

7 New York / USA

Zoning in America. Beauty, History and Real Estate

The Right of Cities to be Beautiful
(Walter Muir Whitehill, 1966)¹

New York revels in its image as a city of constant reinvention, of permanent change. Yet this dynamism takes a high toll on even the city's most iconic architecture, as books such as *Lost New York* (1968) have vividly demonstrated.² Relatively early in the city's history, before the midpoint of the 19th century, awareness of the disadvantages of the relentless rebuilding was already expressed in terms of complaints at the dominant "pull-down-and-build-over spirit".³ In fact, New York has been the site of several decisive historic preservation battles: the conflict over Pennsylvania Station (fig.1), which was torn down in 1963, is considered the catalyst for the historic preservation movement in the USA.⁴

Above all, however, it was the struggles around Greenwich Village that took the discussion over heritage conservation in a whole new direction.⁵ This was a debate that also had a lasting effect in Germany, decisively influencing prominent authors such as Mitscherlich.⁶

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- 1 Muir Whitehill, *The Right of Cities*, 1966, as a consequence of the famous US-Supreme Court's ruling in *Berman v. Parker* 1954 (348 U.S. 26); see below.
 - 2 Silver, *Lost New York*, 1968.
 - 3 Goldstone/Dalrymple, *A Guide to New York City*, 1976, 17–18.
 - 4 Plosky, *Fall and Rise of Pennsylvania Station*, 1999.
 - 5 Flint, *Wrestling with Moses*, 2011.
 - 6 It is no coincidence that Alexander Mitscherlich draws on Jacobs' 1961 *Death and Life* in his 1965 polemic *Die Unwirtlichkeit unserer Städte. Anstiftung zum Unfrieden*.



Figure 1: A catalyst. Demolition of New York's Pennsylvania Station 1965

The Battle of Greenwich Village

The uniqueness of “The Village” is owed to its origins. Established in 1790 as overflow for the city that had outgrown its boundaries, when the surveys to plan New York’s legendary grid were undertaken in 1811, Greenwich Village was already too built-up to be assimilated to the meshwork plan of large-scale streets and blocks designed to ensure that the city would conform to a regular plan in the future. This district around and to the north of Washington Square, formerly occupied by people of modest means, soon developed into wealthy middle-class area. Then, as the rich moved further north, it became first a home for immigrants, and then, by the 1920s at the latest, a legendary home for bohemians and artists, keeping its outsider status in the post-war years thanks to an association with political radicalism and the lesbian and gay rights movement.⁷ “The Village remained a bucolic neighbourhood within a bustling metropolis, a quaint sanctuary just a few blocks from the skyscrapers of the world’s first vertical city. But Greenwich Village’s map had a metaphoric resonance as well: rejecting orderliness, refusing conformity, repelling the grid.”⁸ In the 1950s, this dense neighbourhood with such a significant place in the city’s fabric was supposed to be torn down in a slum clearance and rebuilt on New York’s standard gridiron pattern. This was part of the urban renewal programme in whose name the all-powerful New York city planner Robert Moses flattened entire districts to make room for urban expressways and standardised blocks. Some 130 buildings would have been demolished in the redevelopment, and 150 families would have needed to be rehoused.⁹ The plan also included extending 5th Avenue to the south, right through Washington Square, whose iconic triumphal arch is one of the Village’s most distinctive landmarks – a plan that, in 1958, *The New Yorker’s*

7 Wetzsteon, *Republic of Dreams*, 2002; Strausbaugh, *The Village*, 2013.

8 Wetzsteon, *Republic of Dreams*, 2002, 4.

9 Flint, *Wrestling with Moses*, 2011, 62.

influential architecture critic described as “a piece of unqualified vandalism”.¹⁰ A deeply committed citizens’ initiative arose to save the small-scale, mixed-use artists’ district, so steeped in tradition, and it was ultimately successful in preventing the destruction of “The Village” (fig. 2).¹¹



Figure 2: Civic resistance. Protest poster ca. 1952/59

In her best-selling opus magnum, *The Death and Life of Great American Cities*,¹² the campaign’s most prominent spokesperson, Jane Jacobs (fig. 3), denounced the loss of organically developed urban structures with their heterogeneous mix of uses, stressing the importance of neighbourhoods as part of the living fabric of a city.



Figure 3: Jane Jacobs (Photo 1961)

10 Quoted in: Flint, *Wrestling with Moses*, 2011, 80.

11 Gratz, *Authentic Urbanism*, 2003.

12 Jacobs, *Death and Life*, 1961.

The possibility of safeguarding the Village from destruction in the long term was based on new legislative instruments that had been introduced in the USA in the 1950s. It is telling that this did not come about as a result of preservation orders in the narrow sense but rather through zoning regulations. The passing of the NYC Zoning Resolution in 1961 in fact marked a major departure in the history of planning in New York. It divided the city into three different kinds of zoning district: residential, commercial and manufacturing.¹³ The NYC Zoning Resolution replaced New York's original zoning laws, which dated from 1916, and with a considerable number of amendments, it remains in force to this day. These regulations granted The Village a certain degree of protection. Yet they said nothing about historic preservation. Conservation activists saw the possibility of adding provisions on "aesthetic zoning" for "historic neighbourhoods", about which there had been much discussion at the time, to the new zoning regulations, using this as a means of establishing protection for building historic urban ensembles. In the end, stipulations concerning what was also known as "historic and aesthetic zoning" (discussed below in greater detail) were not incorporated into the NYC Zoning Resolution; still, a degree of protection had been obtained.¹⁴ The new law was to come into effect after a year's grace period: in the embattled Village, this led to 150,000 planning applications for major projects being received, which would have irreversibly transformed the character of the area.¹⁵ This was prevented by means of an emergency statute, which remained in place until the new zoning laws came into force.

For a truly effective historical preservation law, New York City had to wait until 1965 and the New York City Landmarks Law. It established a body, the New York City Landmarks Preservation Commission, charged with ordering the preservation of landmarks, landmark sites and historic districts.¹⁶ In 1969, Greenwich Village joined Brooklyn heights and SoHo in being designated one of the first historic districts in the city; it was also the largest, covering 60 blocks (figs 4, 5).

