

SYMPOSIUM INTRODUCTION: RESILIENT CITIES: ENVIRONMENT | ECONOMY | EQUITY

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I. OVERVIEW

The call to build “resilient cities” has grown seemingly louder by the day. This is remarkable because, just a few years ago, the concept of a resilient city was almost unheard of. Now, there are multiple organizations working solely to further the cause.¹ Among these organizations are: ICLEI;² Rockefeller Foundation;³ Center for Resilient Cities;⁴ United Nations Office for Disaster Risk Reduction;⁵ Next City;⁶ International Federation for Housing and Planning;⁷ Ceres;⁸ Beijer Institute of Ecological Economics Project SUPER: Sustainable Urban Planning for Eco-

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1. See Craig Anthony (Tony) Arnold, *Resilient Cities and Adaptive Law*, 50 IDAHO L. REV. 245, 248 (2014); see generally Palma Joy Strand, *Cultivating “Civity”: Enhancing City Resilience with Bridging Relationships and Increased Trust*, 50 IDAHO L. REV. 153 (2014).

2. *Resilient Cities Series*, ICLEI, <http://resilient-cities.iclei.org/resilient-cities-hub-site/home/> (last visited May 4, 2014).

3. *100 Resilient Cities: Centennial Challenge*, ROCKEFELLER FOUND., <http://100resilientcities.rockefellerfoundation.org> (last visited May 4, 2014).

4. CENTER FOR RESILIENT CITIES, http://www.resilientcities.org/Resilient_Cities/PROFILE.html (last visited May 4, 2014).

5. *Making Cities Resilient: My City is Getting Ready*, UNSDR, <http://www.unisdr.org/campaign/resilientcities/> (last visited May 4, 2014).

6. *Resilient Cities: Surviving, Adapting, and Growing in a Changing Environment*, NEXT CITY, <http://nextcity.org/resilientcities> (last visited May 4, 2014).

7. *Climate Resilient Cities*, IFHP, <http://www.ifhp.org/content/climate-resilient-cities#.U1FfNMb4bG5> (last visited May 4, 2014).

8. JEB BRUGMANN, BUILDING RESILIENT CITIES: FROM RISK ASSESSMENT TO REDEVELOPMENT (Nov. 2013), available at <http://www.ceres.org/resources/reports/building-resilient-cities-from-risk-assessment-to-redevelopment>.

system Services and Resilience;⁹ Biophilic Cities;¹⁰ and the Berkeley Resilience Capacity Index.¹¹

However, there are problems with the rise of “resilient cities” from a legal perspective. Foremost, the phrase “resilient city” is fraught with ambiguity. By one report’s calculation, there are at least forty-six definitions of “resilience” that have been proposed across multiple disciplines.¹² Similarly, the concept of a “city” is slippery for a legal scholar, as it does not easily connote a boundary or jurisdiction to which law is so closely allied.¹³ Still, the rise of the phrase—the resilient city—indicates that it has resonance across disciplines, in the public at large, and also within the law. And so, what might the “resilient city” mean for the law, and how might the law further such a concept?

The 2014 *Idaho Law Review* symposium, *Resilient Cities: Environment | Economy | Equity*, was held in Boise, Idaho on April 4, 2014 (the “Symposium”)¹⁴ precisely to address these questions. The Symposium’s call for papers sought to open such a debate, and perhaps provide answers to such questions, by first proffering a definition by David Godschalk:

A resilient city is a sustainable network of physical systems and human communities. Physical systems are the constructed and natural environmental components of the city. They include its built roads, buildings, infrastructure, communications, and energy facilities, as well as its waterways, soils, topography, geology, and other natural systems. In sum, the physical systems act as the body of the city, its bones, arteries, and muscles . . . Human communities are the social and institutional components of the city. They include the formal and informal, stable and ad hoc human associations that operate in an urban area: schools, neighborhoods, agencies, organizations, enterprises, task forces, and the like. In sum, the communities act as the brain of the city, directing its activities, responding to its needs, and learning from its experience.¹⁵

9. *SUPER – Sustainable Urban Planning for Ecosystem Services and Resilience*, BEIJER INST. ECOLOGICAL ECONS., http://www.beijer.kva.se/research_under.php?id=30 (last visited May 4, 2014).

10. BIOPHILIC CITIES, <http://biophiliccities.org> (last visited May 4, 2014).

11. *Resilience Capacity Index*, BLDG. RESILIENT REGIONS: INST. OF GOVERNMENTAL STUDIES: UNIV. OF CAL. BERKELEY, <http://brr.berkeley.edu/rci/> (last visited May 4, 2014).

12. See Jeffrey B. Litwak, *State Border Towns and Resiliency: Barriers to Interstate Intergovernmental Cooperation*, 50 IDAHO L. REV. 193, 193–94 (2014).

13. Few speaking of “cities” in this context are referring solely to a municipal corporation, which a “city” typically connotes.

