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## ARTICLES

### Planning for Serfdom — An Introduction to a New Theory of Law and Economics

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PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT, *Robin Paul Malloy*. University of Pennsylvania Press, 1991. P.O. Box 4836, Hampden Station, Baltimore, Maryland 21211 (1-800-445-9880).

In my book, *Planning for Serfdom*,<sup>1</sup> I bring together much of what I learned from a prolonged study of ideology in law and economics

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1. ROBIN P. MALLOY, PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT (1991) [hereinafter MALLOY, SERFDOM]. See also ROBIN P. MALLOY, LAW AND ECONOMICS: A COMPARATIVE APPROACH TO THEORY AND PRACTICE (1990) (a basic text for those people seeking to learn more about this subject); Robin P. Malloy, *Expanding Boundaries: Law and Economics as Creative Discourse*, in III SEMIOTICS AND THE HUMAN SCIENCES (R. Kevelson ed., 1992); Robin P. Malloy, *Freedom From Authority — Discovering “The Discovery of Freedom” by Rose Wilder Lane*, in II SEMIOTICS AND THE HUMAN SCIENCES: ACTION AND AGENCY (R. Kevelson ed., 1991); Robin P. Malloy, *Adam Smith’s Conception of Individual Liberty*, in LAW AND ENLIGHTENMENT IN BRITAIN (T. Campbell & N. McCormick eds., 1990); Robin P. Malloy, *Of Icons, Metaphors, and Private Property — The Recognition of “Welfare” Claims in the Philosophy of Adam Smith*, in III LAW AND SEMIOTICS (R. Kevelson ed. 1990); Robin P. Malloy, *Market Philosophy in the Legal Tension Between Childrens’ Autonomy and Parental Authority*, in PERSPECTIVES ON THE FAMILY (R. Moffat et al. eds., 1990) (originally published at 21 IND. L. REV. 889 (1988)); Robin P. Malloy, *Toward a New Discourse of Law and Economics*, 42 SYRACUSE L. REV. 27 (1991) (a special symposium issue on Law and Economics, and Semiotic Process); Robin P. Malloy, *Is Law and Economics Moral? — Humanistic Economics and a Classical Liberal Critique of Posner’s Economic*

and of the relationships that govern human interaction in the urban development context. From my research, I developed a general theory of law and economics that governs the proper relationship between the individual, the community, and the state. The general theory comprises Part I of the book and covers a variety of topics, including a detailed analysis of classical liberal theory emphasizing the work of Adam Smith, Friedrich Hayek, and Milton Friedman.<sup>2</sup> Other topics covered in Part I include a discussion of the checks and balances systems of federal, state, and local government as well as between the executive, legislative, and judicial branches;<sup>3</sup> an analysis of political versus economic means for accomplishing desirable social goals;<sup>4</sup> a new interpretation of the "tragedy of the commons" that describes government and the exercise of state power as an overly used public good;<sup>5</sup> explanations of individual liberty, community liberty, and state liberty as they apply to classical liberal, conservative, liberal, left communitarian, and libertarian theory;<sup>6</sup> and an analysis of the "first principle" foundation that supports any theory of law and economics and urban life.<sup>7</sup>

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*Analysis*, 24 VAL. U. L. REV. 147 (1990) (this issue of the Law Review published a full debate between myself and Judge Posner concerning the humanistic elements of legal economic reasoning); Robin P. Malloy, *The Limits of "Science" in Legal Discourse — A Reply to Posner*, 24 VAL. U. L. REV. 175 (1990) (part of the debate between myself and Judge Posner); Robin P. Malloy, *Equity Participations and Lender Liability Under CERCLA*, 25 COLUM. J. ENVTL. L. 301 (1989); Robin P. Malloy, *Invisible Hand or Sleight of Hand? Adam Smith, Richard Posner, and the Philosophy of Law and Economics*, 36 KAN. L. REV. 209 (1988); Robin P. Malloy, *The Merits of the Smithian Critique: A Final Word on Smith and Posner*, 36 KAN. L. REV. 266 (1988); Robin P. Malloy, *The Political Economy of Co-Financing America's Urban Renaissance*, 40 VAND. L. REV. 67 (1987); Robin P. Malloy, *Equating Human Rights and Property Rights — The Need for Moral Judgment in an Economic Analysis of Law and Social Policy*, 47 OHIO ST. L.J. 163 (1986); Robin P. Malloy, *The Secondary Mortgage Market: A Catalyst for Change in Real Estate Transactions*, 39 SW. L.J. 991 (1986); Robin P. Malloy, *The Economics of Rent Control — A Texas Perspective*, 17 TEX. TECH L. REV. 797 (1986); Robin P. Malloy & Michael H. Hoeflich, *The Shattered Dream of American Housing Policy — The Need for Reform*, 26 B.C. L. REV. 655 (1985); Robin P. Malloy, *Lender Liability for Negligent Real Estate Appraisals*, 1984 U. ILL. L. REV. 53 (1984); Robin P. Malloy, *The Interstate Land Sales Full Disclosure Act: Its Requirements, Consequences, and Implications for Persons Participating in Real Estate Development*, 24 B.C. L. REV. 1187 (1983); Robin P. Malloy, *Mortgage Insurers Should Be the Risk Takers*, 17 REAL EST. REV. 94 (1987); Robin P. Malloy, *Creative Financing Exposes Lenders to Developers' Liabilities*, 15 REAL EST. REV. 60 (1985).