New York was far from leading the way in this regard, with 50 municipalities throughout the United States being quicker to establish historic districts. Yet in the decade following the adoption of the NYC Landmark Law, not only were 400 buildings classified as landmarks, 23 additional historic districts were also created.¹⁷ By 2014, their number had expanded to 114 and more than a quarter of properties in Manhattan had become subject to some kind of heritage conservation requirement¹⁸ – on its face, a huge testament to the success of the new preservation instrument.

13 For a detailed overview, see Wood, *Preserving New York*, 2008, 230–233.

14 Website The New York Preservation Archive Project, 1961 New York Zoning Resolution.

15 Whalen, *A City Destroying Itself*, 1965.

16 Website The New York Preservation Archive Project, New York City Landmarks Law. The law was amended considerably in 1973, allowing the protection of "interior" and "scenic" landmarks and establishing a continuous designation process (ibid).

17 Goldstone/Dalrymple, *A Guide to New York City*, 1976, 20–21.

18 Ellen/McCabe/Stern, *Fifty Years*, 2016, 2, 20–21.



Figure 4: Among New York's earliest Historic Districts. Brooklyn Heights ...



Figure 5: ... and SoHo (Photos: imke.sta 2017; Beyond My Ken 2011)

Heritage Conservation as a Planning Tool

During the 1960s, American heritage conservation underwent a systematic reorientation. The decisive milestone was the National Historic Preservation Act of 1966, the first piece of federal legislation on heritage conservation in the history of the United States – and very close in time to the events we are concerned with here. As in the case of the German conservation laws that were passed almost a decade later, the National Historic Preservation Act was conceived of as a way of regulating the rush towards modernisation, a counterweight to the planning boom and the demolitions that had devastated so many urban and rural areas in the post-war era. This departure from an object-oriented heritage conservation – in which buildings were evaluated according to their historical and artistic significance – went hand in hand with a redefinition of conservation as socially relevant planning practice, and in particular with a new approach to urban planning, one that found its clearest expression in the concept of the historic district. This model of heritage management law, which can only be comprehended in terms of the specifically American zoning-law tradition, transformed the field of heritage conservation. In the USA, according to one veteran conservationist with an intimate understanding of these matters, heritage conservation is now above all an “environmentally orientated concept of preservation planning”.¹⁹

During the 1960s, many countries undertook a similar reorientation, seeking to grant heritage conservation a new social relevance.²⁰ Yet the consistency of the American approach, which we shall examine in further detail below, is certainly impressive. In Germany, by contrast, similar conceptions that emerged just slightly later were blocked, and heritage conservation institutions remain trapped to this day in an “antiquarian” tradition that considers questions of planning and development to be outside its remit. Paradoxically, it is precisely the establishment of the “historic urban ensemble” as a technical term in heritage management law in Germany since the 1970s that has weakened the links between conservation and urban planning, while also discouraging citizen engagement. The “ensemble” as a concept, a loaded term as a result of its origin in the traditionalist, not to say nationalist and *völkisch* concept of *Heimatschutz* (literally “homeland protection”), was seen rather as a means of preventing the erection of ‘ugly’ modern buildings than a contribution to historically informed urban planning.²¹ A momentous step forward in this regard was the declaration of the European Architectural Heritage Year in 1975, an acclaimed event which is generally seen as a watershed in the development of effective heritage conservation.²² But although this did place urban conservation on the agenda, it did not do so as part of urban development and

19 Murtagh, *Keeping Time*, 2006, 86. William J. Murtagh was active in the field for nearly 50 years, working on the National Register of Historic Places administered by the U.S. Department of the Interior and serving as vice-president of the National Trust for Historic Preservation.

20 Cf., e.g., Baumeister/Bonomo/Schott, *Cities Contested*, 2017 and particularly the chapter by Vinken, *Escaping Modernity*, 2017.

21 Breuer, *Ensemble*, 1989.

22 Eidloth/Ongyerth/Walgern, *Grundlagen und Grundsätze*, 2013, 13, 32.

planning but merely to ‘save’ buildings of historical value from a contemporary building and planning practice that was – not always unjustly – seen as ‘damaging to the environment’.²³ If institutionalized heritage conservation in Germany could recognize in 1975 that “urban and ensemble heritage conservation has long since grown into the central problem and challenge”,²⁴ then this also partly reflected the wish – shared by a broad section of the public – to offer an alternative to this experience of destruction: namely, another kind of city. In particular the “reformist wing” of heritage conservation, with its stronghold in academia, laid great hopes at that time on the possibility of obliging heritage conservation to accept some social responsibility.²⁵ “Heritage conservation must be much more than a concern to save certain ‘islands of tradition’ [...]”. Heritage conservation today must encompass the living preservation of the entire urban environment, to the extent that it has its origin in history or its positive urban qualities are obvious to everyone: ambience, mixing, centrality, affordability, building on the human scale, variety of form.”²⁶ These are all arguments that had been made a decade earlier in the USA and had led to a reorientation in that country. In Germany, however, the voices calling for a fundamental reorientation remained in the minority.²⁷ Leading experts considered fundamentally overhauling urban conservation to be “a side-issue within the discipline at best”.²⁸ The tenor of a statement by the Association of State Conservationists (*Vereinigung der Landesdenkmalpfleger*), which was drafted by the then Cologne-based conservationist Georg Mörsch, is typical in this regard. It criticizes “an eagerness more suited to medical emergencies” in “social aspects of urban planning” and “the tendency to understand and accept heritage conservation largely in relation to issues of urban planning”. This paper calls into question the basic legitimacy of heritage conservation “to move in areas that are generally considered from the perspective of urban planning” and underlines the priority of the conventional stand-alone monument.²⁹ The ‘academic’ heritage conservation that was mobilized against a “short-lived prevalence in public opinion” is revealed again to be a case of experts defending their territory and rejecting more plural and participatory mechanisms for the appropriation of heritage.³⁰ Above all, however, the insistence on an object-oriented concept of the historic monument (as a ‘historical document’) limits the social relevance of heritage conservation to ‘rescuing’ and managing built heritage. By rejecting a role in forward-looking social planning and development activities, state heritage conservation went down a path, enacted in legislation at state level, that echoes down to the present.