14. *2014 Idaho Law Review Symposium*, IDAHO L. REV., <http://www.uidaho.edu/law/law-review/symposium> (last visited May 4, 2014).

15. *Id.* (quoting David R. Godschalk, *Urban Hazard Mitigation: Creating Resilient Cities*, 4 NAT. HAZARDS REV. 136, 137 (2003)).

From this starting point, Symposium panelists branched out to offer a broad array of investigations into how law might relate to, and further, the resilient city. Section II of this introduction provides a brief overview of the events of the Symposium.¹⁶ Section III provides a summary of the articles in this Symposium edition, which were contributed by Symposium participants.¹⁷ Section IV briefly reviews several Symposium presentations not accompanied by an article in this edition.¹⁸ Section V reviews a Student Note included in this edition and of relevance to the topic.¹⁹ Section VI offers concluding remarks and acknowledgments.²⁰

II. EVENTS OF THE SYMPOSIUM

The Symposium began with a welcome from Boise City Mayor David Bieter, an alumnus of the College of Law, who addressed several key issues facing Boise's efforts to build resiliency—financing being foremost among them.²¹ The substantive sessions then began following a general arc from theory to practice.²² The first panel, "Disaster, Destruction, and Resilient Cities," looked at resilient approaches for cities responding to disaster.²³ The second panel, "Social Aspects of Resilient Cities," looked at the relationship between ecological and social aspects of the city.²⁴ A third panel, "Resiliency, Equity, and Economy," addressed the relationship between a city's economic development activities, resiliency, and paying for city services.²⁵ A fourth panel, "Resiliency and Planning for City Growth," addressed resilient planning strategies for rapidly urbanizing areas.²⁶ The Symposium's keynote address by Ken Alex, the director of California's Office of Planning and Research, provided a detailed analysis of how one state is attempting to implement resiliency policies.²⁷ Finally, a pre-recorded interview with Craig Anthony (Tony) Arnold, conducted on March 26, 2014, was used as a means to give the Symposium an on-line presence, and discussed Arnold's work on resilient local governance and adaptive law.²⁸ Video of the entire symposium,

16. *See infra* p. 2.

17. *See infra* pp. 3–12.

18. *See infra* pp. 12–13.

19. *See infra* p. 14.

20. *See infra* p. 14–15.

21. UNIV. OF IDAHO COLL. OF LAW, *Welcome: David Bieter, Mayor, City of Boise*, VIMEO (Apr. 4, 2014), <http://vimeo.com/91969099>.

22. *See 2014 Idaho Law Review Symposium, supra* note 14.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. UNIV. OF IDAHO COLL. OF LAW, *Keynote with Ken Alex*, VIMEO (Apr. 4, 2014), <http://vimeo.com/92067906> (keynote address from the 2014 Idaho Law Review Symposium).

28. *See 2014 Idaho Law Review Symposium, supra* note 14.

along with the articles in this Symposium edition, have been archived and are available online.²⁹

III. SUMMARY OF ARTICLES IN THE SYMPOSIUM EDITION

The articles in this Symposium edition compose one of the largest collective works on legal aspects of resilient cities so far assembled. They are an impressive lot. The articles are discussed here in the order in which they were presented at the Symposium.

Andrea McArdle's article, "Storm Surges, Disaster Planning, and Vulnerable Populations at the Urban Periphery: Imagining a Resilient New York After Superstorm Sandy," deconstructs the meaning of resilience as that term is used in New York City planning documents after Superstorm Sandy.³⁰ In its June 2013 report that would guide the City's resilience planning strategies, *A Stronger, More Resilient New York*, resilience was defined as "able to bounce back after change or adversity" and 'capable of preparing for, responding to, and recovering from difficult conditions,' followed by 'Syn.: Tough[.] See also: New York City.'³¹ McArdle argues this rhetoric of resilience as "toughness" prevents the City from taking into account the needs of vulnerable people living along its coastline and also makes strategies of managed retreat less politically viable.³²

The article begins by investigating the impacts wrought by Sandy on the New York region, which included forty-three deaths; "300 homes lost; 800,000 New York residents and businesses without power"; "evacuation of five hospitals and thirty residential facilities that sustained flooding damage and power failures"; and damage to 402 buildings in the City's public housing stock that include 35,000 units.³³ The article next delves into the rhetoric of resilience in multiple city planning documents while also investigating how resilience has developed as a concept in the psychological and ecological sciences.³⁴ The article asserts that the city has used broadly popular definitions of resilience—"toughness"—in its reports rather than the more precise meanings used in scientific disciplines.³⁵ This has the effect of "broadening" and "blunting" the meaning, and impact, of resilience as a goal.³⁶ The article next evaluates what resilience strategies the city can undertake.³⁷ Among the strategies discussed, McArdle is especially concerned by plans that seek

29. See *2014 Idaho Law Review Symposium*, *supra* note 14.

30. Andrea McArdle, *Storm Surges, Disaster Planning, and Vulnerable Populations at the Urban Periphery: Imagining a Resilient New York After Superstorm Sandy*, 50 IDAHO L. REV. 19 (2014).