2. MALLOY, *SERFDOM*, *supra* note 1, at 16-29. In particular, see Chapters 3, 7, 8 & 9 which discuss classical liberal theory. Chapter 3 and its footnotes include an extensive analysis of the works of Adam Smith.

3. *Id.* at 30-37.

4. *Id.* at 38-44.

5. *Id.* at 45-48.

6. *Id.* at 49-83.

7. *Id.* at 84-86.

In Part II, I apply the general theory to the specifics of urban development and revitalization. I examine the use of planning and zoning techniques as well as a variety of commonly used financial arrangements.<sup>8</sup> I discuss political, economic, and philosophical problems governing the law in this area.<sup>9</sup>

From the perspective of law and economics, I have looked at the legal, political, and economic arrangements that are used to foster urban development and revitalization.<sup>10</sup> As such, I have asked: What do the emerging trends in legal, political, and economic relationships reveal about our culture, our concepts of self and community, and about the philosophical vision and direction of American society? I believe that by studying the legal arrangements employed for urban development and revitalization, we can learn a great deal about ourselves and about the ideological direction in which we are headed.

A study of recent trends in the legal relationships employed in the development and revitalization of American cities reveals many important changes in American society.<sup>11</sup> American urban environments over the last ten years have been experiencing what some people have called a “Renaissance” of redevelopment. Cities like New York and Chicago, as well as Indianapolis and other urban places, have all experienced major redevelopment that helped or is helping to transform neighborhoods and even entire cities. The projects undertaken in these cities are generally new upscale housing (not low-income housing), shopping centers, festival marketplaces, office buildings, restaurants, and to a limited extent, public squares or open spaces as a part of or adjoining a specific development project.<sup>12</sup> In some cities the impact has been tremendous, but what do these changes tell us about these places and the people that live there?

Although I briefly examined St. Louis, Louisville, Pittsburgh, and Boston, I did a detailed and in-depth review directed at the city of Indianapolis, Indiana. As a former faculty member of the School of Law, Indiana University—Indianapolis, I was able to obtain a great deal of information on city activities. Indianapolis is a city cited by the Reagan Administration,<sup>13</sup> *National Geographic*,<sup>14</sup>

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8. *Id.* at 89-102.

9. *Id.* at 113-28.

10. *Id.*

11. *Id.* at 12-15, 103-12, 129-39.

12. *Id.*

13. ROBERT DUCKWORTH ET AL., *THE ENTREPRENEURIAL AMERICAN CITY* 6-8 (1986).

This book is printed and distributed by the Department of Housing and Urban Development.

14. Louise E. Levathes, *Indianapolis: City on the Rebound*, 172 *NAT'L GEOGRAPHIC* 2230-59 (1987).



*Smithsonian*,<sup>15</sup> the *Urban Land Institute*,<sup>16</sup> and *Newsweek*<sup>17</sup> as an example of our new urban possibilities. For this reason, Indianapolis proved worthy of a detailed study and discussion,<sup>18</sup> a discussion that critically evaluates the public relations clips of city officials and that probes these heralded new urban possibilities to determine their negative and positive implications not only for Hoosiers, but also for American society.

