

THE UNIVERSITY OF CHICAGO

A RECONSIDERATION OF THE JUSTIFYING VALUES OF PUBLIC PARKLAND

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JESSICA FELDMAN

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### **Abbreviations: Archives Consulted**

AHP August Heckscher Papers, Manuscript Division, Library of Congress, Washington, D.C.

ASB Albert S. Bard Papers, Manuscripts and Archives Division, The New York Public Library.

C14 Committee of Fourteen Records, Manuscripts and Archives Division, The New York Public Library.

CCC Christiane C. Collins Collection of the West Harlem Coalition for Morningside Park and Urban Problems of the Contiguous Communities: West Harlem, Manhattan Valley, Morningside Heights and Manhattanville, Sc MG 397, Schomburg Center for Research in Black Culture, The New York Public Library.

CSS Community Service Society Records, Rare Book and Manuscript Library, Columbia University, New York.

GBP Gutzon Borglum Papers, Manuscript Division, Library of Congress, Washington, D.C.

GHR Greenwich House Records; TAM 139; Tamiment Library/Robert F. Wagner Labor Archives, Elmer Holmes Bobst Library, New York University.

HHR Henry Hope Reed Papers, Department of Drawings & Archives, Avery Architectural and Fine Arts Library, Columbia University, New York.

HSS Henry Street Settlement Records, Social Welfare History Archives, University of Minnesota Libraries.

JGPS James Graham Phelps Stokes Papers, Rare Book and Manuscript Library, Columbia University, New York.

LDW Lillian D. Wald Papers, Rare Book and Manuscript Library, Columbia University, New York.

LNH Louis L. and Nettie S. Horch Papers, Department of Drawings & Archives, Avery Architectural and Fine Arts Library, Columbia University, New York.

MANY New York City Municipal Archives.

MAS Municipal Art Society of New York, Greenacre Reference Library.

MLP Mary Lasker Papers, Rare Book and Manuscript Library, Columbia University, New York.

NRA National Recreation Association Records, Social Welfare History Archives, University of Minnesota Libraries.

OAR Olmsted Associates Records, Manuscript Division, Library of Congress, Washington, D.C.

PAF Public Art Fund Archive; MSS 270; Fales Library and Special Collections, New York University Libraries.

PCR Parks Council Records, Department of Drawings & Archives, Avery Architectural and Fine Arts Library, Columbia University, New York.

PIR People's Institute Records, Manuscripts and Archives Division, The New York Public Library.

RCW The Professional Papers of Robert C. Weinberg, Special Collections & Archives, Long Island University, Brooklyn Center.

REH Richard Edes Harrison Collection, Geography & Map Division, Library of Congress, Washington, D.C.

RWP Richard Welling Papers, Manuscripts and Archives Division, The New York Public Library.

UNH United Neighborhood Houses of New York Records, Social Welfare History Archives, University of Minnesota Libraries.

USS The Papers of the University Settlement Society of New York City (microfilm edition, 1972), State Historical Society of Wisconsin.

WNS Whitney North Seymour Papers, Manuscripts and Archives Division, The New York Public Library.

WSA Records of the Washington Square Association, Inc.; MC 94; New York University Archives, New York University Libraries.

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## Abstract

Nearly 20% of New York City land is dedicated to public parkland. As parcels of ground that are plotted, mapped, and potentially saleable in a market for real property, the public parks of New York City have remained overwhelmingly stable—on a parcel-by-parcel basis—for over a century. We do not observe the same durability in other forms of public land (e.g. school grounds), or in other forms of “sacred” land (e.g. cemeteries). The remarkable persistence of New York City parkland is the empirical puzzle at the center of this dissertation.

In New York State, municipal parkland is held in trust by the state for the public. Parks, as property, constitute a relationship between a diffuse public in perpetuity and the trustees of the public interest in parkland. To functionally protect parkland, this interest must be continually defined and defended. By anchoring the public/trustee relationship through indefinite time—over which “encroachments” accrue as precedent, while material parkland degrades as legible landscape architecture—preservationists construct the concept of parkland as constantly threatened with reversion to commodity land. Successful preservation techniques have disarticulated parks from land, offering justifications for the preservation of parks as e.g. art or scenic landmarks. Preservationists also construct “the threatened park” by framing proposals for the altered use of parkland as catering to restricted interests at the expense of a broadly construed public.

Park preservation differs from historic building preservation, which in New York City has saved select gems while sacrificing the remaining built environment. Park preservationists instead defend a property relationship, in this way linking specific battles over parcels of land to constrained rules of exchange for the administrative category of parkland. Site-specific fights, particularly over the proper uses of Central Park, contribute to the category-level ideology of park purposes. This ideology, in turn, serves to maintain most parkland as practically precluded from exchange. The definition of what constitutes a “park purpose”—what can be permissibly built or temporarily

allowed to occupy space within a city park—is the determining question in the adjudication of parkland alienation disputes in New York State courts, making this a fateful question for the shape of the city.

## Chapter One: Introduction: The Surprising Persistence of New York City Parkland

If you have ever stood at the water's edge on the Battery and looked out over the New York Harbor at the Statue of Liberty, if you have visited the Cloisters, attended a match of the U.S. Open, eaten a hot dog on the Coney Island boardwalk, sunbathed at Orchard Beach, or gawked at the lights of Times—aka Father Duffy—Square, you have been to a New York City park. The New York City Department of Parks & Recreation, covering the five boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, oversees 30,000 acres of land, an ecologically, functionally, and aesthetically diverse domain. For scale, Central Park's 843 acres comprise less than three percent of all city-owned parkland.

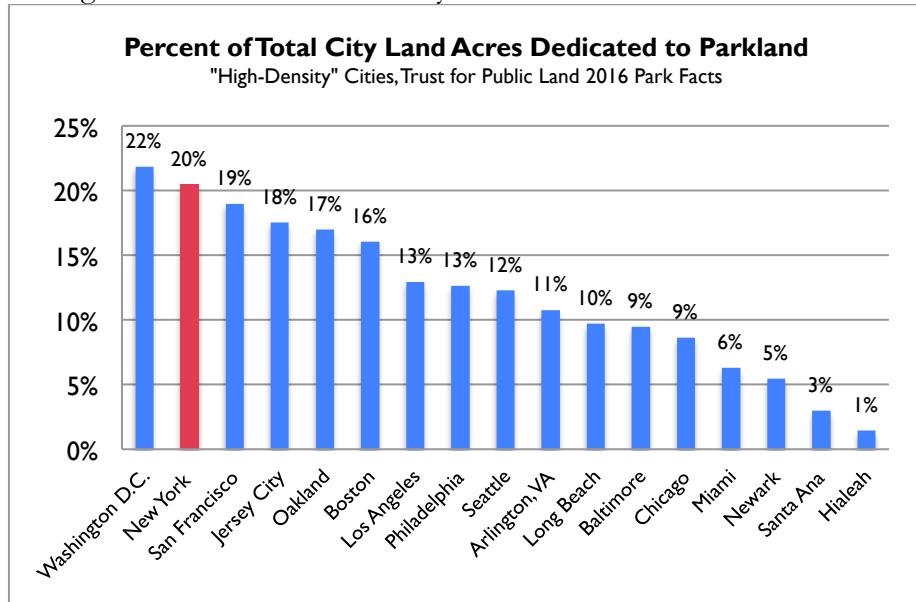
An additional 7,724 acres of National Park Service land, 1,300 acres of land managed by the New York State Department of Environmental Conservation, and 669 acres under the purview of the New York State Office of Parks & Recreation, cumulatively amount to 39,615 acres of parkland, covering nearly 20% of New York City.<sup>1</sup> Among “high-density” U.S. cities, only Washington, D.C., has a higher percentage of total area dedicated to parkland.<sup>2</sup>

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<sup>1</sup> Trust for Public Land, *2016 City Park Facts*, <https://www.tpl.org/2016-city-park-facts>. Some waterfront park property includes within its acreage land that extends to the (underwater) pierhead line. New Yorkers for Parks (personal communication, Aug 31, 2016) calculates that after removing land under water, 17.18% of the city landmass is parkland. Even with demonstrated measurement and record-keeping imprecision, the stylized observation remains: a sizable amount of cash valuable New York City land is held in the form of public parkland. (On measurement imprecision, see: Lisa W. Foderaro, “How Big is that Park? City Now Has the Answer,” *NYT*, May 31, 2013).