In the 1960s, the United States drew different conclusions from a similar set of crises. The destructive potential of technocentric planning became evident earlier there than in Europe. New York was not the only city whose citizens demanded new regulations to stem the ubiquitous demolition work – demands that were fulfilled at the

23 Petzet, *Zukunft für unsere Vergangenheit*, 1975, 7–8.

24 Gebelßler, *Altstadt und Denkmalpflege*, 1975, 69.

25 Haindl, *Denkmalpflege in der sozialen Verantwortung*, 1976.

26 Bode, *Unser Lebensraum braucht Schutz*, 1975, 38.

27 Vinken, *Altstadtkonjunktur und Modernfeindlichkeit*, 2020.

28 Schmidt, *Einführung in die Denkmalpflege*, 2008, 68.

29 Mörsch/Vereinigung der Landesdenkmalpfleger, *Denkmalpflege* 1975, 1976, 87–89.

30 Vinken, *Escaping Modernity*, 2017, 169–191.

local level in the *New York City Landmarks Law* and nationally in the *Preservation Act*. The transformation of heritage conservation into a social 'planning tool' that shifted the focus from historic monuments to city neighbourhoods stands at the end of a long and conflict-riven history. As in Europe, heritage conservation in the USA had for many years centred on historic monuments, above all on what are known as *Heroic Places*, locations associated with the founding fathers and the young nation's first president, George Washington. It was only with the *City Beautiful* movement around the turn of the last century that the value of the city and the landscape in its entirety was acknowledged: the goal of urban planning now became the harmonic development of the whole, including elements such as parks.³¹ Against this background, a growing awareness of the visual qualities of monuments can be observed, alongside their historical significance. This paralleled the work of theorists such as Alois Riegl that became typical of the turn-of-the-century Reform movement in architecture in Europe and the traditionalist, regionalist *Heimatschutz* style. The first legislative measures taken in the USA also show that there was growing recognition of urban ensembles and of spatial qualities beyond the mere preservation of objects. In Boston, for instance, the height of the planned Westminster Chambers building was reduced because it limited the visual impact of Trinity Church.³² Nonetheless, the path from here to urban conservation was by no means direct, nor was the going always easy.

Zoning Laws: Heritage vs. Private Property

In the USA, private property rights have been a particular obstacle to heritage conservation from the start. They enjoy constitutional protection and cannot easily be overturned even in the public interest. The history of urban conservation can be considered a special case within the debate over how urban development should be subjected to public control, i.e. within the history of legislative regulation of urban planning. In Europe, too, we can see a direct connection between legislative efforts to plan and modernize cities and the creation of historic districts.³³ In Basel, for instance, the 'old town preservation zone' (*Schutzzone Altstadt*) was established via the designation of building zones.³⁴ There is a dialectical relationship between modernizing cities and 'saving' islands of tradition. Meanwhile, in the USA, the origin of urban conservation in the planning – and modernization – of cities is far more obvious: the origin of the historic district can be traced directly to America's zoning laws, which made it possible to encroach upon that country's private property rights.³⁵

The first zoning laws in the USA were enacted in California. Pioneering legislation in the 1880s excluded laundries from certain city districts. This rule, which ostensibly aimed to curb certain emissions, was in fact an instance of contemporary racial

31 Holleran, *Changeful Times*, 1998, 110–134.

32 Holleran, *Changeful Times*, 1998, 174–182.

33 Vinken, *Zone Heimat*, 2010.

34 Vinken, *Zone Heimat*, 2010, 73–80, and the essay on Basel in this volume (Chapter 6).

35 Holleran, *Changeful Times*, 1998, 245–268.

policy that sought to exclude the Chinese population by undermining their sources of income.³⁶ Nonetheless, the practice succeeded in establishing purely residential (and privileged) areas, undisturbed by industry and commerce. In Los Angeles in 1909 for instance, the German concept of zoning rings, which aimed at a decreasing intensity of use as one moved from the centre to the outskirts of the city, was adapted and put into practice.³⁷ The controversy over zoning regulations applying to New York's 5th Avenue from 1916 is also famous.³⁸ Zoning grew in importance as the symptoms of crisis began to proliferate in many US cities after 1900. The flipside of dynamic urban development was that formerly desirable residential areas often became so-called slums. The 'rehabilitation' of historical areas was often initiated using planning regulations. Functional zoning kept industry at arm's length, height regulations protected against overshadowing, and regulations limiting building density made newbuilds unprofitable, thereby putting the brakes on speculation- and development-driven pressure.³⁹ In Boston, for instance, zoning was seen early on by both conservationists and city planners explicitly as a potent instrument of heritage preservation: "A direct benefit of Zoning [...] will be the protection and preservation of old historical buildings and sites."⁴⁰ Yet even in the conservation-friendly atmosphere of the New Deal, no national legislation was passed granting protection to building ensembles, though, at the local level, zoning laws became *the* mainspring of heritage conservation, which was now shifting from being a question of civil society interest to a matter for planning departments.⁴¹ In short, America's historic districts began as areas subject to special planning regulations, where various approaches to planning were synthesized and optimized over time.⁴² Particularly in the early days, this was often undertaken in order to promote tourism. The forerunner here was New Orleans, which had been trying to protect its famous French Quarter (*Vieux Carré*) by means of zoning regulations since 1924.⁴³ The protection scheme that took force in 1936, however, did not have any legal standing at the federal level. Charleston, South Carolina, had designated the Battery area of the city an 'Old and Historic District' as early as 1931 (fig. 6) – and this very first historic district in the USA was also a direct product of local zoning regulations.⁴⁴

36 Holleran, *Changeful Times*, 1998, 257.

37 Mullin, *American Perceptions*, 1977.

38 Explored in detail in Toll, *Zoned American*, 1969, 188–196.

39 Holleran, *Changeful Times*, 1998, 262–267.

40 Quoted in: Holleran, *Changeful Times*, 1998, 264, Note 62, with reference to: Boston City Planning Board, *Zoning for Boston*, 34 (no year given, probably 1915).

41 Murtagh, *Keeping Time*, 2006, 44–45. On the relationship between zoning and area preservation, cf. Holleran, *Changeful Times*, 1998, 262.

42 Morrison, *Historic Preservation Law*, 1974, 16–19; Murtagh, *Keeping Time*, 2006, 87–98; Holleran, *Changeful Times*, 1998, 265.

43 Morrison, *Historic Preservation Law*, 1974, 39; Holleran, *Changeful Times*, 1998, 265 and Note 65; for details on New Orleans: Ellis, *Madame Vieux Carré*, 2010, and the essay on New Orleans in this volume (Chapter 16).