31. *Id.* at 20–21.

32. *Id.*

33. *Id.* at 24.

34. *Id.* at 34–36.

35. *Id.* at 35–37.

36. McArdle, *supra* note 30, at 35.

37. *Id.* at 36–42.

to continue growth in coastline areas that are most susceptible to climate change-related disasters.³⁸ One city planning document encourages New Yorkers to “embrace our coastline,” and argues that “[t]he city cannot, and will not, retreat.”³⁹ McArdle argues that such a response reflects the city’s “general preference for development that maximizes economic returns. It also reflects coastal area residents’ attachment to their homes and neighborhoods and general reluctance to abandon them.”⁴⁰

Finally, the article turns to ask what the city should do with regard to the social dimensions of weather disaster.⁴¹ McArdle argues that, “[a]t a minimum, what is needed is an overall approach to planning that incorporates the core elements of systems resilience,” such as a redundancy or back-up capacity in key systems, as well as a full embrace of a variety of climate change related adaptation strategies, such as managed coastal retreat.⁴² Such a planning approach, McArdle argues, must also be informed by social factors that affect vulnerability and the capacity for human resilience, including financial and social capital, race, age, gender, and disability.⁴³ McArdle concludes that

an overall shift in perspective is needed to promote a more nuanced, multifaceted way of thinking about resilience in the context of climate change that takes into account the social-ecological, psychological, and systems dimensions of resilience and recognizes how resilience in the era of climate change is crucially tied to a city’s social infrastructure.⁴⁴

John Travis Marshall and Ryan Max Rowberry’s “Urban Wreckage and Resiliency: Articulating a Practical Framework for Preserving, Reconstructing, and Building Cities” argues that cities should use a City Resilience Index as a policy tool to measure cities’ comparative resiliency that could assist cities with post-disaster long-term recovery strategies.⁴⁵ The City Resilience Index proposed by Marshall and Rowberry would employ quantitative metrics “allowing [local governments] to identify current problems, track progress, and created more refined incentives for cities to incorporate specific tools, programs, and policies into their current and future planning.”⁴⁶

38. *Id.* at 42–43.

39. *Id.* at 42.

40. *Id.* (footnote omitted).

41. McArdle, *supra* note 30, at 43.

42. *Id.*

43. *Id.* at 43–44.

44. *Id.* at 47–48.

45. John Travis Marshall & Ryan Max Rowberry, *Urban Wreckage and Resiliency: Articulating a Practical Framework for Preserving, Reconstructing, and Building Cities*, 50 IDAHO L. REV. 49 (2014).

46. *Id.* at 53.

The article begins by describing what a City Resilience Index is: “a policy tool that identifies components critical to a city’s long-term resilience *and* establishes a framework to measure these components.”⁴⁷ While previous legal scholarship has identified “checklists” or “toolboxes” for cities to explore sustainability, Marshall and Rowberry argue that “[w]ithout some way to measure city resiliency indicators, cities do not know whether their policies are achieving desired outcomes.”⁴⁸ Marshall and Rowberry further assert that “[d]esigning and implementing long-term recovery efforts might be more effective and less a matter of guesswork if federal, state, and local governments could understand the challenges and capacities of the local governments that they must assist.”⁴⁹ Although a City Resilience Index is a “major undertaking,” it would ideally “take the pulse of each of [a city’s key] systems,” such as “fire, police, parks & recreation, planning & development, solid waste, wastewater, and water.”⁵⁰

Marshall and Rowberry assert that a City Resilience Index would have similar benefits as Heather Gerken’s Democracy Index: “(1) the looming threat of exposing poorly performing local election operations (the ‘stick’); (2) the ability to highlight the work of effective local government election staffs (the ‘carrot’); and (3) the capacity to give the public easy-to-understand information that it can use to advocate for better election administration.”⁵¹ In addition, a City Resilience Index would also provide two additional benefits. “First, the City Resilience Index helps measure a local government’s likely aptitude for carrying out essential city building tasks.”⁵² Second, a City Resilience Index would assist non-profit and philanthropic funders with insight as to how best assist a city where typically a city’s relative sophistication and functionality are difficult for outside groups to assess.⁵³ The article then explores why a City Resilience Index is a valuable decision making tool for local governments and investigates two essential components of any City Resilience Index: housing and historic resources.⁵⁴

The article notes that law plays a central function in such an index, as most of the Index indicators show that a “proficiency at using legal tools and knowing how to navigate legal requirements are core competencies for city building and long-term disaster recovery.”⁵⁵ Marshall and Rowberry conclude that a “City Resilience Index can be an integral

47. *Id.* at 54.

48. *Id.* at 55–56.

49. *Id.* at 48.

50. *Id.* at 59.