<sup>2</sup> The Washington, D.C., count includes the National Mall and all national monuments. Data source: 2016 Trust For Public Land *City Park Facts*. “High-density” refers to the top sextile of population/city acres among the 100 most populous U.S. cities (measured by municipal boundaries and not the MSA).

Figure 1.1 Percent of Total City Land Acres Dedicated to Parkland



City-owned parkland is my focus, and a staggering range of facilities occupy those 30,000 acres, including “more than 800 athletic fields and nearly 1,000 playgrounds, 1,800 basketball courts, 550 tennis courts, 65 public pools, 51 recreational facilities, 15 nature centers, 14 golf courses, and 14 miles of beaches.”<sup>3</sup> The New York City Department of Parks & Recreation also tends to street trees, monuments, and historic houses. These are distributed over parks that contain old growth forests, coastal wetlands, and riparian ecosystems, in addition to the more traditional lawns, fields, and courts.

Most of this land has proven remarkably durable, persisting as public parkland even as the rest of New York City relentlessly changes. As parcels of ground that are plotted, mapped, and potentially saleable in a market for real property, the public parks of New York City have remained overwhelmingly stable for over a century. Parks are a “commitment to a relatively fixed land use”<sup>4</sup> and that persistence is the empirical puzzle at the center of this dissertation.

<sup>3</sup> “About the New York City Department of Parks & Recreation,” accessed Oct 11, 2017, <http://www.nycgovparks.org/about>.

<sup>4</sup> Galen Cranz, *The Politics of Park Design: A History of Urban Parks in America* (Cambridge, MA: MIT Press, 1982), 246.

Parks, as the physical realm of the city, are the stages on which citizens “act out and express the interests of their lives.”<sup>5</sup> Their internal organization structures the use of city space for leisure and recreation. Their distribution across the broader city landscape shapes the daily spaces of people’s lives. There are a number of reasons why we might care about the physical shape of the city. There are literatures that discuss the spatial distribution of “urban fortunes,” the psychic wellbeing of city dwellers, and the potential for the physical realm of the city to foster and mobilize political consciousness. Mindy Fullilove has documented the intergenerational effects of urban renewal on mental health, arguing that ruptures in the physical environment reverberate through “emotional ecosystems.”<sup>6</sup> The stages on which we act out our neighborly lives can also become the stages of our political lives, as Gould has shown in the case of the Paris Commune and Zhao has mapped for participants in the 1989 Beijing student movement.<sup>7</sup>

Parks are a theoretically interesting class of land as well. There are several qualities of parkland that open connections between a political economy of place transacted through land markets and the creation of cultural rules of exchange for special categories of land that are not fully included within the market. While “places have a certain preciousness for their users that is not part of the conventional concept of a commodity,” parkland has particular characteristics that complicate the preciousness of individual place attachment (and the “collective interest” that location generates by conscripting e.g. all home buyers in a neighborhood into a common set of local concerns).<sup>8</sup> Parks persist through time as legacies to future generations of users; and they are held in public ownership with the state acting as a trustee for the public interest in the land.

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<sup>5</sup> Reminiscences of August Heckscher (1978), page 12, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

<sup>6</sup> Mindy Thompson Fullilove, *Root Shock* (New York: Random House, 2005), 14-17.

<sup>7</sup> Roger V. Gould, *Insurgent Identities* (Chicago: University of Chicago Press, 1995); Dingxin Zhao, “Ecologies of Social Movements: Student Mobilization during the 1989 Prodemocracy Movement in Beijing,” *American Journal of Sociology* 103, no. 6 (1998).

<sup>8</sup> John R. Logan, and Harvey L. Molotch, *Urban Fortunes: The Political Economy of Place* (Berkeley: University of California Press, 1987), 17; 19.

The New York State Court of Appeals continues to affirm that parkland is held in trust by the state for the public, drawing future public legatees into the contemporary set of park constituents. For the current generation of park advocates and policymakers, parkland may be valued as a bequest to be passed on to future generations. Fourcade describes the concept of “bequest value,” as articulated by the National Wildlife Federation: “simply knowing that an unsullied region is there for future generations has a value,” even for individuals who never plan to set foot on that pristine soil.<sup>9</sup> Though most people are not users of most parks, there are possible attachments to parkland that extend beyond the traditional conception of use value, adding time, legacy, and future users into the formulation. This in turn helps to create a class of land with considerable constraints on exchange.

Molotch describes the struggle over land use as a “fight not only over a piece of turf, but about the sort of reality that it constitutes.”<sup>10</sup> In preservation battles for parkland, people fight over more than the immediate use of a parcel of land; they also situate the use of that land relative to projections about the future of the city (or a system of cities), and to the needs and experiences of future inhabitants of the city. The dedication of land as parkland creates the scaffolding for a reality with a potentially indefinite time horizon over which the enjoyment and benefit of the public will continue to be served.<sup>11</sup> The “projected future,” according to Ann Mische, is “a dynamic force

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<sup>9</sup> National Wildlife Federation, quoted in: Marion Fourcade, “Cents and Sensibility: Economic Valuation and the Nature of ‘Nature,’” *American Journal of Sociology* 116 (2011): 1763.

<sup>10</sup> Harvey Molotch, “The Space of Lefebvre,” *Theory & Society* 22 (1993): 888.

<sup>11</sup> Federal, state, and city parks have been dedicated to the future enjoyment that Americans will take in their public lands, in perpetuity. The Organic Act of 1916, signed into law by President Wilson, established the National Park Service “to conserve the scenery” and “to provide for the enjoyment” of designated federal parks, monuments, and reservations, “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” (This passage of the act was written by Frederick Law Olmsted, Jr., whose work I discuss in Chapter Three.) The Wilderness Act of 1964 asserts that the United States Congress will designate land “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness” (Public Law 88-577 (16 U.S.C. 1131-1136), Section 2(a)). Article XIV, Section 1 of the New York State Constitution, declares that the Adirondack and Catskill Parks “shall be forever kept as wild forest lands.” And on the 1836 map on which large portions of Chicago’s lakefront parks were plotted, it was written “Public Ground—A Common to Remain Forever Open, Clear, and Free...” Lois Wille, *Forever Open, Clear and Free: The Struggle for Chicago’s Lakefront* (Chicago: University of Chicago Press, 1991), 23.

undergirding social change.”<sup>12</sup> In this case, the projected future of parks within a dynamic city undergirds land use stability, as well as the conceptual stability of parks as land reservations.

In the chapters ahead, I look at how New York City parkland has been subject to particular rules of exchange, and how those rules have been defended, transformed, and strengthened. As a category of land, New York City parks currently remain outside of the commonly conceived inventory of land available for development. For example, in a recent article arguing for the development of public land as “the answer to the affordable housing crisis”—including open spaces on Housing Authority property and the air rights over public libraries—the author never considered the sale or development of parkland.<sup>13</sup> On a case-by-case basis, the fights to preserve parkland are seldom waged to prevent the direct market exchange of parkland. Instead, local battles revolve around particular uses of parkland, often for other “public serving” projects such as schools, museums, festivals, and infrastructure.

A prominent legal tool, used to prevent the placement of these projects on parkland, employs a test of alienability based on the concept of “proper park purposes.” I will argue that this test has strengthened the concept of parkland as inalienable, while producing a body of case law that supports the constrained terms of parkland conversion. Healy and Fourcade write that the “focus on conflict over meaning opens the prospect of linking local battles over particular transactions with large-scale shifts in categories of worth.”<sup>14</sup> I ask how debates about the appropriate placement of buildings and the hosting of events on parkland (that is, the meaning of a “proper” park purpose) rely upon and reconstitute a category of inalienable land, facilitating the subsequent morphology of the city via cultural practices of exchange.

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<sup>12</sup> Ann Mische, “Projects and Possibilities: Researching Futures in Action,” *Sociological Forum* 24 (2009): 695.

<sup>13</sup> Leonard Grunstein, “The Answer to New York City’s Affordable Housing Crisis is Under Its Feet” (2014), <http://republic3-0.com/answer-affordable-housing-nyc-leonard-grunstein>.

<sup>14</sup> Marion Fourcade and Kieran Healy, “Moral Views of Market Society” *Annual Review of Sociology* 33 (2007): 301.