44 This began with regulations to ban the building of gas stations in the historic city centre. See Murtagh, *Keeping Time*, 2006, 89. On Charleston, cf. also Weyeneth, *Historic Preservation for a Living City*, 2000.



Figure 6: Conservation by means of zoning. King Street, Old Charleston (Photo 1910)

Using zoning regulations to protect historic districts remained a topic of legal conflict. Doubts about whether a general ban on alterations such as that enacted in Charleston could be adequately justified on the grounds of public interest – referred to in the sources as “public benefit”, “public welfare” or “general welfare” – continued to be expressed for a considerable period. This is probably why the example of Charleston was emulated only with great hesitation: By 1957 there were only eleven historic districts in the whole of the United States.⁴⁵ The key barrier to effective urban conservation remains the high degree of protection afforded to private property, which has constitutional status in the USA.⁴⁶ For a long time, the transfer of property to be protected to public ownership (with compensation for the former owners) was considered the most legitimate and culturally acceptable form of heritage conservation, following the example of various privately organized societies and groups since the 19th century.⁴⁷ Even efforts to turn entire estates and city districts into open-air museums were ultimately based on this approach and required large sums of cash for their realization. For one project of this kind, Colonial Williamsburg, John D. Rockefeller Jr. bought up city lots in secret before creating a historical city in the style of the 18th century.⁴⁸ In Charleston, too, the Revolving Fund established by the city government

45 Morrison, Historic Preservation Law, 1974, 16.

46 Morrison, Historic Preservation Law, 1974, 20–34, contains detailed sources for the relevant rulings and sources of law.

47 The very first instance being in 1816, when the city of Philadelphia purchased and restored the Old State House to save it from demolition, cf. Murtagh, Keeping Time, 2006, 12.

48 On Colonial Williamsburg, cf. Greenspan, Creating Colonial Williamsburg, 2009; as well as, more critically, Huxtable, The unreal America, 1997, 12–36. On the – underestimated – impact of America's outdoor museums on heritage conservation, cf. Murtagh, Keeping Time, 2006, 75–85.

for the upkeep of the old town's street fronts followed the logic that ownership is a prerequisite for effective preservation. The fund is used to purchase houses deemed worthy of preserving in order to restore their façades and sell them on at a profit. The new owners are to be responsible for the renovation of the interiors, and the profit on each deal is reinvested in the purchase of additional properties.⁴⁹

The success of this model naturally had its limits, just as it was clear that it is only possible and desirable to turn entire city districts into open-air museums in exceptional circumstances, as in Williamsburg. For the protection of building ensembles to be effective, a way needs to be found to place the interests of heritage conservation above those of property owners.⁵⁰ And while zoning laws were able to encroach upon private property rights to a previously unheard-of degree in the name of the public interest, this was generally accomplished in the name of some legally uncontentious reason of security, health or economic efficiency. Restrictions in the name of heritage conservation, by contrast, were counted as merely “special cases of aesthetic control”, which did not provide an adequate level of justification in the public interest.⁵¹ ‘Beauty alone’ was for most judges not a sufficient reason for the public sphere to interfere in private property rights. A turning point only came in 1954, when the US Supreme Court ruled the ‘attractiveness’ of a municipality is a matter of public interest and that beauty is, alongside health and security, a legitimate goal of city planning.⁵² The frequently cited *Right of Cities to Be Beautiful* is at the heart of this ruling, which considers this right to be entirely compatible with the constitutionally protected right to private property.⁵³ The efforts of conservationists to amend New York City's zoning regulation in 1962 to include a clause on “aesthetic zoning” for “historic neighbourhoods”, as discussed above, needs to be seen in terms of this change in legal opinion.

At the national level as well, efforts intensified to establish the institutional basis for heritage conservation, and particularly to include heritage areas. The Preservation Act, which was passed in 1966 and remains central to this day, was strongly influenced by the a conference entitled “On Natural Beauty”, which was hosted by Lady Bird Johnson, then the First Lady, at the White House. Published by the conference committee with the support of the National Trust for Historic Preservation, the book *With Heritage So Rich* completed the paradigm shift from an object-oriented, preservationist model of heritage conservation to one that understood itself to have an active role in shaping cities and societies: “If the preservation movement is to be successful, it must go beyond saving bricks and mortar. It must go beyond saving occasional historic houses and opening museums. It must be more than a cult of antiquarians. It must do more than revere a few precious national shrines. It must attempt to give a sense of orientation to our society, using structures and objects of the past to establish values of time and

49 Murtagh, *Keeping Time*, 2006, 94.

50 A detailed discussion may be found in Morrison, *Historic Preservation Law*, 1974, 16, 31–32, 133; Murtagh, *Keeping Time*, 2006, 87–98.

51 Cf., e.g., the case of *Welch v. Swasey*, cf. Holleran, *Changeful Times*, 1998, 265.

52 “It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” US-Supreme Court, *Berman v. Parker* 1954 (348 U.S. 26). Cf.: US-Supreme Court, *United States Reports*, 1955, 33.

53 Cf. Morrison, *Historic Preservation Law*, 1974, 26; as well as the preface to H. D. Bullock (*ibid.*), IX.

place.”⁵⁴ The conflicts occurring simultaneously in New York over Greenwich Village show that this redefinition was overdue. The proponents of conserving the “historic” neighbourhood of The Village did consider that it possessed value in purely architectural terms, but were far more focused on its value as an organic, human-scale and heterogeneous habitat – environmental heritage in the broadest sense.

Historic Districts: Environmental Heritage

Against this background, the reorientation of American heritage conservation towards environmental heritage is as necessary as it is logical. The term ‘environment’, which is capable of encompassing both social aspects (‘milieu’) and spatial ones (cultural or heritage area), represents a new departure in the practice of heritage conservation. After all, the key aim of the National Historic Preservation Act was to provide a legal basis for heritage conservation as a socially relevant practice. In order to achieve this, it seemed essential to include, beyond architectural ‘crown jewels’ and conventional stand-alone monuments, both vernacular architecture and the lived environments peculiar to specific population groups. Addressing large entities such as housing developments, street facades and historic town centres amounted to a considerable expansion of responsibility for heritage conservation in terms of both scale and types of object. Above all, however, with the emphasis on historic neighbourhoods, the focus now turned to the groups immediately affected by conservation – owners, residents and users – and to those controlling and influencing it.