51. Marshall & Rowberry, *supra* note 45, at 60 (footnotes omitted).

52. *Id.*

53. *Id.*

54. *Id.* at 62.

55. *Id.* at 83.

part of a more collaborative way of implementing long-term disaster and urban revitalization policy.”⁵⁶

Kellen Zale’s “Urban Resiliency and the Right to Destroy” argues that a city’s right to destroy is as necessary to post-disaster urban resiliency planning as are efforts to create something new.⁵⁷ At the same time, Zale argues that while a city may possess the legal entitlement to exercise the right to destroy, that power

can pose risks to a city’s resiliency because of the very characteristics that make it an appealing choice in other contexts: destruction is permanent, cheap, and simple. As a result, cities may engage in a tendency to overuse the power to destroy in situations where it is not the most resilient choice.⁵⁸

For instance, cities often acquire properties in older, urban neighborhoods built with infrastructure and land use patterns that represent the kind of sustainability essential to a resilient city: walkable places laid out for a mix of uses.⁵⁹ Destroying these neighborhoods can exacerbate suburban flight while also eliminating some of the most resilient locations for potential redevelopment.⁶⁰ Further, the perceived “simplicity of the act of destruction may blind city decision-makers to the complexity of the ‘displacement dilemma’” that exercising the right to destroy may create: “cities [that] are successful in the goal of creating new uses that generate new tax revenues... are also likely to displace low-income residents, simply because higher value properties generate greater tax revenues.”⁶¹

As a result, Zale argues “that before exercising the right to destroy as a property owner, a city should conduct a demolition review procedure targeted at evaluating the impacts of the proposed exercise of the right to destroy on the city’s resiliency.”⁶² Zale argues that

[s]uch a demolition review procedure could be modeled on the demolition delay ordinances that a number of jurisdictions have applied to historic properties, as well as on the federal and state environmental laws designed to identify environmental impacts of private actions. While there is no one-size-fits-all solution applicable in all situations, this article suggests that by adopting a procedural mechanism that incorporates a set of heuristics specifically targeted at identifying the impacts of destruction on resiliency, the decision about whether to exercise the right to de-

56. *Id.* at 84.

57. Kellen Zale, *Urban Resiliency and the Right to Destroy*, 50 IDAHO L. REV. 85 (2014).

58. *Id.* 87–88 (footnote omitted).

59. *Id.* at 104.

60. *Id.*

61. *Id.* at 110.

62. *Id.* at 88 (footnote omitted).

stroy will not only be better informed, but may be substantively different than the decisions that would be made without such a process.⁶³

Zale suggests that the procedure could be limited “to a relatively short time frame, such as thirty to ninety days,” that would nonetheless permit cities to determine whether the right to destroy, in fact, promotes resiliency without an otherwise unnecessary delay.⁶⁴

Melissa M. Berry’s “Thinking Like a City: Grounding Social-Ecological Resilience in an Urban Land Ethic” proposes an “urban land ethic that connects urban dwellers with their ecological identity.”⁶⁵ As Berry conceives it, an urban land ethic would “meld [] the systems theories of resilience science with the ethics articulated by . . . ecologist Aldo Leopold and urban activist Jane Jacobs.”⁶⁶

Berry begins by reviewing the evolution of resilience theory. She argues that the Godschalk definition of resilient cities, which formed the basis of the Symposium’s call for papers, needs to be re-envisioned to “recognize the connection between the physical and the human systems The connection between those systems creates a new system: a social-ecological system.”⁶⁷ Berry then turns to discussing how social-ecological systems exist on many scales in a city: the “individual, household, neighborhood, city, region, nation, [and] global.”⁶⁸ “The hierarchy of these nested adaptive cycles across scales is known [in other disciplines] as ‘panarchy,’” as that “term was coined by Holling and Gunderson.”⁶⁹

Berry finally turns to framing an urban land ethic, one that she imagines as drawing on, but not simply an extension of, the ethics of Aldo Leopold and Jane Jacobs.⁷⁰ “[T]he creation of a unique urban environmental ethic that reflects the interrelationship between humans, their built environment, and the natural environment that comprise the social-ecological system.”⁷¹ Berry further asserts that “[a]n authentic urban land ethic is one that sees nature first and foremost as a part of the city, but then goes further by making sure that nature maintains an intentional and recognized space in cities.”⁷² Berry argues that “[a]n urban land ethic is consistent with the movement of law toward an understanding of two principles affecting the concept of property in this country: (1) land has become a basic community resource; and (2) land—and

63. Zale, *supra* note 57, at 88–89 (footnotes omitted).

64. *Id.* at 113.

65. Melissa M. Berry, *Thinking Like a City: Grounding Social-Ecological Resilience in an Urban Land Ethic*, 50 IDAHO L. REV. 117 (2014).

66. *Id.* at 121.

67. *Id.* at 124.

68. *Id.*

69. *Id.* at 125.