In this introductory chapter I: 1. Present expectations for urban land persistence and show that New York City parkland is in fact more durable than other forms of city land use, such as school buildings and cemeteries; 2. Consider parks as a form of urban land development; and 3. Expand on the example of impermanent cemeteries, and discuss the practice of landmark building preservation, in order to identify the specificity of park permanence.

## **Part 1: New York City Land: Change and Stability**

### An Overview of Changing Land Use

New York's founding myth begins with a land transaction.<sup>15</sup> And for any New Yorker who has been treated to stories about having arrived a minute too late for the cheap rent or the right deal, there is a moment further back in the historical record to let you know how really very late you are. "Progress is a terrible thing," and you have also missed out on the true great New York, now lost to the march of development.<sup>16</sup> (You can find the other James brother grousing about the "impudent" newness of New York's skyscrapers in *The American Scene*).<sup>17</sup> Laments for the lost city are enticing, perhaps because they resonate so poignantly. I have seen this passage, first published in *Harper's Monthly* in 1856, repeated in numerous historical treatments of the city:

New York is notoriously the largest and least loved of any of our great cities. Why should it be loved as a city? It is never the same city for a dozen years together. A man born in New York forty years ago finds nothing, absolutely nothing, of the New York he knew.<sup>18</sup>

In an editorial often credited with sparking the "park movement" that culminated in the creation of Central Park, William Cullen Bryant warned, "Commerce is devouring inch by inch the coast of the

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<sup>15</sup> For a discussion see e.g., Edwin G. Burrows and Mike Wallace, *Gotham: A History of New York City to 1898* (New York: Oxford University Press, 1998), xiv.

<sup>16</sup> William James, quoted in Edward K. Spann, *The New Metropolis: New York City, 1840-1857* (New York: Columbia University Press, 1981), 158.

<sup>17</sup> Henry James, *The American Scene* (London: Chapman and Hall, 1907), 76.

<sup>18</sup> Burrows and Wallace, 1998, xxii. See also: Spann, 1981, 158; Edward Robb Ellis, *The Epic of New York City* (New York: Coward-McCann, 1966), 273; Patrick W. Ciccone, introduction to *Manhattan Moves Uptown*, by Charles Lockwood (New York: Dover, 2014 [1976]), xii; James M. Lindgren, *Preserving South Street Seaport* (New York: NYU Press, 2014), 7; Gunther Barth, *City People* (New York: Oxford University Press, 1980), 31.

island, and if we would rescue any part of it for health and recreation it must be done now.”<sup>19</sup> In 1868, after Central Park had been built, its existence was still a marvel. Journalist Junius Henry Brown wrote that, “It is not a little remarkable, in a City where every square inch of ground is prized as gold, that so much real estate in the most valuable part of the island should have been appropriated to the public use.”<sup>20</sup> I still find this remarkable today.

Nancy Munn helps us to imagine what Central Park’s physical presence might have meant to New Yorkers in 1858. The city’s residents had been living from the time the street grid was laid out in the Commissioners’ Plan of 1811, up to the creation of the park with the knowledge that the city’s topography would be plowed through and laid flat.<sup>21</sup> (A particularly striking lithograph, printed in 1861, shows a family strolling down the newly carved Second Avenue at 42<sup>nd</sup> Street while a lone, stranded house perches above on a rock bluff.)<sup>22</sup> At the time, New Yorkers would have had the sense that land development would rupture all possibility of “descent and inheritance,” and Central Park must have been precious as a place that would be held in perpetuity, when there was no expectation that something even so seemingly durable as a Murray Hill mansion would remain.<sup>23</sup> For many of the park preservationists whose work I describe in later chapters, the parks of New York might have been one of their few constant points of reference in the city. August Heckscher III, Commissioner of Parks from 1967 to 1972, was born in a home on the site of today’s Rockefeller Center skating rink. His next childhood house, built by his father at 277 Park Avenue, is now a

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<sup>19</sup> William Cullen Bryant, “A New Public Park,” *The Evening Post*, Jul 3, 1844.

<sup>20</sup> Junius Henri Brown, *The Great Metropolis* (Hartford, CT: American Publishing Co., 1868), 121.

<sup>21</sup> On the history and legacy of the grid plan, see: Hilary Ballon, ed., *The Greatest Grid: The Master Plan of Manhattan, 1811-2011* (New York: Columbia University Press, 2012).

<sup>22</sup> Egbert L. Viele, *View of Second Avenue looking up from 42nd Street*, 1861.

<sup>23</sup> Nancy D. Munn, “The ‘Becoming-Past’ of Places: Spacetime and Memory in Nineteenth-Century, Pre-Civil War New York,” *Journal of Ethnographic Theory* 3 (2013): 371.

skyscraper.<sup>24</sup> The persistence of houses, estates, buildings, and even, as I will show, cemeteries, has been ever precarious in New York City.

There are less sentimental aspects to this precarity. There is a current crisis, and a longer history, of residential displacement from fast receding affordable dwellings. Marshall Berman titled his book on Faustian development, which includes 50 pages of mourning for his childhood neighborhood lost to Robert Moses's wholesale "slum" clearance, "*All That Is Solid Melts into Air*."<sup>25</sup>

The dynamic of growth in Manhattan is "a vibrant and often chaotic process of destruction and rebuilding."<sup>26</sup> Even historic preservation facilitates a Schumpeterian cycle of destruction and creation. According to Randall Mason, building preservationists work to create a physical "memory infrastructure," in addition to defending architecturally masterful examples of style. In service to the preservation of civic memory, historic building preservationists in New York have sought to destroy structures that encourage the "wrong" historical associations, e.g. the preservationist push to remove the Tweed Courthouse as discordant with their narrative of civic history.<sup>27</sup> The "save only the gems" approach creates license to raze and rebuild wide swaths of the city.<sup>28</sup> (I discuss the competing logics of park and historic building preservation in more detail below.)

The story of Manhattan is the story of "the transmutation of land into real estate,"<sup>29</sup> of land into commodity via the grid, which made the market for Manhattan land "more systematic and

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<sup>24</sup> Reminiscences of August Heckscher (Apr 6, 1978), Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

<sup>25</sup> Marshall Berman, *All That Is Solid Melts into Air* (New York: Penguin, 1988).

<sup>26</sup> Max Page, *The Creative Destruction of Manhattan, 1900-1940* (Chicago: University of Chicago Press, 1999), 2.

<sup>27</sup> Randall Mason, *The Once and Future New York: Historic Preservation and the Modern City* (Minneapolis: University of Minnesota Press, 2009), 174.

<sup>28</sup> For an illustration, see Daniel Bluestone on the preservation of Frank Lloyd Wright's Robie House and its relation to extensive Hyde Park urban renewal building clearance, in *Buildings, Landscapes, and Memory* (New York: Norton, 2011), 169-70.

<sup>29</sup> David Scobey, *Empire City: The Making and Meaning of the New York City Landscape* (Philadelphia: Temple University Press, 2002), 91.

predictable.”<sup>30</sup> In the midst of the constant transaction and transformation of New York City land, we find that once land has been dedicated as a park, its use as parkland remains remarkably stable.

In the next section I demonstrate the stability of parkland, and offer comparisons to other forms of land use to show that stability is indeed a notably distinct feature of parkland. I document the permanence of WPA-era parks, and I compare park persistence with the relative instability of land dedicated to public school use and to cemeteries. I selected schools and cemeteries as examples, respectively, of “public” and “sacred” land. Park permanence would perhaps not be so surprising if we found that the city acted as a land-banking institution, guarding its land holdings regardless of the agency in which a parcel resided. The example of schools also helps to address the possibility that parks are preserved because of the special status of a prominent class of park user—children. The “sacred” land of cemeteries appears categorically distinguishable from common or profane land uses. But the category-level sacredness of cemeteries does not consistently attach to specific parcels of land. In comparison, parkland is distinct from market land both categorically and on a parcel-by-parcel basis.

### WPA-Era Parks Persist

Between 1934 and 1943 the New York City Park Department constructed and rehabilitated hundreds of parks and playgrounds using federal Works Progress Administration funds. As an exercise to examine park permanence, these sites are interesting for their detachment from the loftier goals of landscape art preservation and the ennobling theories about the social uplift facilitated by parks. Rather, they were created as a convenient way to spend federal relief funds,

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<sup>30</sup> Scobey, 2002, 122. See also Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (Chapel Hill: University of North Carolina Press, 1983), 172.

which Park Commissioner (among other titles) Robert Moses was particularly adept at securing.<sup>31</sup>

The predominant traits of Moses-era recreational designs were “utility, standardization, and austerity.”<sup>32</sup> The WPA playground form was “didactic,” “meant to enhance the child, not the environment.”<sup>33</sup> The space was merely the arena for the real action—the recreation of the child.