‘Historic District’ became a new category of protected object in the National Register of Historic Places. The term was now defined very generally as a geographically definable area, urban or rural, small or large, “possessing a significant concentration, linkage, or continuity of sites, buildings, structures, and/or objects united by past events or aesthetically by plan or physical development”.⁵⁵ In concrete terms, the new provisions meant that responsibility for planning and rehabilitation in listed historic areas now lay with the Department of the Interior, and effectively with specialist departments established in each state. The political repercussions were significant. When demolitions are planned as part of large-scale government modernization or infrastructure, the Department of the Interior can intervene at the same level. And while municipalities had previously only been able to apply for grants for renovation projects from the Department of Housing and Urban Renewal, which had a strong focus on wholesale redevelopment (demolishing and rebuilding along new plans), the new law meant that state funds were now also available for restoration and rehabilitation. And finally, in the conflict of interests between demolition and conservation, there was now the possibility of appealing to the Department of the Interior’s Advisory Council.

The establishment of historic districts as a zoning tool spelled out how the conservation of heritage areas, which would gain ground in the decades to come, would

54 Quoted in: Murtagh, *Keeping Time*, 2006, 50–51. The full text of the document *With Heritage So Rich* from 1966 is available on the Website Archives and Special Collections Library.

55 Quoted in: Murtagh, *Keeping Time*, 2006, 88.

be undertaken using the existing planning instruments and spatial planning procedures. Many regulatory instruments were subsequently adopted at state and local level. Historic districts were identified via a process of “selective local zoning”. This involved updating the usual zoning restrictions to include specific heritage conservation requirements – a practice sometimes referred to as “preservation-oriented zoning”.⁵⁶ Values such as identity, continuity and beauty, now legally defined as serving the common good, were established by means of zoning regulations as integral parts of municipal planning procedures.

Historic districts are geographically limited and usually defined in a zoning plan. In New York, according to the legal definition, a historic district must be a “distinct section of the city” with a “special character or a special historical or aesthetic interest or value”.⁵⁷ In most US states, a permit must be issued before any changes are made to the shape, structure, colour, texture or material of buildings within historic districts. Applications to perform construction or demolition work or to make any amendments that affect the exterior of buildings and are visible to the public within the historic district are considered by a specially convened Board of Architectural Review. Public hearings are generally held, and objections may be lodged; infringements are subject to punishment, which may take the form of fines or imprisonment.⁵⁸ The regulations concerning a historic district generally encompass highly detailed “guidelines for design”, which also apply to extensions, conversions and new construction. The rules for infills can vary widely – from requiring historical reproductions that match exactly in terms of form and colour, to allowing contemporary adaptations of the original style that are generally required to conform in terms of proportions, typology, materials, etc. A degree of heterogeneity may be allowed; however, elements including buildings, rooms, forms and surfaces are required to be old and “cohesive”,⁵⁹ a term also open to discussion. As with all listed buildings, renovation work carried out in historic districts since 1976 is tax-deductible up to a certain level. This is conditional on the work fulfilling the criteria of ‘rehabilitation’. Rehabilitation is defined in the general sense by the 1965 Venice Charter as the restoration of buildings to usability by means of repair or reconstruction work that preserves those parts and features with architectural and cultural significance. Later additions are to be respected, repairs are to be preferred to replacement.

The protection provided by historic-district status applies, as do similar regulations in Europe, strictly to the exteriors of buildings that are visible in public space. Comfort and modern conveniences are explicitly not considered to be incompatible with the preservation of a ‘historic’ streetscape. On the contrary, in the USA the repair and restoration of exteriors and the modernization of interiors have always been equally important goals in the rehabilitation of historic neighbourhoods. Already in Charleston, where external preservation work was undertaken “with the aim of maintaining or re-

56 Murtagh, *Keeping Time*, 2006, 87–88.

57 Website Administrative Code of the City of New York, 25-301, 25-302.

58 Morrison, *Historic Preservation Law*, 1974, 19.

59 Murtagh, *Keeping Time*, 2006, 92.

capturing the sense [...] of the neighborhood identity in potential jeopardy”,⁶⁰ internal work focused explicitly on the modernization (*rehabilitation*) of living standards. Such an approach is well known in Europe. The renovation of Basel's Old Town in the 1940s was publicized using the slogan “*Brausebad für alle*” (“A shower-bath in every home”);⁶¹ the highly acclaimed reconstruction of Warsaw's old town aimed – in line with Stalin's slogan “national in form, socialist in content” – to combine historical reconstructions with modern comforts such as district heating.⁶² Similar approaches were also standard in Germany's post-war reconstruction.

It has been noted how, in Europe, the protection of building ensembles often amounts to no more than an aesthetic concern with the ‘character’ of a town that easily veers into kitsch picturesqueness. The creation of old towns generally goes hand in hand with a radical formal harmonization and homogenization, which continue to betray the historic ensemble's origins in the traditionalist and conservative *Heimatschutz* movement.⁶³ Here the boundary becomes blurred between a preservation-focused stance, on the one hand, and a questionable, taste-based preference for vaguely historicizing forms on the other. No systematic distinction is made between restoration and augmentation; archaeological reconstruction and free invention; historically informed, formally sensitive complementary building and the propagation of clichés of all kinds. Or, which is even worse, the annulment of this distinction is, if it is not the explicit aim of the measures, at least passively approved of. There has been a real boom in such urban beautification measures in Germany in recent decades, some of which have involved the collaboration of state and local conservation agencies. Emblematic of this are the many remodelings of Mainz's main square (*Marktplatz*), each more ‘historical’ than the last,⁶⁴ and, more recently, the many old town clones that have cropped up, whether with or without reconstructions – as in Frankfurt am Main or Potsdam, where the lines between reconstruction and postmodern historicism become completely blurred.⁶⁵

These kinds of phenomena are not unknown in the USA. More strongly than is the case in Europe, the American legislation relies on arguments of aesthetic in addition to historical value. Among other things, the landmark ruling *The Right of Cities to be Beautiful* that was mentioned above dealt with the right of cities to regulate advertising billboards. This had been a favourite topic of German civic beautification ever since the traditionalist *Heimatschutz* movement of the early 20th century – and proves just how strong the interest in a picturesque and harmonic cityscape was in the thought of conservationists regarding the historic districts.⁶⁶ As in Europe, so too were architects and conservationists in the New World initially united in rejecting what they identified as a

60 Murtagh, *Keeping Time*, 2006, 88. Emphasis added.

61 Vinken, *Zone Heimat*, 2010, 80–83, 94.

62 According to Andrzej Tomaszewski in a conversation in 2009. Cf. Stalin, *Deviations on the National Question*, 1942 (1930), 207.