Indianapolis, a city of about one million people, is located in the heart of the midwestern "rustbelt."<sup>19</sup> Between 1980 and 1987, Indianapolis had over \$1 billion in new construction in the downtown urban center.<sup>20</sup> Although \$1 billion spent in New York City may not be overwhelming, it makes a substantial difference in a city the size of Indianapolis. As a result of this new investment, downtown Indianapolis now has dozens of *new* office buildings, shopping centers, sport facilities, restaurants, and upscale apartment complexes — not to mention a new multimillion dollar "River Walk" designed for downtown public spaces, shopping, and eating.

It is important to note that Indianapolis had plenty of this type of development occurring before the city decided to get involved as a public partner in real estate development activity. The outer city and nearby suburbs were being actively developed without extensive government incentives. City leaders, however, wanted more development in the *urban center*. Thus, a major push began that involved millions of dollars in public subsidies for development in order to get private parties to build *city planned* projects for the *urban center*. One of the latest moves in this direction has been the continuing fight to locate an upscale shopping mall downtown. In an effort to obtain a private developer to construct the mall, the city is promising to provide one-half of the now estimated \$600 million cost.<sup>21</sup> This \$600 million would be among the recent additions to the prior \$1 billion spending binge in Indianapolis. In *Planning for Serfdom*, I outline in detail the behind the scenes political games and manipulations that led Indianapolis to pursue a wide variety of redevelopment projects. My research indicates that many of the decision-makers committing public funds to such efforts are unaccountable to

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15. Doanld D. Jackson, *Indianapolis: A Born-Again Hoosier Diamond in the Rust*, SMITHSONIAN, June 1987, at 70-80.

16. Rita Bamberger & David Parham, *Leveraging Amenity Infrastructure — Indianapolis' Economic Development Strategy*, URB. LAND, Nov. 1984, at 12-18.

17. Frank Maier, *A Rust-Belt Relic's New Shine*, NEWSWEEK, Sept. 9, 1985, at 26.

18. MALLOY, SERFDOM, *supra* note 1, at 4-5.

19. *Id.* at 103.

20. *Id.*

21. *Id.* at 104-07 (estimated costs of the mall have changed repeatedly with news items since completion of this manuscript, indicating an ever increasing cost).

the voters, and frequently have benefited directly or indirectly from city investments.<sup>22</sup> This is important to know because it can help us understand the significance of certain trends in the legal and economic approaches to urban development.

Fundamental to emerging trends in urban development programs such as those employed in Indianapolis, is an underlying change in the relationship between public and private roles in real estate development and promotion. New planning and financing strategies have emerged which have transformed the environment for urban development *from a competitive and adversarial process into a "cooperative" environment where public and private resources are combined in the pursuit of "mutual" objectives.*<sup>23</sup> Lawyers and other professionals forge new and creative methods for accomplishing urban development, but they tend to do so without asking how these new and creative methods may affect underlying social norms and values. For example, they create new ways for the *state* to finance, manage, and encourage new project development, *but* they fail to ask: (1) Is this an appropriate function for the state and (2) how will such action affect underlying cultural assumptions and norms concerning the economic and political marketplace upon which so many of our laws and institutions rest? In my research, I have focused on these activities by analyzing two primary components of urban development: planning and zoning considerations<sup>24</sup> and financing arrangements.<sup>25</sup>

In first considering the area of planning and zoning, I identify three major context periods in the historical analysis of planning and zoning. These periods are:

(1) The *frontier period* which in many ways was ideologically close to being a period of "Laissez Faire" free market activity with respect to land use;<sup>26</sup>

(2) the *Euclidian period* named for the famous U.S. Supreme Court case of *Euclid vs. Amber Realty*<sup>27</sup> which guided zoning

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22. *Id.* at 107-11.

23. *Id.* at 89-112.

24. *Id.* at 89-97.

25. *Id.* at 98-102.

26. *Id.* at 89-90. Historically, one envisions limited zoning in colonial America. Beyond simple restrictions for health and safety reasons — such as the height of buildings for fire fighting purposes — there was little intrusion by today's standards. Furthermore, with westward expansion, it was always possible to move west, to acquire land, and to do what you wanted — at least until many more people showed up.