And yet, the overwhelming majority of parks constructed or rehabilitated with WPA funds persist to this day. Almost 90% of the parks and playgrounds, covering all five boroughs, mentioned in the press releases of the New York City Park Department between 1934 and 1943 exist today.<sup>34</sup> Approximately 40 properties are no longer parkland, while approximately 365 properties remain under the jurisdiction of the contemporary Department of Parks & Recreation.<sup>35</sup>

### Schools Get Sold

One possible explanation for the persistence of parks is their status as public land. I compare the durability of parks with another type of public property dedicated to use by children—public school buildings and the land on which they reside. I created a list of every public school (K-12) in the borough of Manhattan from the 1903 *Directory of Teachers in Public Schools*, which I compared to a

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<sup>31</sup> Robert Caro writes that by 1936, “New York City was receiving one-seventh of the WPA allotment for the entire country” and credits this to Moses. Robert A. Caro, *The Power Broker* (New York: Vintage Books, 1974), 453.

<sup>32</sup> Phoebe Cutler, *The Public Landscape of the New Deal* (New Haven: Yale University Press, 1985), 15.

<sup>33</sup> Cutler, 1985, 19.

<sup>34</sup> Given the preponderance of drafters and builders hired with federal funds during this timeframe, I assume that all projects benefited at least indirectly from WPA funding. This is not a comprehensive list of park properties in operation at the time. It is a sample that captures any park that was built, renovated, or hosted active recreation. I collapsed multiple improvements and events within a single park to construct a count of unique park properties.

<sup>35</sup> I removed from this count 10 unique properties that were developed as temporary playgrounds on a lease or permit basis from private property owners, and two cases of city buildings with roof playgrounds (the buildings remain as city property and were never under the jurisdiction of the Park Department). There are an additional five properties that I could not locate. Of the approximately 40 properties that no longer exist as parkland, I cannot find the history of land transfer for 12 sites. The remaining sites were all conveyed to city, state or federal agencies, such as the New York City Housing Authority, the Department of Education, or the Department of General Services. The sites were put to competing public uses, primarily through Urban Renewal plans, which were overseen by the state. Given the state’s authority over parkland disposition, the land could be converted without alienation proceedings.

list of every park under the jurisdiction of the Department of Parks in the borough of Manhattan in 1908.<sup>36</sup>

Of 65 park properties listed in 1908, only one has been completely removed from the street map, replaced by public housing as part of an urban renewal project. Two properties still function as parks but operate outside of Parks Department jurisdiction (one is owned by the Department of Transportation and one by a land trust). And six parks still exist in substantially the same form but have been altered by road construction. That is, if you were to visit Manhattan using a 1908 guidebook with listings for 65 parks, you could still sit on a bench and enjoy your lunch in 64 of those sites today, 62 under the Parks Department flag.

However, if you were to attempt to enroll your child in a public school using only the 1903 list of facilities as your guide, you would more than likely send off your child to a condominium, community center, or commercial establishment than to a classroom. Of 142 schools, I was able to identify 139 contemporary locations. Of those, 52 are still property of the Department of Education.<sup>37</sup> 37% of Manhattan public school sites from the first decade of the 20<sup>th</sup> century remain as schools to this day, compared with 95% of Manhattan public park sites.

### Cemeteries Move

I want to consider the argument that we preserve parks because they are sacred, and do this by establishing the transience of cemeteries as a counterpoint to park permanence. In 1879 the *New York Times* wrote that, “Hardly a street has been opened during the last 50 years that has not caused

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<sup>36</sup> *Directory of Teachers in the Public Schools*, Board of Education of the City of New York (1903); Parks compiled from Bureau of Municipal Research, *The Park Question: Critical Study and Constructive Suggestions Pertaining to Administrative and Accounting Methods of the Department of Parks: Manhattan and Richmond* (New York: Bureau of Municipal Research, 1908). I counted only the Manhattan sites.

<sup>37</sup> Of the 52 sites, two schools were relocated within an urban renewal block; and one former school site is owned as a Department of Education “open space.” I confirmed contemporary property ownership using oasisnyc.net, an open source tool that uses as its base map the New York City Department of Finance PLUTO maps. I also confirmed sites using the NYC Department of Finance digital tax map. For addresses listed in the original directory only by cross street I consulted the current PLUTO map for all properties on the block and I reviewed the block using Google Street View.

the removal of the whole or a portion of some shaded plot of ground devoted to the dead, and in which their friends fondly hoped they might rest forever.”<sup>38</sup> Burial space in Manhattan has given way to development from the earliest colonial history of the island, when bodies in the first settler graveyard were disinterred for the sale of the land in 1676. The Reformed Church burial ground, dedicated in 1729, was sold for a post office in 1844, and again in 1882 to the Mutual Life Insurance Company, which exhumed numerous unclaimed and unidentifiable bones in the construction of its headquarters. A portion of the Portuguese Jewish cemetery, deeded in 1729, was condemned to extend the Bowery in 1856. Bodies buried at the Methodist Church on 44<sup>th</sup> Street and 8<sup>th</sup> Avenue were moved twice—first in 1860 to the church vaults on 19<sup>th</sup> Street and then to Woodlawn Cemetery in 1875. Exchange Place was built over the former grounds of a 1691 South Dutch Reformed churchyard gravesite. These examples, chronicled by Louis Windmuller, “show how delusive is the presumption that the ‘dwellings of the dead’ are secure against intrusion.”<sup>39</sup> The living have displaced the dead in other Western cities, including the disinterment of all 29 acres of Harmony Cemetery in Washington, D.C., for freeway construction, and the passage of legislation, in 1921 and 1923, ordering the removal of cemeteries from San Francisco to Colma, California.<sup>40</sup>

Hallowed ground can be deconsecrated to the point that we sunbathe, skateboard, and exercise above former burial grounds in Washington Square Park and Madison Square Park. The Fort Greene Park Conservancy has taken to reminding people not to hold aerobics classes or ride BMX bikes at the Prison Ship Martyrs Monument in recognition of “the 11,500 patriots who perished on British prison ships” during the Revolutionary War, some of whom are buried in a crypt below. The notice is widely disregarded.

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<sup>38</sup> “Some Old Grave-Yard: Homes of the Dead Still Found Within City Limits,” *NYT*, May 18, 1879.

<sup>39</sup> Louis Windmuller, “Graveyards as a Menace to the Commonweal,” *The North American Review* 167 (1898).

<sup>40</sup> U.S. Department of Housing and Urban Development, *Cemeteries as Open Space Reservations* (Washington, D.C.: Government Printing Office, 1970). On London’s closed burial grounds see: Spiro Kostoff, *The City Assembled: The Elements of Urban Form Throughout History* (Boston: Little Brown, 1992), 169. On the removal of corpses from central Paris, see: David Schuyler, *The New Urban Landscape* (Baltimore: Johns Hopkins University Press, 1988), 38.

I created a list of Manhattan burial sites from Carolee Inskeep's *The Graveyard Shift: A Family Historian's Guide to New York City Cemeteries*.<sup>41</sup> I used Inskeep's text, historical newspapers, and contemporary maps and city guides to verify if a cemetery that once existed on Manhattan Island persists to this day. This is not a comprehensive list of burial sites—it certainly misses some small family plots and religious congregations with poor record keeping. The bias in my list would be to over-report the percentage of cemeteries that have persisted, as the missing data comprises formerly active burial sites, now forgotten to historians and to physical planners. From this set of 111 cemeteries that once existed in Manhattan, 13 cemeteries (12%) still remain, three of those in significantly reduced form.<sup>42</sup>

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*To summarize:* Once land is dedicated as a park it is likely to persist in that state, while other forms of urban land, including child-serving public land and hallowed ground, are more susceptible to change. While some New York City parks contain unique natural features or important historic artifacts, all parks are created from the same material basis as other more fungible plots of city land, and as a category encompass everything from Central Park to unremarkable patches of asphalt. Having distinguished parks as more durable than other forms of land, I want to consider the particularities of parks as a form of city land use.