63 For discussion, see several chapters in Enss/Vinken, *Produkt Altstadt*, 2016.

64 Karn, *Geschichte im Rückwärtsgang*, 2008; cf. also Glatz, *Rekonstruktion der Rekonstruktion*, 2008.

65 Vinken, *Unstillbarer Hunger*, 2013.

66 Morrison, *Historic Preservation Law*, 1974, 26–35.

'Victorian' historicism, with its large-scale urban expansion projects; both parties were in favour of urban change and modernization, with the difference being that the conservationists wished to preserve 'islands' of architecture from the preindustrial past as historic districts.⁶⁷

Research in the US has so far paid little attention to this issue. Morrison's expositions made it clear that up to the 1960s, aesthetic arguments were used almost exclusively in applying for conservation status and that efforts to regulate focused almost entirely on formal questions – on questions of design rather than preservation. At its heart, this was a matter of defending against destructive interventions, particularly in the interest of tourism and the economy. Legal disputes over whether regulations affecting the formal and visual characteristics of a neighbourhood should also apply to new buildings, or whether only passive 'protection of the surrounding area' should apply, are instructive. In the French Quarter of New Orleans, the rules on advertising and other elements were affirmed to apply to *all* the buildings in the zone, on the basis that the aim was to protect "the antiquity as a whole"; with antiquity being apparently understood as an aesthetic value or a question of appearance.⁶⁸ In 1964, in a legal dispute concerning the historic district of Santa Fé, New Mexico, the court rejected a claim based on the stipulation contained in the 1953 zoning law according to which construction had to exhibit "harmony with adjacent buildings, preservation of historical and characteristic qualities, and conformity to Old Santa Fe Style".⁶⁹ To date, theorists continue to stress the need for formal homogeneity: "The overall visual impact gives to the viewer an instinctive sense of locality and place"; "nonconforming intrusions", by contrast, would weaken the sense of identity that is rooted in cohesion and homogeneity.⁷⁰ The retention of the (often largely homogeneous) population in the neighbourhoods is also reflected in the goal of retaining – or manufacturing – a formal homogeneity.

In the meantime, however, this attitude has met with resistance. In January 2015, the 'case' of Charleston made it onto the front page of *The New York Times*.⁷¹ The city is prosperous and currently experiencing a building boom, thanks in part to the Boeing plant and to a flourishing tourism sector. The latter is concentrated on the historical centre of Old Charleston, which, as already mentioned, was placed under protection as the US's first historic district in 1931. The city, whose reputation is built on the grandeur of its historical buildings, has trouble reaching consensus on how construction should be carried out in the city. Traditionalists block the erection of modern buildings in the historical centre; modernists complain about the poor quality of the historicizing buildings springing up everywhere: "dull boxes dressed up with the occasional row of columns (fig. 7)"⁷².

67 Holleran, *Changeful Times*, 1998, 271.

68 Morrison, *Historic Preservation Law*, 1974, 47–48.

69 Morrison, *Historic Preservation Law*, 1974, 34.

70 Murtagh, *Keeping Time*, 2006, 92.

71 Fausset, *Stately Old Charleston*, 2015.

72 Fausset, *Stately Old Charleston*, 2015, A1, A3.



Figure 7: Real estate advertisement for “Old Charleston Cottages” (Photo 2013)

Since every architectural plan in the historic district must also be approved by the Board of Architectural Review, a culture of historical reproductions has developed. The recent appointment to a consulting role of Andrés Duany, an urban planner and architect from Miami, has revived this controversy. Critics fear that Duany – who is an exponent of New Urbanism and associated with the Florida retirement community of Seaside that served as the set for the dystopian film “The Truman Show” – might be seeking to bring about a ‘movie-set uniformity’ in Charleston as well.⁷³

‘Movie-Set Uniformity’: Sylvan Terrace, NYC

New York also has streets with an artificial – and quite literal – ‘movie-set uniformity’ that are listed as historic districts. In some cases, the effort to return to the ‘historical’ streetscape has gone so far that all traces of more recent development has been erased. Sylvan Terrace, a street of wooden row houses built between 1890 and 1902, was listed as a historic district in the 1970s (fig. 8).⁷⁴

73 Fausset, *Stately Old Charleston*, 2015, A1, A3.

74 As part of the Jumel Terrace Historic District, cf. Website Wikipedia, Jumel Terrace Historic District.



Figure 8: Historic District as film set. Sylvan Terrace, New York (Photo: Sailko 2017)

With state support, the ensemble was returned to its ‘historical appearance’ – though this only concerned the façades, while the backs of the houses often retained their aluminium facing. A report from *The New York Times* in 1989 noted that the occupants felt the city had left them to take care of the high-maintenance wooden façades themselves and wished they could have the weather-resistant metal facing back. At that point, additional funding was found to restore the buildings to the full glory of their original form in perfect detail. When asked whether it was worth replacing so much material for the sake of recapturing a historical version of these buildings, my American colleagues appeared puzzled. The replica was authentic, they argued, in the sense that it was based on historical evidence. According to Andrew Dolkart, the former Director of Columbia University’s renowned Historic Preservation programme, nearly every detail has been preserved on at least one of the houses in situ. And the replacement elements, in contrast to the first campaign, do indeed appear to be of high quality and well crafted. The objection that it might be in the best interest of heritage conservation to be able to distinguish between original features and replicas – as the Venice Charter stipulates – is dismissed as European hair-splitting. The economic success of the restoration certainly speaks for itself: “Nearly all of the properties are back to excellent condition, and homes are selling [in 2011, author’s note] for nearly a million each.”⁷⁵ These rows of houses are seen as a piece of authentic old New York and are a popular set for films: both “Bamboozled” (directed by Spike Lee) and the widely viewed television series “Boardwalk Empire” were filmed here. However, comments make it clear that the flawless, stage-set perfection of the reconstructions also undermines the intention of showing an authentic piece of atmospheric old New York. As one worker on a filmset noted in 2011 with irritation “The rows of houses and