70. *Id.*

71. Berry, *supra* note 65, at 126.

72. *Id.* at 126.

accompanying property rights—do not exist in isolation.”⁷³ Moreover, Berry argues that “[a]n urban land ethic is not simply another tool in the resilience building toolbox. It is foundational.”⁷⁴

Palma Joy Strand’s “Cultivating ‘Civity’: Enhancing City Resilience with Bridging Relationships and Increased Trust” calls for an emphasis on “civity,” or city-systems comprised of citizens, broadly conceived, “whose interactions and relationships create civic social networks.”⁷⁵

Strand begins by investigating the elusive term “resilient city.”⁷⁶ Strand concludes that “[a] working definition of a ‘resilient city,’ then, should look first to the human,” a recognition “that the way we build and live in our cities—and provide for their response to shocks or changes—depends predominantly on [a city’s inhabitants].”⁷⁷ The article then investigates what constitutes a “city,” and Strand ultimately adopts a complex adaptive systems approach in which “interactions between different individuals rooted in time and space define the nature of the city.”⁷⁸ Cities, Strand concludes, “are complex adaptive systems with a distinctive twist—a form of ‘organism’ that is not self-limiting” and that “have, to date, adapted by ever-accelerating cycles of innovation.”⁷⁹ Strand then investigates how the term “resilient”—the “ability to bounce back”—is defined in three manners by urban planners Pendall, Foster, and Cowell, as well as how resiliency is defined by physicist Geoffrey West’s scaling analysis.⁸⁰

Strand then calls for a renewed emphasis on “civity,” a term she defines as city-systems comprised of citizens, broadly conceived, “whose interactions and relationships create civic social networks.”⁸¹ Two categories of legal approaches Strand identifies for cultivating civity are “building ‘bridging’ relationships and nurturing trust.”⁸² Strand identifies the need for bridging relationships “across demographic divides, across jurisdictions, across sectors [in governance], and across issues [that people care about].”⁸³ However, civity requires more than simply establishing bridging relationships; such relationships must also be bonded with trust.⁸⁴ The article then evaluates how trust can be infused into the bridging relationships previously articulated.⁸⁵ Strand con-

73. *Id.* at 134–35.

74. *Id.* at *24.

75. Strand, *supra* note 1, at 177.

76. *Id.* at 158–60.

77. *Id.* at 157.

78. *Id.* at 162 (quoting MICHAEL BATTY, *THE NEW SCIENCE OF CITIES* 30 (2013)) (internal brackets omitted).

79. *Id.* at 165.

80. *Id.* at 165–67.

81. Strand, *supra* note 1, at 177.

82. *Id.* at 178.

83. *Id.*

84. *Id.* at 184.

85. *See id.* at 184–91.

cludes by noting that not only must we “begin to be more intentional with respect . . . to how we alter the physical environment. We must also become more conscious of the ways in which our sociocultural, socioeconomic, and sociolegal interactions underlie those actions,” and then “start asking what social relationships, what cultural principles make sense in the Anthropocene Age.”⁸⁶

Jeffrey B. Litwak’s “State Border Towns and Resiliency: Barriers to Interstate Intergovernmental Cooperation” argues that “[a] resilient community has redundancies and is interdependent [with] other communities”⁸⁷; however, there are a number of interstate border communities in which a city’s ability to maintain redundancies in its emergency management systems would most likely arise from a city in an adjoining state.⁸⁸ Intergovernmental agreements could provide a much-needed means of resiliency-enhancing service redundancies between these communities, yet restrictions on the use of intergovernmental agreements prevent their use in many places where these specialized agreements might otherwise be of use.⁸⁹

As Litwak notes:

[b]order communities that have no intra-state neighbors must rely on shared services and joint infrastructure with communities in the adjoining state; however, the differences in the states’ authorities for interstate intergovernmental agreements and conflicting state statutes and regulations limit opportunities for cross-border cooperation.

Statutory authorities for mutual aid agreements and assistance are broad and overcome many of the hurdles posed by statutory and regulatory differences in times of emergency, but these statutes presume that communities have the basic services and infrastructure that they can use to provide that emergency aid.⁹⁰

Litwak argues that “[i]nterstate intergovernmental agreements are a critical component to ensuring that basic level of services and infrastructure.”⁹¹ Litwak further argues that “[a]s part of creating resilient communities, states must review their internal law to eliminate barriers to interstate cooperation or be willing to help or step out of the way of communities working for themselves.”⁹² The article provides a framework for understanding intergovernmental agreements and illustrates how they are presently proving effective in overcoming barri-

86. *Id.* at 192.

87. Litwak, *supra* note 12, at 216.

88. *Id.* at 216–17.

89. *Id.* at 217.

90. *Id.* at 216–17.

91. *Id.* at 217.