## Part 2: Parks As Land

In the language of New York State's prevailing case law, the determination of parkland alienation rests upon the judgment of a proposal's conformity to "park purposes." This purpose

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<sup>41</sup> Carolee Inskeep, *The Graveyard Shift: A Family Historian's Guide to New York City Cemeteries* (Orem, UT: Ancestry Publishing, 2000). I reviewed the website of the New York City Cemetery Project, maintained by Mary French, as an additional source of confirmation, <https://nycemetary.wordpress.com>.

<sup>42</sup> I could not verify the location of one cemetery. The percent reported is 13 out of 110 sites.

does not reside in the underlying characteristics of the land,<sup>43</sup> and is difficult to discern via induction. As Galen Cranz noted in her history of American city park design, under the category of “park” one might find:

an almost indiscriminate range of properties, from children’s playgrounds, neighborhood playfields, golf, bathing, and camping areas, athletic fields to zoological and botanical gardens, arboretums, landscaped ovals, triangles, and other small segments of street grid, neighborhood parks, downtown squares, scenic outlets, waterfront, and land reservations.

She continued, “The common purpose uniting this collection was not obvious.”<sup>44</sup>

All city parks have had former lives, sometimes with several acts, whether as ash dumps, landfill, brownfields, private real property, or unimproved city land holdings. The stickiness of parks as property does not inhere in the land or exist as a natural category. Washington Square Park, once a burial ground for yellow fever victims and a military parade ground, was officially dedicated as a park in 1878 after public agitation to prevent the construction of an armory on the square. The state legislature dedicated the park under the following terms: “The public park...known as Washington square or Washington parade ground shall...be used in perpetuity...*for the public as a public park*, and for no other use or purpose whatsoever.”<sup>45</sup> This places Washington Square Park in the same precarious situation as all parks: its defense rests upon the definition of a “park purpose.”

Greenstreets, playgrounds, and untended parkways are all city parkland and persist as such, though individually they may be neither sacred nor booster symbols nor particularly remunerative for neighboring property. The landholdings of the Parks Department are so morphologically diverse that it can be difficult to distinguish certain parcels of parkland from other categories of land using landscape features as an exclusive guide. For example, in Image 1.1, parkland (subject to alienation

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<sup>43</sup> This observation should date at least to Simmel, whose work shows that, “Value...is never an inherent property of objects, but is a judgment made about them by subjects,” Arjun Appadurai, ed., *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press, 1986), 3.

<sup>44</sup> Cranz, 1982, ix.

<sup>45</sup> New York Laws of 1878, Chapter 380, emphasis mine. On the armory, see: Emily Kies Folpe, *It Happened on Washington Square* (Baltimore: Johns Hopkins University Press, 2002), 161.

proceedings and held in trust by the state for the public) appears indistinguishable from the adjacent slice of land along the waterfront, owned (and readily disposable) by the city, managed under the Department of Citywide Administrative Services (DCAS). It would be difficult to argue that either space conforms to the “park as pleasure ground” definition recently reaffirmed by the New York State Court of Appeals.<sup>46</sup>



Image 1.1: Thursby Basin Park (Queens) and Surrounding Property<sup>47</sup>

In the chapters to come I take up the question of how the definition of a park purpose is debated, transformed, and defended. I also show how park preservationists work to distinguish parkland from other forms of landholding. As one contemporary park advocate told me, “Parkland is different. It looks like real estate, but it ain’t.”<sup>48</sup> The puzzle is precisely how this limitation on exchange, which the advocate described as “an almost religious” distinction, consolidates around and is persistently defended as a categorical distinction that attaches to plots of ground that were carved out of city land as part of numerous social projects.

One of those projects has been the stimulation of the surrounding real estate market.<sup>49</sup> It is

<sup>46</sup> Friends of Van Cortlandt Park v. City of New York, 750 N.E.2d 1050 (2001).

<sup>47</sup> Image source: Google Maps Street View. Property data accessed from <http://www.oasisnyc.net>, Oct 2014.

<sup>48</sup> Author interview, March 2016. I describe interview methods in Appendix A.

<sup>49</sup> New York City has acquired parkland through a number of mechanisms, including the purchase of private land, the use of eminent domain, and gifts to the city from sources including private individuals, nonprofit organizations, and other government agencies. The parcel-by-parcel defense of a proper park purpose will depend, in part, on the terms of

possible to conceive of the acquisition and continuing dedication of parkland as the preservation of use value in the service of the exchange value of surrounding city land. Parks remove land from market circulation (and by limiting the supply of development sites possibly drive up demand for surrounding land), they provide a category to formulate relational value, and their expected persistence helps to facilitate predictions of surrounding growth.<sup>50</sup> Parks create a form of scaffolding for investment expectations, and boosters have strategically promoted park development to encourage speculative growth.<sup>51</sup>

From the start, park developers have behaved as “place entrepreneurs,” classic growth machine actors.<sup>52</sup> Logan and Molotch’s political economy of place begins with the claim that parcels of urban land are commodities, and possess the “fundamental attributes of all commodities...the social context through which they are used and exchanged.”<sup>53</sup> According to Logan and Molotch, cities take physical shape through the interplay of “place entrepreneurs” i.e. “people dreaming, planning, and organizing themselves to make money from property” and the “social groups that push against these manipulations” that “embody human strivings for affection, community, and sheer physical survival.”<sup>54</sup> The growth machine is a set of “nested interest groups” who “use the

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land acquisition. The Battery, for example, was acquired in pieces, transferred to the city by both the state and federal government, and extended (by permission of the state) through landfill into the waters of the Hudson River. The acquisition of each parcel carried different restrictions. The 1821 act that extended the Battery forbade all uses save as a public walk or for common defense, while Castle Garden, situated within the Battery but acquired under different terms, could permissibly host immigration processing. James Watson Gerard, Jr., *A Treatise on the Title of the Corporation and Others to the Streets, Wharves, Piers, Parks, Ferries and other Land Franchises in the City of New York* (New York: Poole & Maclauchlan, 1872), 290-94.

<sup>50</sup> Rosenzweig & Blackmar note that in constructing Central Park, “The city was not just reserving land from private exchange, it was also altering the shape of the market itself,” Roy Rosenzweig and Elizabeth Blackmar, *The Park and the People: A History of Central Park* (Ithaca: Cornell University Press, 1992), 80. This book has been an exceptionally helpful guide to my research on New York City parks. It explicitly directed me to some material, such as the archives of Richard Welling and Albert Bard. At times I converged on sources cited by Rosenzweig and Blackmar, such as the papers of the Board of Commissioners of Central Park, and the Olmsted Associates Records at the Library of Congress. At other times, I was certain I had happened upon an original pamphlet or report, only to find it quoted and thoughtfully discussed by Rosenzweig and Blackmar. I cite their scholarship throughout this dissertation.

<sup>51</sup> Logan and Molotch, 1987, 27.

<sup>52</sup> Park builders have often been city growth boosters. But park preservationists were not exclusively self-interested defenders of private property values, as I discuss in Chapter Two.

<sup>53</sup> Logan and Molotch, 1987, 1.

<sup>54</sup> Logan and Molotch, 1987, 12.

institutional fabric, including the political and cultural apparatus, to intensify land use and make money.”<sup>55</sup> Coalitions of interests work with and through multiple levels of government to pursue profit-maximizing land uses.<sup>56</sup>

Homer Hoyt described the role of Chicago park builders as speculative land dealers. The establishment of the Chicago parks and boulevard system in 1869 drove up land prices and encouraged the outward expansion of residential settlement. The speculative nature of park building and the use of city infrastructure as an outlet for capital investment “fired the imagination of real estate operators” in Chicago following “reports of the rapid rise of land values in the vicinity of Central Park in New York” and “the fame of Haussmann’s park and boulevard system in Paris.”<sup>57</sup> Hoyt traced three lines of “fashionable growth” emanating north, south and westward from the city center, with vacant lots along those paths commanding high prices in anticipation of continued axial growth. This extension “was favored by the placing of a belt of large parks in the direct path of growth, several miles beyond the fashionable settled area” with grand boulevards paving the way.<sup>58</sup> Logan and Molotch would call Hoyt’s park builders “structural speculators”—actors who not only anticipate people’s behavior in the land market, “but actively work to intervene in those future choices.”<sup>59</sup>

In 1884 the Commission to Select and Locate Land for Public Parks in the Bronx offered the state legislature an eclectic set of justifications for the creation of a park system, including: keeping up with European capitals, “moral and social welfare,” health and hygiene, and “the

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<sup>55</sup> Harvey Molotch, “The Political Economy of Growth Machines,” *Journal of Urban Affairs* 15 (1993): 31.