75 Website Scouting New York, Sylvan Terrace.

cobblestone street are so uniform and perfectly preserved that I'd assumed the whole thing was set aside specifically for film shoots. I had no idea people still lived there.”⁷⁶

The enthusiasm for such antiseptically ‘original’ historical islands is particularly bizarre in a city where many cityscapes can reveal a deeply impressive richness of historical detail that is hard to find in European metropolises. In Brooklyn, that is true of both listed and unlisted neighbourhoods. However, even there, architectural reproductions are now spreading, with the proliferation of more or less successful imitations of the tightly packed brownstones that are so beloved of residents and students of architecture alike. It is undeniable that even in New York’s historic districts, a kind of heritage conservation is often favoured that aims at the most complete and homogeneous reproduction of ‘historical’ conditions. Less value is placed on the distinction between reproduction and original than on the use of the ‘right’ materials and traditional manufacturing techniques. As long as the – tax-deductible – expense is balanced by the properties’ maintaining or increasing their value, the formula appears to be a sustainable basis for the interests of conservationists to meet those of the owners. Especially the argument that established neighbourhoods should be maintained in a stable form (including social stability) and that large-scale new building should be avoided, unites a large cross-section of the population.

Historic Districts and Gentrification

However, this situation can also be described in a less sympathetic way. The architecture critic Ada Louise Huxtable was one of the founding figures of heritage conservation in New York, which emerged from civic protest. Already in 1997, she noted that “preservation, development, and real estate have become a very comfortable ménage à trois”.⁷⁷ It is a triangular relationship that appears above all to produce one thing: social homogenization and isolation. This is a significant shift in perception, as earlier authors had ascribed the success of the historic districts, particularly in New York, to “belonging”, i.e. to continuity and identity in a time of acceleration.⁷⁸ Greenwich Village was and still is celebrated as a case where committed citizens successfully fought back against remote urban grand planning, a triumph of the local and the grass roots, a successful effort to save the neighbourhood as a mixed, diverse, ‘living’ entity from the monotony of the drawing-board. This narrative, which the resistance movement around Jane Jacobs promoted so successfully, is even cited in the formal justification for the conservation status of Greenwich Village. For Harmon H. Goldstone, the director of the LPC for many years, the Village is the very model of “diversity in architecture und variety in social structure”. And today, the Greenwich Village Society for Historic Preservation (GVSHP) still has the goal to maintain the “sense of place and human scale that define

76 Website Scouting New York, Sylvan Terrace.

77 Huxtable, *The unreal America*, 1997, 32.

78 Goldstone/Dalrymple, *A Guide to New York City*, 1976, 23.

the Village's unique community".⁷⁹ But the critical voices are multiplying. Many authors have become critical of Jane Jacob's legacy and see the protection of neighbourhoods as historic districts as an expression of the group self-interest of a privileged class (fig. 9).



Figure 9: The collective egocentrism of privileged classes? Brownstones in Park Slope Historic District, Brooklyn (Photo 2016)

The sociologist Sharon Zukin sees a direct connection between the authenticity claimed by the Village (and confirmed by its listing as a historic district) and the neighbourhood's rapid gentrification. According to Zukin, Jane Jacobs discovered that the quality of life of public space depends on diversity and density; but in her inability to recognize that authenticity is a social product, she developed an idyllic image of small-town life in the big city, perpetuating the idealized image of the New York block as a microcosmos of social diversity; she was unaware that she was following an aesthetic of gentrification, a rhetoric of authenticity that is significantly responsible for the city's rising property prices.⁸⁰ "Jacobs's values – the small blocks, the cobblestone streets, the sense of local identity in old neighbourhoods – became the gentrifiers' ideal".⁸¹

Looking back on the story of The Village, the picture that emerges is indeed complex. In many respects, The Village remains a single entity and a space apart within the city. The LGBTQ community still has a strong presence and Christopher Street has become a place of pilgrimage. The annual jazz festival reanimates many of the once-pulsating alternative ('Off') performance spaces, which are nonetheless in decline. The image of diversity is barely sustainable: In the heart of the city, those who can afford it find in the Village a privileged life of walkable distances in a historical oasis built on a

79 Website Greenwich Village Society for Preservation. Relevant details may be found in the tabs "About Us" and "Resources/Village History" (Thanks to Sophie Stackmann).

80 Zukin, *Naked City*, 2009, 17–18.

81 Zukin in an interview with the New York Times in 2010. Cf. Powell, *Contrarian's Lament*, 2010.

human scale, a kind of preserve: Greenwich Village is a prime example of turbo-gentrification, extreme even for Manhattan.⁸² According to a 2014 survey by Forbes, the four ZIP code areas that constitute the Village are the wealthiest in the United States,⁸³ with average property prices of \$23,000 US per square metre.⁸⁴ Naturally, Madonna and Bob Dylan are among those who live here. A key player in the property sector is New York University, one of the biggest landowners in the city. Detailed empirical studies show that while the Village may be an extreme case, it is far from unique. Similar developments can be observed with regard to many of New York's protected areas, including the above-mentioned historic districts of SoHo⁸⁵ and Brooklyn Heights.⁸⁶ Residents of New York's historic districts enjoy higher incomes and larger apartments than most of the city's residents, and they also have higher levels of educational attainment – and are very likely to be “non-Hispanic whites”.⁸⁷

If conservationists are now quick to point out that property values have, without exception, risen in historic districts, this message remains deeply ambivalent.⁸⁸ What is often overlooked here is that this development is, in a certain regard, inevitable, given the way area conservation is based on zoning regulations. Zoning regulations in the USA have always aimed at social homogenization and the stabilization of property prices. When laws for area conservation were being passed in the 1960s, zoning laws were an incredibly controversial topic.⁸⁹ In a phase of enormous social upheaval (and class- and race-based conflict), suburbia was the locus where hopes and fears of a loss of status came together. Zoning was the chosen means for keeping property prices stable. Through it, the social homogeneity of neighbourhoods was ensured and the incursion of ‘undesirable’ segments of the population could be hindered (as had already been achieved with the earliest zoning rules in cities such as Los Angeles, see above). One means by which this was carried out was the definition of minimum lot sizes in a given zone, in order to keep low-income people out of established neighbourhoods. Increasing mobility and uncontrolled growth in cities were thereby translated into a concrete experience that directly affected the majority of people. Zoning was widely discussed, including on the front pages or covers of *The New York Times*, *Wall Street Journal*, *Look and Harper's*, and even on popular entertainment shows on television.⁹⁰ Similar debates were also soon held in the urban centres, where the aim was to use zoning regulations to address problems such as urban decay and the decline of traditional residential areas into slums. Alongside rules for the density and height of new buildings, the acquisition of historic district status could lead to a significant level of gentrification in an area; in other words, to rising property values). It cannot be denied that in the USA, zoning