92. *Id.*

ers in emergency planning for rural communities along the Oregon and Washington state borders.⁹³

Christopher K. Odinet’s “Fairness, Equity, and a Level Playing Field: Development Goals for the Resilient City” reviews city economic development strategy and argues, “that a truly resilient city is one that places equity and fairness at the forefront of its economic decision making.”⁹⁴ As Odinet notes, “[c]ities often compete with one another to lure these economic development projects by each offering their own package of public incentives for the private business or developer to consider [H]undreds of millions of public dollars can be promised in order to obtain” a potential development.⁹⁵

But the resilient city, Odinet argues:

must be prudent when completing and championing these private projects that are clothed in the ever-seductive mantle of economic development. An unbridled desire for growth and obtaining a perceived economic development “win” can often cloud local government decision-making, leading to the support of projects and developments that inure to the benefit of the few, at the expense of the many [B]y using public power to give one private group benefits that are not enjoyed by others, the field of economic opportunity is necessarily skewed to the prejudice of other similarly situated parties.⁹⁶

In Odinet’s view:

[r]esilient cities do not blindly give way to the unbridled temptations of economic development, which can so easily lead to division and injustice. Rather, the resilient city is one that seeks, in exercising its public prerogatives, to create a level playing field where economic opportunity is afforded equally to all persons. And in those cases where it is decided that the public power should be accorded to the benefit of a particular private interest because it significantly serves the greater good⁹⁷

Odinet argues that “the process from which this decision ultimately derives must be considered, sober, tempered, and informed. In adopting such a policy view,”⁹⁸ Odinet argues that

new developments and physical systems, which are vital to making a city thrive, must be rooted in a philosophy that not only

93. See Litwak, *supra* note 12, at 211–16.

94. Christopher K. Odinet, *Fairness, Equity, and a Level Playing Field: Development Goals for the Resilient City*, 50 IDAHO L. REV. at 222–223 (2014).

95. *Id.* at 221.

96. *Id.*

97. *Id.* at 223.

98. *Id.*

engenders a business climate of opportunity and equality, but also lays an economic foundation for the city that will allow it to weather future economic cycles.⁹⁹

Odinet's article begins by exploring "the history of the city and its role as an economic driver, as well as how the economic downturns of the past several years have impacted its standing in light of the recent renaissance of the city's place in American society."¹⁰⁰ The article continues to discuss:

the economic development decision-making process that is so tightly bound up in this new era of intense municipal competition, which permeates the post-recession economy. This part also questions the wisdom of current decision-making processes regarding public incentive packages, specifically through the public-private partnerships, by considering the ways in which these arrangements diminish market competition and economic equality.¹⁰¹

The article concludes by calling "for cities, in their quest for resilience in the aftermath of the Great Recession, to place fairness and equality at the forefront of their economic development policy-making processes so as to ensure that the field of economic opportunity is level and open to all."¹⁰²

Craig Anthony (Tony) Arnold's article "Resilient Cities and Adaptive Law" argues that "the capacity of cities to build social-ecological resilience and adaptive capacity will depend, at least in part, on the legal system and frameworks that shape and constrain cities."¹⁰³ Based upon previous works with resilience scientist Lance Gunderson, Arnold explores "the relationship between social-ecological resilience and law."¹⁰⁴ Arnold and Gunderson previously suggested a new paradigm, which they "call[ed] 'adaptive law,' to replace features of the legal system that are rigid, ignore interrelationships among social and ecological systems, emphasize front-end prescriptive rules, and generally are ill-equipped to adapt to rapid, unexpected change."¹⁰⁵

Arnold and Gunderson previously argued that the "U.S. legal system is maladaptive to [disturbances and change in complex, interconnected social-ecological systems] in at least three respects:"¹⁰⁶ (1) the legal system "seeks to impose and protect stability and certainty in human affairs, often with narrow or singular goals and methods;"¹⁰⁷ (2)

99. *Id.* at 223.

100. Odinet, *supra* note 94, at 223.

101. *Id.*

102. *Id.*

103. Arnold, *supra* note 1, at 251.

104. *Id.* at 253.

105. *Id.*

106. *Id.* (brackets in original).

107. *Id.*

“U.S. laws are based on assumptions about a globally stable nature, which is at odds with current scientific understandings of natural systems;”¹⁰⁸ and (3) “[l]egal processes require up-front prescriptive decision making and treat elements of nature and society in fragmented ways.”¹⁰⁹

“In contrast, [Arnold and Gunderson] propose four features of an adaptive legal system: ‘1) multiplicity of articulated goals; 2) polycentric, multimodal, and integrationist structure; 3) adaptive methods based on standards, flexibility, discretion, and regard for context; and 4) iterative legal-pluralist processes with feedback loops, learning and accountability.’”¹¹⁰

Using this framework, Arnold then explores “three implications of the adaptive law concept that are relevant to cities and their resilience: local governance; private property rights; and adaptation.”¹¹¹