<sup>56</sup> Logan and Molotch, 1987, 27; 58; Harvey Molotch, “The City as a Growth Machine: Toward a Political Economy of Place,” *American Journal of Sociology* 82 (1976): 309.

<sup>57</sup> Homer Hoyt, *One Hundred Years of Land Values in Chicago* (New York: Arno Press, 1970 [1933]), 99.

<sup>58</sup> Hoyt, 1970 [1933], 302.

<sup>59</sup> Logan and Molotch, 1987, 30.

cultivation of the public taste.”<sup>60</sup> Included as well were economic justifications, based upon projections of city growth, and the recognition that the outlay of parkland would in turn shape future growth. The Commission projected that the establishment of a Bronx park system would pay for itself and generate revenue for the city over and above what would have been expected without the parks, plus additional unpriced benefits from the advancement of city business interests and the increase of “trade and travel.”<sup>61</sup> The Committee summarized its case, “The true policy is to make our metropolis so inviting that it will bring not only pleasure-seekers, but profit-seekers to enjoy its advantages and participate in its pleasures.”<sup>62</sup> In pursuing these goals through the creation of parks, the legislature dedicated reserves of land that persist to this day.

Geographers working in the Marxist tradition might explain investment in parks as part of the secondary circuit of capital flow into the built environment.<sup>63</sup> However, parks are an inefficient form of temporary land holding. There are exceedingly high transaction costs for New York City to hold parks until the land on which they reside can be put to more profitable use. Once land is dedicated as parkland, it is difficult to convert to other uses, including other city infrastructure projects. The courts in New York State have consistently prevented other city agencies from appropriating Parks Department land to conduct city business without prior State authorization. The New York City Departments of Sanitation and of Highways were ordered to remove trucks from Cunningham Park (Queens), and the New York City Police Department was ordered to remove its

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<sup>60</sup> *Report to the New York Legislature of the Commission to Select and Locate Lands for Public Parks in the 23<sup>rd</sup> and 24<sup>th</sup> Wards of the City of New York, and in the Vicinity Thereof* (New York: Martin B. Brown, 1884), 8-9. This resulted in the outlay of land for present day Claremont, Crotona, St. Mary’s, Van Cortlandt, Bronx, and Pelham Bay parks.

<sup>61</sup> New York Park Association, *More Public Parks!* (New York: New York Park Association, 1882), 16.

<sup>62</sup> *23<sup>rd</sup> and 24<sup>th</sup> Ward Report*, 1884, 50.

<sup>63</sup> David Harvey, *The Urbanization of Capital* (Baltimore: Johns Hopkins University Press, 1985). Public infrastructure projects might also be understood as an investment in the labor force, though it is unclear that this would necessitate investment in land-intensive parks. Similarly, investment in the health and happiness of a docile labor force does not demand the use of 20% of the city’s land. In Chapter Two I discuss playground advocates who argued that the provision of recreation facilities for the “productive” use of the leisure time of the masses would forestall revolution. But part of my argument is that recreational programming did not necessitate the coupling of playgrounds to parks. The People’s Institute work in school buildings and community centers, for example, shows how anti-revolutionary uses of play could be accomplished without the near-permanent dedication of large swaths of city land.

vehicles from Chatham Square (Manhattan). The courts determined that the operation of a compost facility on Brooklyn parkland—for material gathered from city parks—constituted parkland alienation; and municipalities in New York must obtain legislative authorization from the state prior to the seizure of city parkland for the construction of streets.<sup>64</sup> In contrast, the city’s Department of Housing Preservation and Development oversees a portfolio of vacant land that it holds until financing becomes available for the construction of affordable housing units. We might argue that park persistence is achieved because a body of case law makes the disposition of parkland by the city onerous, expensive, and hence rare. But that begs the question. These disputes entered court only because the claims on parkland were understood by mobilized interest groups to be violations of the purpose of a park.

New York State case law sustains the concept of parkland as categorically distinguishable from market land, through its designation as land held in trust by the state (a differentiating feature of parks from the cemeteries and schools that I discussed above). The current formulation of this claim argues that municipal parkland in New York State is protected by the “public trust doctrine.” There is a large body of scholarship on the public trust doctrine in American law, from its Roman and English origins as riparian doctrine, to the evolution of its “amphibious” applications, to its resurrection in 1970 as a tool for environmental resource protection.<sup>65</sup> Ancient Roman civil law stated that, “By the law of nature these things are common to all mankind: the air, running water,

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<sup>64</sup> Ackerman v. Steisel, 104 A.D.2d 940 (1984); Chatham Green v. Bloomberg, 765 N.Y.S.2d 446, 453-54 (Sup. Ct. 2003); Raritan Baykeeper v. City of New York; In re Central Parkway, Schenectady, 251 N.Y.S. 577, 580 (Sup. Ct. 1931). See: New York State Office of Parks, Recreation & Historic Preservation, *Handbook on the Alienation and Conversion of Municipal Parkland in New York*, revised Mar 2012, <https://parks.ny.gov/publications/documents/AlienationHandbook.pdf>.

<sup>65</sup> See: Molly Selvin, *This Tender and Delicate Business: The Public Trust Doctrine in American Law, 1789-1920* (New York: Garland Publishing, 1987). The doctrine has “evolved into an amphibian, moving easily from the waters onto the shore lands,” Scott W. Reed, “The Public Trust Doctrine: Is It Amphibious?” *Journal of Environmental Law & Litigation* 1 (1986): 107. On the use of the doctrine as a tool for environmental resource protection, see: Joseph L. Sax, “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention,” *Michigan Law Review* 68 (1970). For a discussion of Sax’s interpretation of the federal trust doctrine, see: Joseph D. Kearney and Thomas W. Merrill, “The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central,” *University of Chicago Law Review* 71 (2004).

the sea, and consequently the shores of the sea.”<sup>66</sup> This concept was substantively adopted in English common law, which travelled to the American colonies and was retained in the subsequently admitted states to the union.<sup>67</sup> In its traditional form, as applied to navigation, “The Public Trust Doctrine provides that title to tidal and navigable freshwaters, the lands beneath, as well as the living resources inhabiting these waters within a State...is a title held by the State in trust for the benefit of the public.”<sup>68</sup> As Robin Kundis Craig demonstrates, there is no “*the* public trust doctrine.”<sup>69</sup> There are distinct federal and state lineages, with each state evincing its own “public trust philosophy.”<sup>70</sup> (The application of the doctrine to parks in e.g. Chicago or Milwaukee will rely on different state traditions, and for this reason my discussion focuses exclusively on the use of the doctrine for parkland preservation in New York State.)

Joseph Sax, who in an influential 1970 law review article “revived and re-invented”<sup>71</sup> the public trust doctrine, has argued that “only the most manipulative of historical readers could extract much binding precedent from what happened a few centuries ago in England,”<sup>72</sup> and I will take that as my license to set aside an investigation of ancient doctrinal history. The importance of the public trust doctrine for contemporary New York parkland is that it establishes a claim for park protection, and provides a mechanism for enforcing that claim. I discuss the public trust doctrine as a park preservation tool in more detail in Chapter Seven.

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<sup>66</sup> On the principle of Roman law, see Mark Dowie, “Salmon and the Caesar: Will a Doctrine from the Roman Empire Sink Ocean Aquaculture?” *Legal Affairs* (Sep-Oct 2004), accessed Oct 11, 2017, [https://www.legalaffairs.org/issues/September-October-2004/termsofart\\_sepoct04.msp](https://www.legalaffairs.org/issues/September-October-2004/termsofart_sepoct04.msp).

<sup>67</sup> Craig, 2007: 6.

<sup>68</sup> David C. Slade, *Putting the Public Trust Doctrine to Work* (Hartford: Connecticut Dept. of Environmental Protection, Coastal Resources Management Division, 1990), xvi.

<sup>69</sup> Robin Kundis Craig, “A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries,” *Penn State Environmental Law Review* 16 no.1 (2007): 3.

<sup>70</sup> Craig, 2007: 25.

<sup>71</sup> Carol Rose, “Joseph Sax and the Idea of the Public Trust,” *Ecology Law Quarterly* 25 (1998): 351.