82 Sternbergh, *Embers of Gentrification*, 2007.

83 Carlyle, *Most Expensive ZIP Codes*, 2014.

84 Website Wikipedia, Greenwich Village, which references in particular the real estate website *trulia.com*.

85 Shkuda, *Lofts of SoHo*, 2016; Petrus, *From Gritty to Chic*, 2003, 52.

86 Osman, *Invention of Brooklyn Brownstone*, 2001.

87 For extensive figures and statistics: Ellen/McCabe/Stern, *Fifty Years*, 2016.

88 Murtagh, *Keeping Time*, 2006, 94.

89 Toll, *Zoned American*, 1969, 197.

90 Toll, *Zoned American*, 1969, 294–295.

regulations – an instrument created in the public interest, in the service of health and security – has in boom times largely served the interests of the real-estate market – and private property owners.

Islands of the Blessed?

This is all too evident in NYC, where the real-estate market is prone to frequent overheating. The historic districts listed in the first decade⁹¹ after the NYC Landmark Preservation Commission was established in 1965 included many exquisite properties: they include MacDougal-Sullivan Gardens in the South Village (fig. 10), built from 1844–50 around a common garden in the Greek revival style and home to Bob Dylan and Richard Gere, among others; Treadwell Farm on the Upper East Side, where Kim Novak, Montgomery Clift, Eleanor Roosevelt and Paul Gallico have come and gone; and Turtle Bay Gardens, another reform-driven project of the 1920s with a common garden, where in 2010 Katharine Hepburn's old apartment was available to rent for \$27,500 per month.⁹²



Figure 10: Island of the blessed. MacDougal-Sullivan Gardens (Photo 2016)

Such ‘islands of the blessed’ have sprung up in many parts of Manhattan, where the protection of unspoiled, human-scale urban architecture has created a rare and thus highly desirable situation: historical single-family residences with arcadian, semi-private parks designed on the model of historical gardens, and interiors that allow free rein to the individual imagination of total luxury: astronomical prices and glamour guaranteed. The *ménage à trois* of heritage conservation, urban development and the

91 For details of the first historic districts listed in New York, cf. Goldstone/Dalrymple, *A Guide to New York City*, 1976. Comprehensive details are available on the Website New York City's Historic Districts Council.

92 Taylor, Hepburn's former brownstone, 2010, or Website Curbed New York, Hepburn's Turtle Bay House.

property market that Huxtable condemned here reaches truly pornographic levels. The goal of making heritage conservation socially relevant again that was pursued by the reformers of the 1960s achieved a paradoxical fulfilment in some places: by reinforcing social divisions.

The broad picture is a very heterogeneous one. It is indisputable that New York districts like the Village and SoHo only avoided the devastation of large-scale redevelopment thanks to being placed under protection.⁹³ Rehabilitation of existing fabric means that these areas can be experienced as 'historic' and organically developed. However, the popularity they owe to their positive qualities has also done long-term damage to their established social structures by ushering in turbo-gentrification.⁹⁴ At the same time however, in terms of heritage conservation, the historic districts represent enormous achievements. For one thing, listing such an area requires an enormous effort of inventorization. The precise recording of formal and historical details represents a major increase in our store of knowledge, particularly since it also encompasses the history of usage and social structure as well as architectural typology and patterns of urban development. In general, this work of researching and recording is privately financed, at least in part. A further factor, the influence of which cannot be exaggerated, must be appended to this argument. On the whole, the listing of a historic district is initiated by its residents or by private interest groups, and therefore goes hand in hand with significant civic commitment.⁹⁵ This complex and at times protracted process involving so many actors provides an – apparently – highly effective platform for articulating and negotiating among all these different interests – economic, cultural and social. The involvement of municipal planning authorities ensures that the requirements of heritage conservation are discussed broadly and have a permanent presence in local government bureaucracies. Overall, historic districts appear to have ensured that conservation issues, which were for too long the preserve of a tiny and highly specialized elite, now reach a wider public. Some of the structural weaknesses of German heritage conservation, such as the distinction between conservation and development planning responsibilities, could be overcome in this way. New York has found sustainable ways both to integrate heritage concerns into other vital fields of urban development and to involve residents in the assessment of value – so often called for but so seldom pursued with any seriousness. The city, the residential district, the village appear here as habitats in which diverse interests are gathered, and in which all questions of their future direction are naturally linked with issues of identity, historical and social character, heritage and history.

It is certainly incontestable that in today's increasingly diverse society, effective and vital approaches to heritage that involve a diverse range of voices are particularly important.⁹⁶ Here, the USA has been a trailblazer, thanks in part to the multicultural understanding of heritage that is now dominant there. If the US heritage movement

93 Flint, *Wrestling with Moses*, 2011.

94 Zukin, *Naked City*, 2009; see also many media pieces, such as Fisher, *Tyranny of Nostalgia*, 2015.

95 The book by Schmickle, *Politics of Historic Districts*, 2007, is very illuminating here.

96 Vinken, Pranger von Bahia, 2015.

has shifted from a concern with museum-quality landmarks to become a neighbourhood-based planning process which works hand in hand with a productive mass movement and is planning-, profit- and process-oriented,⁹⁷ then this should be welcomed from the point of view of heritage conservation. Already in the 1980s, James Marston Fitch (Columbia University) saw meaningful heritage conservation not as a one-time act of rescue, but as a process which he defined as “curatorial management of the Built World”.⁹⁸ For all the contradictions of these ‘special zones’, New York’s historic districts represent a culturally acceptable instrument that can manage this transformation – offering scope in which public negotiations over the value of heritage can be fruitfully carried out.

97 Murtagh, *Keeping Time*, 2006, 98.

98 Fitch, *Curatorial Management*, 1982.