Finally, Arnold argues “[r]esilient cities will need to develop new or reformed legal and policy tools in order to enhance their adaptive capacity.”¹¹² Arnold notes that “[o]ne improvement, already practiced by some cities, would be to adopt policies that aim for the resilience of multiple systems and component parts, recognizing the potential for failure of one to affect the others—a concept that Gunderson and [Arnold] call ‘poly-resilience.’”¹¹³ In other words, a city “cannot just focus on the vitality of our parks while . . . streams are degraded or make one neighborhood thrive while another is vulnerable and declining. Thinking adaptively about poly-resilience requires acknowledging uncertainty and avoiding brushing off potential future risk based on past data or optimistic assumptions.”¹¹⁴

Arnold notes that:

[C]ities could be particularly well-suited to using adaptive planning methods, because they regularly engage in urban planning processes [O]ne of the biggest problems that cities will have to tackle . . . is how to get landowners, businesses, and others to make adaptive changes to their already-authorized existing land uses, such as retrofitting their properties with “best management practices” (BMPs), restoring degraded ecosystems, reducing or eliminating harmful behaviors, or agreeing to new and changeable conditions.¹¹⁵

108.. *Id.*

109. Arnold, *supra* note 1, at 252.

110. *Id.* (quoting Craig Anthony & Arnold Lance, *Adaptive Law and Resilience*, 43 ENVTL. L. REP. 10426, 10428 (2013).)

111. *Id.* at 258.

112. *Id.* at 260.

113. *Id.*

114. *Id.* at 260–61.

115. Arnold, *supra* note 1, at 262–64.

Ken Alex, director of California's Governor's Office of Planning and Research, provided the Symposium's keynote address.¹¹⁶ Mr. Alex discussed a number of strategies that California is employing to implement urban resiliency strategies throughout the state.¹¹⁷ A transcript of Mr. Alex's speech is included in this Symposium edition and provides a useful look at real-world, boots-on-the-ground legal complexities of implementing resiliency as urban policy.

IV. ADDITIONAL SYMPOSIUM PRESENTATIONS

In addition to the above Symposium edition articles, video of several additional presentations heard at the Symposium, but not represented by articles in this edition, can be viewed online.¹¹⁸

Jonathan Rosenbloom presented *Funding Resiliency*, in which he discussed the tremendous costs faced by local governments in paying for resilient local infrastructures.¹¹⁹ Rosenbloom noted that very few plans aimed at enhancing resiliency set forth the necessary funding strategies to raise capital to implement the plans.¹²⁰ He noted that the limited data available, however, includes several individual municipal projects that cost billions of dollars each.¹²¹ He also noted that a 2009 estimate of water utilities alone projected that implementing resilience projects to U.S. drinking water systems would cost \$325–\$692 billion, while implementing resilience projects to U.S. wastewater systems would cost \$123–\$252 billion.¹²² Rosenbloom cautioned that the report was based on data from the Intergovernmental Panel on Climate Change's 2007 report and not the Intergovernmental Panel on Climate Change's 2013 report, which showed sizable increases in climate-related impacts.¹²³ Rosenbloom then questioned whether municipal bonds—the traditional method—for funding local infrastructure projects would be sufficient to meet the high cost of building resilience into local infrastructures.¹²⁴ Specifically, he cited the budgetary restraints local governments currently face and differing risk factors between typical infrastructure projects and resilience projects.¹²⁵ Rosenbloom then evaluated several alternative methods, other than the traditional bond market, which could be used to pay for such infrastructure, including methods formed around public/private partnerships, such as performance-based or social impact bonds, which in-

116. UNIV. OF IDAHO COLL. OF LAW, *supra* note 27.

117. *Id.*

118. *See* 2014 Idaho Law Review Symposium, *supra* note 14.

119. *See* JONATHAN ROSENBLUM, FUNDING RESILIENCY (2014), available at <http://www.uidaho.edu/~media/Files/orgs/Law/law-review/2014-symposium/Jonathan-Rosenbloom-Funding-Resiliency.ashx>.

120. *Id.*

121. *Id.* at 11.

122. *Id.* at 12.

123. *Id.*

124. *Id.* at 14.

125. ROSENBLUM, *supra* note 119, at 17.

crease options for raising capital and disperse risk in a manner more consistent with resilience needs.¹²⁶

Tom Bergin and Thomas Wuerzer presented *Fire Resilience Policy and Planning at the Wildland-Urban Interface: Impressions from Idaho*, which provides case studies from Idaho's recent fire seasons that have been among the worst on record.¹²⁷ In addition to land use planning techniques, Bergin and Wuerzer discussed new efforts to create ordinances and policy approaches that would require a defensible space around buildings in fire-prone areas, which would prevent property loss even if fire were to reach a populated area.¹²⁸ Bergin and Wuerzer also discussed approaches to building such that a community and its surrounding ecosystem could be resilient after a burn.¹²⁹