<sup>72</sup> Sax, 1970: 485.

### Part 3: The Specificity of Park Preservation

In this section I compare the logic and practice of cemetery and historic building preservation with that of parkland preservation, in order to distinguish the particularity of parks as a sticky form of urban land use.

#### Cemetery Disruption and Park Preservation

##### *City Growth and Relational Land-Valuing*

In 1823 the Corporation of the City of New York prohibited private burials within the city (which at the time extended from the southern tip of Manhattan to Canal Street). Urban growth altered the relational meaning of cemetery land. Hartog writes that the courts upheld the Corporation's prohibition, using "the city's physical growth" as "an independent reason why the legitimacy of the ordinance ought to be sustained. According to the New York Supreme Court, the increase of population had transformed a 'common,' bounded on one side by a vineyard, into an urban 'nuisance,' which might be enjoined at the pleasure of the corporation."<sup>73</sup>

As Philippe Ariès recounts, Western societies across the 18<sup>th</sup> century became concerned with "the death of the other person, whose loss and memory inspired in the nineteenth and twentieth centuries the new cult of tombs and cemeteries and the romantic, rhetorical treatment of death."<sup>74</sup> A report on New York City burial policy, issued by the municipal corporation in 1825, suggested that changing land use patterns in the central city altered the meaning of the practice of reverential

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<sup>73</sup> Hartog, 1983, 77. Hartog argues that the courts felt compelled to recognize state sovereignty in the "atavistic" organization of the municipal corporation as a private property holder. The municipal corporation of the City of New York at the time was a "schizophrenic personality"—on the one hand a corporate person (who, judged as such, would have lost its case to the churches), on the other "as an agent of the legislature...it was that public authority." If the state and not the municipal corporation had ordered the cessation of private burials, the churches would have no standing to sue for breach of contract, and therefore, "Legal ascendancy had to go to the public legislative role. If such were not the case, the sovereignty of the state could be compromised and denied." Hartog, 1983, 79-80.

<sup>74</sup> Ariès compared "the great indifference of the population" as Louis XVI razed the Cemetery of the Innocents in 1786, with the public indignation some 70 years later against Napoleon III and his government's "sacrilegious projects" to remove Parisian cemeteries. Philippe Ariès, *Western Attitudes toward Death: From the Middle Ages to the Present* (Baltimore: Johns Hopkins University Press, 1974), 56; 74-75.

communion with the dead. The report quoted from Timothy Dwight's observation of New Haven's town cemetery:

It is always desirable that a burial ground should be a solemn object to man; because in this manner it easily becomes a source of useful instruction and desirable impressions. But when placed in the centre of town, in the current of daily intercourse, it is rendered too familiar to the eye, to have any beneficial effect on the heart. From its proper, venerable character, it is degraded into a mere common object; and speedily loses all its connexion with the invisible worlds, in a gross and vulgar union with the ordinary business of life.<sup>75</sup>

In 1887, the trustees of Congregation B'nai Jeshurun voted to transfer its burial ground from 32<sup>nd</sup> Street near Seventh Avenue in Manhattan to Cypress Hills Cemetery in Queens because, "The old burying ground is now surrounded by factories and tenements."<sup>76</sup> In 1907, the trustees of the Roman Catholic cemetery on 11<sup>th</sup> Street east of First Avenue in Manhattan, which had been in operation since 1833, supported moving the cemetery because, according to the Archbishop, the surrounding neighborhood had been given over to "business purposes and is not conducive to the reverence due to the dead." The Archbishop continued that the condition of the immediate environment "vitiate[d] the consecration" of the cemetery land:

The neighborhood of East Eleventh Street is anything but a reverential neighborhood. It is a neighborhood in which are all sorts of peoples, and few of them have any reverence or respect for the cemetery. These people throw rubbish over the fence, and the place is littered with refuse, which no amount of effort within reason is sufficient to prevent.<sup>77</sup>

The meaning of a burial plot, established on what had been the outskirts of the growing city center, changed in terms of its capacity to offer a place of quiet repose. It also became a nuisance relative to a redistributed population, and as Hartog writes, a sign of urban disorder that was itself a justification for the use of police power.<sup>78</sup> The meaning of the cemetery was relational to its position within a larger ecology of land use, and city growth tended to corrupt the sacredness of the

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<sup>75</sup> *Report of the Committee on Laws to the Corporation of the City of New-York on the Subject of Interment within the Populous Parts of the City* (New York, 1825), 19.

<sup>76</sup> "To Move The Bodies," *NYT*, Feb 25, 1887.

<sup>77</sup> "Catholics to Abandon East Side Cemetery," *NYT*, Feb 3, 1907.

<sup>78</sup> Hartog, 1983, 77.

cemetery.

Urban growth appears to have the opposite effect on parkland. As the city grows, parkland becomes more precious. The relational meaning of parkland relative to a growing city worked to increase the attachment of park preservationists to the idea that parks must not be built upon. Gutzon Borglum, a member of the Parks and Playgrounds Association of New York (whose work I discuss in detail in Chapters Two and Six), demonstrated the calculation of the relational valuing of parkland in his opposition to the expansion of the Metropolitan Museum of Art into Central Park: “If we had more park room in New York City I would not be opposed to the adding of another building or two...in Central Park; but we have not sufficient park room, so I am opposed to it unalterably.”<sup>79</sup>

A contemporary park promoter expressed a similar formulation of the value of parkland relative to population density and land scarcity:

[New York] is so densely populated that every piece of parkland is precious, even if it's just a little sitting area with a couple benches in it. And more precious because of the density. If we were Phoenix or Tucson you could probably be a little more flexible, you've got a 10,000-acre desert. Could you put a library in this 10,000-acre desert? Yes. But if you've got a 200-acre park that serves half a million people, it's probably not the best place to put a library. So I think to a certain extent that density is destiny. *Parks become more valuable by virtue of having to serve more people.*<sup>80</sup>

As I will discuss in Chapter Three, one of the foundational “justifying values” of Central Park was the extent to which its preciousness as a land reservation, set apart from the city grid, would accrue as the city population surged and attendant physical development encompassed Manhattan.

### *Police Power & Property Rights*

When Joseph Sax revived the Public Trust Doctrine in his 1970 law review article, he stated that he had explicitly searched for a doctrine that would allow citizens to hold public agencies

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<sup>79</sup> Borglum to Philbin, Jan 20, 1911, GBP 79: Parks & Playgrounds Jan-March 1911.

<sup>80</sup> Author interview, March 2016.

accountable; an effective doctrine would “contain some concept of a legal right in the general public” and “it must be enforceable against the government...”<sup>81</sup> As a formulation of the relationship between the public and the state, the alienation of parkland allows for the pursuit of grievances in a way that extinguishment of burial rights in cemeteries does not.<sup>82</sup>

The property rights of private cemeteries were held subject to police power. Novak describes the policy arguments for the regulation of private property rights on the basis of public health: “The church’s covenant for quiet enjoyment was trumped by *salus populi*—the threat the cemetery posed to the ‘health’ and ‘lives’ of the ‘citizens.’”<sup>83</sup> The Corporation of the City of New York supported the extinguishment of private burial associations’ property rights with recourse to the other common law doctrine of the well-regulated 19<sup>th</sup>-century American city that Novak has described, writing:

Your Committee conceive that a very obvious and conclusive [answer to private property claims] is to be found in the principle of the common law, ‘*sic utere tuo, ut alienum non laedas*’ so use your own property as not to injure that of another.<sup>84</sup>

Citizens possess different rights to have the state consider their grievances regarding the closure of a burial ground compared with the alienation of parkland. The term alienation is instructive here. Radin argues that the concept of alienation is unresolved, but contains at its core the “notion of alienation as a separation of something—an entitlement, right or attribute—from its holder.”<sup>85</sup> The formulation of the sale or conversion of public parkland as an act of alienation recognizes the separation of the public from its (entitled) physical estate. In contrast, the individual owner of a cemetery plot possesses “burial rights.” The title in fee simple to the land that comprises

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<sup>81</sup> Additionally, Sax argued that the doctrine “must be capable of an interpretation consistent with contemporary concerns for environmental quality.” Sax, 1970: 474.

<sup>82</sup> I discuss the coupling of the concept of alienation to the doctrine of public trust in Chapter Seven.

<sup>83</sup> William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), 108.