27. 272 U.S. 365 (1926). Under Euclidian zoning, general use zones were established for a community. These zones were established in advance of particular cases of dispute and were based on broad conceptions of safety and public health. A heavy industrial

in the early 1900s and established an ideology of general rules applicable to land use; and

(3) the *discretionary period* in which current trends in zoning and planning evidence an abandonment of general rules in favor of an ideology of outcome specific regulations as evidenced by Special Districts, Planned Unit Developments, Mixed Use Developments, and development approval by negotiation, rather than as of right.<sup>28</sup>

These evolving context periods reveal an ideological shift in American planning and zoning law that parallels a similar shift in general cultural ideology. The shift reflects a normative movement away from the ideology of the marketplace — an ideology of “impersonal” market generated decisions about land use — to an ideology of *law as politics* with a corresponding focus on discretionary project approval. The new discretionary focus rewards political clout and “personalizes” the process of urban development by enhancing the power of political experts while devaluing the role and function of unplanned and disorganized market behavior. We can observe an ideological shift in American law and culture away from the marketplace and the corresponding values of individual rights by deconstructing and analyzing discrete examples of zoning and land use planning regulation. Similarly, recent trends in financing urban development reveal the same shift in underlying ideology. The forms of financing validated by law give witness to the underlying ideological norms upon which these arrangements are constructed. In the area of urban finance, one can observe a continual blurring of the “boundary line” between the public and private sectors. Historically, urban development was done by private developers risking private resources on particular projects that in their best judgment reflected the best (most profitable) use of land at any given location. Today, urban development is significantly guided by public, rather than private decisionmakers and is substantially funded by public resources combined with private resources. In today’s environment, city planners and politicians are no longer content to map out general restrictions governing land use. Rather, they seek to actively participate in real estate devel-

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activity should not, for instance, be placed across the street from a schoolhouse. Thus, general zones for such things as single family residential, public buildings, hospitals, and commercial uses were established. Anyone with a use compatible with a generally described zone had a legally enforceable right to enter the zone. In my book I relate this type of zoning to Hayek’s concept of general rules in government. See MALLOY, SERFDOM, *supra* note 1, at 89-92.

28. *Id.* at 92-97. This move towards extensive discretion makes the law very personal. Individuals no longer have legally enforceable rights, but must deal with a political power structure that has broad discretion to do as it pleases.



opment — to participate in the entrepreneurial fulfillment of specific city planned projects that they themselves see as essential to the successful development and marketing of their urban identity.

In this new environment, new approaches to public assisted financing of real estate development have emerged. These “public/private partnerships” or “co-financing” arrangements take many forms, but the underlying objective is twofold: (1) city officials are willing to commit *public* resources and to exercise the power of eminent domain in an effort to assist *private* developers that are willing to build specific politically chosen projects at the time and location set out by city planners and (2) as a partner in the transaction, the city reserves a right to share in some percentage of the income flow generated by the project or the city splits the ownership interest in the project so as to retain a substantial equity position as co-owner of the project.<sup>29</sup> Both of these trends — the trend towards more discretionary planning and zoning and the trend towards public financing of private developers — led to the breaking down of traditional private/public distinctions in urban development.

Ideologically, the new environment for urban development moved many development choices into the public forum and shifted power away from the validating discourse of the private marketplace, only to have private market power replaced by public political power. However, shifting power from the private marketplace to the political forum has done little to alleviate the abuse of power in the urban development process. For example, in Indianapolis, a large portion of the \$1 billion of investment *plus* the subsidizing for the new \$600 million downtown mall have gone to one politically well-connected developer.<sup>30</sup> Furthermore, most of the city’s development plans were mapped out by a secret “City Commission” that intentionally excluded women and counted only one Black participant among its thirty or so members.<sup>31</sup> This secret City Commission planned how to spend public funds on urban revitalization, was unaccountable to voters, and perhaps by coincidence, many of its members directly or indirectly benefited from the city’s public adoption of their private plans.<sup>32</sup> Little money has found its way into the hands of minority or disadvantaged developers. Rather, the new discretionary and politically flexible approaches to urban financing have benefited, to no one’s surprise, those people already politically well connected. Consequently, the change in ideological focus has primarily resulted in a mere shift of power between already established power groups and has

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29. *Id.* at 98-102.

30. *Id.* at 103-08.

31. *Id.* at 108-09.

32. *Id.*

done little to open up the urban development process to a more fair and equitable distribution of power.

Two immediate consequences of these directions in planning and financing are that they create a conflict of interest for public officials, and they destroy the role of private capital as a check on government power. Conflict of interest is evident when the same city officials that decide that their projects are the most *important* projects are later asked to make decisions concerning other private developers that seek to enter the same area of the city. If the private developer will compete with the city-owned project, the city may — as some cities have done, e.g., St. Paul, Minnesota,<sup>33</sup> — refuse to permit the use on the grounds that it might compete with their project. Thus, a *conflict arises* in that city officials have a political stake in assuring the success of *their* projects and yet, are asked to make discretionary decisions affecting competing approaches to urban development.