Keith Hirokawa¹³⁰ presented *Planning for Scarcity: Enabling Resilient Urban Water Planning Through Eco System Services*.¹³¹ Hirokawa noted that the coming decades will force us to re-think urban water infrastructure as many cities' water systems come to the end of their planned life spans.¹³² Hirokawa suggested that urban planning would benefit from integrating lessons from ecosystem services and green infrastructure to facilitate cost-effective infrastructure updates and improving the functionality of water systems.¹³³ Hirokawa noted that Santa Fe, Seattle, and New York City illustrated successful long-term watershed planning, where ecosystem investments have yielded secure and affordable water provision.¹³⁴

V. STUDENT NOTE: URBAN RENEWAL IN IDAHO

This Symposium edition also includes a Student Note by University of Idaho College of Law student Spencer W. Holm, "What's the Tiff about TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness and Urban Renewal in Idaho," which provides a much-needed look at urban renewal and tax-increment financing

126. *Id.* at 21.

127. See UNIV. OF IDAHO COLL. OF LAW, *Resiliency and Planning for City Growth: Tom Bergin (Blaine County Land Use & Building Services)*, VIMEO (Apr. 4, 2014), <http://vimeo.com/92084870> [hereinafter Bergin]; UNIV. OF IDAHO COLL. OF LAW, *Resiliency and Planning for City Growth: Thomas Wuerzer (Department of Community and Regional Planning Boise State University)*, VIMEO (April 4, 2014), <http://vimeo.com/92077899> [hereinafter Wuerzer].

128. Bergin, *supra* note 127.

129. See Bergin, *supra* note 127; Wuerzer, *supra* note 127.

130. Hirokawa is an Associate Professor of Law at Albany Law School. ALBANY LAW SCH., *Faculty Information, Keith Hirokawa*, <http://www.albanylaw.edu/faculty/pages/faculty-listing.aspx?ind=Hirokawa%2C%20Keith> (last visited May 4, 2014).

131. . UNIV. OF IDAHO COLL. OF LAW, *Resiliency and Planning for City Growth: Keith Hirokawa (Albany)*, VIMEO (Apr. 4, 2014), <http://vimeo.com/92077902>.

132. *Id.*

133. *Id.*

134. *Id.*

in Idaho.¹³⁵ Holm begins by considering the national antecedents of Idaho's urban renewal and tax-increment financing laws, as well as the state's constitutional and statutory enabling provisions.¹³⁶ Holm also provides a concise summary of the multiple updates to the urban renewal and tax-increment financing regulations, which serves to clarify misconceptions about the laws.¹³⁷ Finally, Holm offers potential strategies for improving urban renewal and tax-increment financing in Idaho that would more directly provide public benefits.¹³⁸

VI. CONCLUDING REMARKS AND ACKNOWLEDGMENTS

The articles in this Symposium edition do not provide one answer to the question of what a "resilient city" is or one way in which law relates to this burgeoning concept. Instead, these articles offer forth numerous paths by which scholarship can continue to explore the role of law and resilience in an urban environment, a path of discovery that is complicated but also seemingly ripe for discourse and inter-disciplinary cooperation.

Staging this exploration of law into resilient cities was no small feat, and several acknowledgments are due. The Symposium was planned by Alexandra Grande, chief symposium editor of the *Idaho Law Review*, and Tori Osler, symposium editor of the *Idaho Law Review*, in collaboration with symposium faculty advisor Stephen R. Miller. Ms. Grande and Ms. Osler both did a remarkable job with a challenging subject and also with planning the logistics of the event. Their efforts on the Symposium spanned well over a year. As a recent novel remarked, "All great enterprises are about logistics. Not genius or inspiration or flights of imagination, skill or cunning, but logistics. Building pyramids or landing spacecraft on Jupiter or invading whole continents or painting divine scenes over the roofs of chapels: logistics."¹³⁹ With this Symposium, Ms. Grande and Ms. Osler proved themselves masters of logistics in pursuit of the big idea. The Symposium articles were edited by Kendra Lotstein, Editor-in-Chief of the *Idaho Law Review*, Austin Beaumont, Chief Managing Editor of the *Idaho Law Review*, and the diligent associate editors and members of the *Idaho Law Review*.¹⁴⁰

Finally, many thanks are owed to the faculty from the University of Idaho College of Law's Natural Resources and Environmental Law program—Barbara Cosens, Dale Goble, Jerry Long, and Anastasia Telesky—who served as moderators for the panels, and to the College of

135. See generally Spencer W. Holm, *What's the Tiff about TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness and Urban Renewal in Idaho*, 50 IDAHO L. REV. 273 (2014).

136. *Id.*

137. *Id.*

138. *Id.*

139. TOM MCCARTHY, REMAINDER 196 (Vintage Books 2007) (2005).

140. For a complete list of the 2013–2014 member list of the *Idaho Law Review*, please see our membership roster at the beginning of this issue on page xi.

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Law's Interim Dean, Mike Satz, who ensured the Symposium's funding and welcomed guests to the event.

