get the large ward of Gentilly in northeastern New Orleans to accept a plan for rebuilding that would require mixed-use reconstruction (combining residential and commercial buildings), more local public parks and streetcar routes (perhaps at the expense of some houses, through eminent domain), and dense,

attractive, two-story (and thus flood-resistant) homes that would encourage walking and social interaction and de-emphasize the automobile.

Many of these ideas dovetail with the experience of **Kobe, Japan**, a city of comparable size that was rebuilt after the 1995 earthquake and fire. There are many similarities between the disasters that faced the two cities, including the fact that both had to decide whether to rebuild in a manner that would risk a repeat of the disasters (Kobe with small wooden homes, New Orleans with below-sea-level neighborhoods) and both were buffeted with complaints about the slowness of rebuilding. Despite much initial criticism from local residents, Kobe was rebuilt according to strict new land use laws and plans, which involved the clustering of housing in large buildings and the replacement of some neighborhoods with parks.

There are numerous challenges, however, to rebuilding New Orleans using the precepts of New Urbanism and the lessons of Kobe. First, the outer sections of New Orleans, which were more likely to be flooded, were more unlike old New Orleans, and more like the rest of the United States. The anti-automobile nature of New Urbanism will be difficult to sell in some sections of New Orleans, especially in communities that had been used to land use that included wide roads, driveways, and parking lots.

Second, zoning to encourage "Main Street"-type small businesses and retail stores is likely to face the problem of limited consumer demand in much of New Orleans, where Wal-Mart had been a successful entrant. Moreover, any attempt to use eminent domain to seize homes is likely to be resisted by those who want to rebuild on their old plots.

Finally, the experience of Kobe only goes so far in providing lessons for New Orleans. Most prominently, Louisiana suffers from widespread racial distrust, which hampers lawmaking. Efforts to reconfigure lands use plans are likely to be combated by African American residents who suspect that state and national authorities want to prevent them from returning to their culture in New Orleans. Even beyond race, the Japanese legal model of ordered, top-down hierarchy differs greatly from the American preference for consensus in disaster response (which also has slowed down the land use plan at New York's "ground zero") and for very localized decisionmaking.

Despite these limits, however, the land use law ideas of New Urbanism and of Kobe offer as great a hope as possible for re-inventing New Orleans as a relatively safe, prosperous, and successful city for the 21st century.

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