Regarding the second consequence of destroying the role of private capital, the public/private partnership destroys the ability of private capital to act as a check on government power in two ways. First, it takes potentially dissident voices and co-opts them into political submission by rewarding political cooperation with highly profitable urban development projects. This means that the way to win profits and political clout on a specific project is to join in, rather than question, particular urban development choices. Second, once a party joins a specific project, that party can no longer afford to use private resources to challenge other aspects of the city's political agenda because that party's fate, financial success, and continued political influence are too closely linked to the success of the city's plans. This process greatly diminishes the usefulness of private capital as a means of financing alternative voices. It concentrates power in government and thereby reduces the importance of counterbalancing power sources as a means to a more creative, diverse, and less coercive social environment.

Given this brief overview of the changing roles of public and private parties in the process of urban development, what, if anything, can we learn about changing norms and values in American society? First, we learn that there are many *contradictions* in our society at this stage of the evolution in urban development programs. Again, Indianapolis serves as a good example. Indianapolis and Indiana are well known bastions of conservative politics. Both the state and city are strongly Republican. Public officials constantly provide ample rhetoric in support of the free marketplace, competition, private enterprise, and rugged individualism.

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33. See Nina J. Gruen, *Public/Private Projects — A Better Way for Downtown*, URB. LAND, Aug. 1986, at 4 (discussing this type of action in St. Paul, Minn.).



However, in complete contradiction to this rhetoric is an urban development program based on *centralized* urban planning, *public* management, and *government* ownership of almost every major new commercial project in the urban center. Thus, the rhetoric of the marketplace continues, but the reality is that the dominance of government ownership and management of private commercial projects is more reminiscent of “urban socialism” or “state capitalism” than it is of a free marketplace. Even the terms used by public officials to describe these city activities present a contradiction while superficially invoking free market imagery, such as “public *entrepreneurism*” and “public/private *partnerships*.”

However, the major tragedy in this regard has been the unthinking approach of lawyers in creating innovative new legal arrangements for the purpose of “getting the job done” without asking how certain ways of doing the job may dramatically change important cultural norms. At a primary level we need more debate, more information, and greater reflection on these issues of urban redevelopment. We need to unmask the underlying ideology that supports alternative ways of structuring real estate transactions and social arrangements. Through a legal economic critique, one can better assess the alternative values and norms that compete for validation in the law. Maybe in a free society people will say, “The times, the society, have changed. We need to embrace a new philosophy of the world around us — we need to think of more *public* involvement and more state ownership — the old economics, the old individual right’s do not work anymore.” On the other hand, they may say, “We still value the norms invoked by the legal economic traditions of the marketplace, of individual liberty, natural rights, and government regulation by general rules.” The problem at this primary level of analysis is that public debate and open dialogue are suppressed by the political process and by a lack of information. The danger in travelling so far down the paths of current urban development efforts is that we will be unable to engage in meaningful dialogue prior to the destruction of significant and important norms.

If city officials cared about open debate in Indianapolis, why would they have deemed it necessary to place urban redevelopment efforts in the hands of a secret, private, and unaccountable City Commission?<sup>34</sup> Should not the major restructuring of an urban community with the use of public resources be the subject of open debate? Is debate avoided by public officials because they think they are smarter or more important than the rest of us, or are they just in it for political and economic gain, seeking the surest way to “line their pockets”? Whatever the answers to these rhetorical questions, it is clear that many of the sub-

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34. See MALLOY, SERFDOM, *supra* note 1, at 108-09.

sidized projects in Indianapolis continue to lose money totaling tens of millions of dollars.<sup>35</sup> These losses hurt the taxpayers and come at a time when the local Chamber of Commerce is discussing the need for more than \$1 billion to be directed at the basic infrastructure.<sup>36</sup>

At a secondary level of analysis, we need to do more than debate. We need to take positions concerning the values and norms at stake. On this level of analysis, I argue that recent trends in urban development should be rejected as inappropriate for a society concerned with individual liberty and human dignity. Ideologically, recent trends in urban development and revitalization result in a new age of *serfdom*, a serfdom based on personal status in the political sphere.<sup>37</sup> This serfdom is the result of the growing exercise of discretionary political power and is evidenced by the forms of legal economic discourse indicated in current approaches to urban planning and financing. This trend is dangerous to freedom and individual liberty because it concentrates power in the state by blurring public and private distinctions. Thus, this trend combines the most coercive powers of the marketplace with the power of the state. From the point of view of the poor and disenfranchised, there is no good likely to come of this ideological shift away from competitive market values and individual rights. I think the proof of this point is clearly illustrated by the types of projects uniformly pursued by today's urban planners. Urban planners are using public resources and joining forces with private developers *not* to develop substantial low-cost housing, *not* to shelter the homeless, and *not* to provide job training, but rather to build upscale housing, high cost office buildings, and shopping facilities. In part, the new ideology has allowed wealthy capitalists to successfully co-opt the power of the state for their own benefit.

My position against the current trend in urban development is a position against the rising statist ideology that is inherent in the evolving role of the public sphere in the traditionally private marketplace. It is a role that is particularly evil because it destroys the balance needed between the government and the private sphere. This balance is built upon the concept of counter-balancing power sources — the state protects individuals from the abusive and coercive exercise of private power, while private sources of capital serve as a check on the emergence of

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35. *Id.* at 104 (for losses from 1987-89); Susan Schramm, *Losses Still Plague 5 Downtown Projects: Partners Take Long-Term View*, INDIANAPOLIS STAR, June 12, 1990, at 1 (losses from 1989-90).

36. *See City Crumbling Around Us*, INDIANAPOLIS NEWS, June 11, 1991, at 1, col. 2; John R. O'Neil, *Study Says City's Infrastructure on Road to Ruin*, INDIANAPOLIS STAR, June 11, 1991, at 1.

37. *Cf.* FRIEDRICH A. HAYEK, *THE ROAD TO SERFDOM* (1944).



an all too powerful state apparatus.<sup>38</sup> This balance between independent and competing power sources is a fundamental ideological assumption of free market economics and is essential for the protection and enhancement of creativity and spontaneous social order.

My normative position against current trends in urban development is not one that seeks to exclude government from a public role in the urban development market. Rather, it is a position which seeks to limit the definition of that role so that the state does not become the pervasive and undisputed source of power in the urban marketplace. My normative position allows government to act when doing so by general rules when there is market failure in the private sector and when the action is necessary to preserve human dignity. A lawyer's obligation is to engage in a continuous dialogue on these points.

The requirement to act by general rules is merely one that seeks to eliminate discretionary outcome specific results that can lead to political abuse and the destruction of liberty.<sup>39</sup> The requirement of market failure is merely a recognition that the government should not be spending and risking public resources on real estate projects adequately provided by the private marketplace.<sup>40</sup> Similarly, the requirement that the government act only when essential to preserve or enhance human dignity is merely a recognition that the purpose of government is to protect those who are less powerful from those who are more powerful, and *not* the reverse. This last factor is both a moral position and an economic position. It is this very process that preserves counterbalancing power sources, competition, and the benefits that flow therefrom.

Examples of the types of activities that I believe government should be doing if government is to engage in a co-financing and public/private partnership agenda include providing low-income housing, job training, and housing for the homeless. Such programs are the reason we have government, to assure that the basic needs of all people are met. Even Adam Smith can be read to support such a role for government.<sup>41</sup> We should not form governments merely to have them fund shopping centers, restaurants, and office buildings, because these are the kinds of projects that private developers have always provided and continue to provide. There is nothing essential to human dignity nor anything relevant to a homeless and unemployed person that will be accomplished by a city's desire to get a Saks Fifth Avenue or a Neiman Marcus located in a downtown shopping center. Our ideological drift with respect to the way

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38. See MALLOY, SERFDOM, *supra* note 1, at 30-37.

39. *Id.* at 53-60.

40. *Id.* at 113-39.

41. *Id.* at 16-29.



we engage in the *process* of urban development through planning, zoning, and financing has led us to this perverse and exploitive use of the public purse and trust.

The study of law and economics allows us to come to an understanding that law and legal relationships embody ideological assumptions concerning economic and political arrangements. In their distinctive form and structure, both law and economics can be viewed as a discourse concerning the allocation of power and resources within society. I have studied urban development and revitalization efforts under American law and have discovered an ideological drift away from individual rights, private property, and the virtues of a competitive marketplace. In its place I see the emergence of a new age of serfdom: an ideological serfdom embodied in a discretionary exercise of state power, the emergence of a disbelief in individual rights, and the destruction of counterbalancing power sources as a result of blurring the distinction between the public and private sphere.