<sup>84</sup> *Committee on Interment Report*, 1825, 32. The Committee also found justification to privilege the common good over private property rights in the “Divine Law of the Redeemer,” i.e. the biblical golden rule to do unto others.

<sup>85</sup> Margaret Jane Radin, “Market-Inalienability,” *Harvard Law Review* 100, no. 8 (1986-1987): 1852.

the plot remains vested in the cemetery corporation. This right is akin to a pew claim in a church, in which a worshiper owns neither the land on which the church is built nor the right in perpetuity to occupy a portion of that land, but rather holds something like a temporary easement. This right would be extinguished if, for example, the church were to burn down.<sup>86</sup> According to Muckey, “The act of burial in religious, private, or public graveyards is merely a temporary license to bury and is without ownership rights.”<sup>87</sup>

### Historic Preservation and Park Preservation

I draw two comparisons between the practice of historic building preservation and park preservation. (I rely on the work of Max Page and Randall Mason to describe the practice of historic building preservation in New York City.)

First, building preservation is site (or district) specific, while park preservation obtains over the category of parkland. Through public bureaucratic organization and the application of legal precedent to the holdings of an entire administrative unit, park preservation practice redounds to a category of land. In contrast, if a private entity holds title to a landmarked property, its obligations do not necessarily extend to other property it might own. This makes the threat of precedent a particularly salient way to mobilize park defense; it also makes the accretion of legal precedent, established in cases regarding a few select parks, a powerful preservation tool for all parks, including those without any remarkable historical legacy, critical ecology, or other salient features that could be considered valuable by other logics of preservation. But the argument, for example, to save St. John’s Church in lower Manhattan, did not suggest the necessary preservation of e.g. all Episcopalian churches or all Georgian architecture. (At best, categorical preservation might extend

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<sup>86</sup> This analogy and description come from Lance Muckey, “Regulating the Dead: Rights for the Corpse and the Removal of San Francisco’s Cemeteries” (PhD diss., UNLV Dept. of History, 2015), 107.

<sup>87</sup> Muckey, 2015, 141.

to an artist, e.g. an effort to save all McKim, Mead & White buildings, analogous to the preservation of all Olmsted and Vaux parks.)

Second, Mason and Page argue that building preservationists in New York have worked to preserve “memory infrastructure,” which can privilege the protection of a few salient structures at the expense of many others.<sup>88</sup> In contrast, I will argue here (and throughout the dissertation) that park preservationists work to preserve *the ideology of parks as invaluable land*, or land that is not exchangeable under the terms of the traditional market for real property. This can be illustrated with the case of City Hall Park.

#### *Valuing City Hall Park/Land*

At the turn of the 20<sup>th</sup> century there was an ongoing debate about the restoration, rehabilitation, and redesign of City Hall Park—including the physical structures within the park, and the parkland itself—that illustrates the difference between the logic of building preservation and parkland preservation.

Mason argues that the practice of historic preservation has always recognized that not all buildings possessed a value worth saving, based in part “on the particular kinds of memories with which buildings are associated and whether those memories are politically and culturally resonant or not.”<sup>89</sup> Page writes, “[City Hall] Park advocates and protectors of historic buildings each saw a threat of destruction from incursions in the park. But they valued the buildings and spaces of the park differently...”<sup>90</sup> Historic building preservationists were concerned with the ongoing reproduction of “memory infrastructure” to support a narrative of American history as expressed through (select)

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<sup>88</sup> Mason, 2009, xxv.

<sup>89</sup> Mason, 2009, 165.

<sup>90</sup> Page, 1999, 134.

didactic structures.<sup>91</sup> In contrast, the park preservationists were concerned with maintaining the idea of parks as “off the table” in development negotiations.

In 1907, the Metropolitan Park Association (MPA) contended that “Park property should not be invaded under any pretext,” even for noble public institutions.<sup>92</sup> While the MPA issued this statement regarding City Hall Park preservation, it articulated the concept of the inviolable park through the broader defense of “park property.” The City Club also argued for the protection of “the parks” in service to its argument for the inviolability of City Hall Park. The City Club wrote, “The only way to preserve the parks is to preserve them, and to accept the fact that they have been stricken from the list of possible building sites. We hold the parks in trust for future generations.”<sup>93</sup> While the practice of the building preservationists was to preserve a site for collective and historical memory, the practice of the park preservationists was to frame a specific park as part of a category of invaluable land, removing it from the realm of developable land. The City Club quoted from the *New York City Globe* (March 12, 1910) to argue this case:

The question thus narrows down to the old one of whether park space as park is worth to the public what it would bring in the open market. The judgment of the community, on many occasions expressed, is that it is worth that and much more.<sup>94</sup>

### *Preserving Park Purposes*

Consider the task of the park defender as described in a 1916 *New York Times* editorial, calling for the formation of an organization dedicated to fighting parkland alienation:

The plea for putting up buildings in parks is that the land belongs to the public and will not cost anything. The first duty of the proposed park protection organization will be to impress upon the public mind the fact that the park lands of New York are the most valuable the city possesses; that the cost to the people of diverting a single half acre of them from the one purpose for which they have been set aside would be enormous.<sup>95</sup>

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<sup>91</sup> Mason, 2009, 126.

<sup>92</sup> MPA executive committee minutes, Nov 25, 1907, GBP 78: Parks & Playgrounds 1907.

<sup>93</sup> The City Club, The People’s Institute, & The Fine Arts Federation of New York, *Save the City Hall and the City Hall Park* (1910), quoted in Page, 1999, 133.

<sup>94</sup> Page, 1999, 139.

<sup>95</sup> “The Park Question,” *NYT*, Jul 21, 1916.

The implication is that while a market price for parkland, valued qua city land, could be calculated, the public valuation of parkland incorporated more than price per acre (and this valuation was achieved, in part, through the organized agitation of park advocates).

In Logan and Molotch's political economy of place, the cost of land is much more than a pricing signal—it is an artifact of explicit land market creation and manipulation. In other words, “price is sociological.”<sup>96</sup> So too is pricelessness, as Zelizer's work makes clear. When *New York Magazine* offered as reason number three to love New York, “Because We Wouldn't Trade a Patch of Grass for \$528,783,552,000,” it was subjecting Central Park to an exercise in “pricing the priceless.”<sup>97</sup> The stratospheric price tag uses the convention of land surveying to briefly move the park into the market sphere.<sup>98</sup> If the park were a mere patch of grass in the heart of Manhattan, it would be a pricey patch indeed. To the extent that this formulation succeeds as a joke, we can see how far in popular imagination the park exists from just another “patch of grass” to be bought and sold.

On September 11, 1967, the *New York Times* ran a full two-page ad spread depicting an aerial view of Central Park. In the text below a picture of the park, which had been altered to include roads, parking lots, and buildings, a group calling itself The Committee to Tear Down Central Park asked:

New Yorkers! Did you know that the 840 acres that make up Central Park are being used for nothing but leisure for New Yorkers? Do you realize that this is the most valuable piece of land in the world? Do you realize that this fine land could be used for buildings, tunnels, parking lots and furniture stores...!

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<sup>96</sup> Logan and Molotch, 1987, 9.

<sup>97</sup> S. Jhoanna Robledo, *New York Magazine*, accessed Oct 11, 2017, <http://nymag.com/nymetro/news/reasonstoloveny/15362>; Viviana A. Zelizer, *Pricing the Priceless Child* (New York: Basic Books, 1985).

<sup>98</sup> Igor Kopytoff, “The Cultural Biography of Things: Commoditization as a Process,” pp. 64–94 in Appadurai, 1986.

The Committee continued, admonishingly, to describe the children playing and the people enjoying evening concerts, row boating, and relaxing on the park's vast expanses of greenery—and for all that, the park didn't even charge admission(!). And then the Economic Development Council of New York stepped in and took credit for the ruse. The EDC explained that it, "just wanted to take [Central Park] away from you for a few moments so that you wouldn't take it for granted." Perhaps readers momentarily feared the demise of the park, and contemplated how much they valued it. The EDC had suggested that the "most valuable piece of land in the world" could not be compared to the invaluable pleasure of leisure time in the park.

The formulation of the extra-market value of parkland has been accomplished in part through the articulation and mobilization of definitions of the "purpose for which" parkland has been set aside. The meaning of a park purpose is debated as the object of worth when calculating land-use trade-offs. Classification becomes a means of precluding trade-offs by making the purpose of a park incommensurable with the cash value of land. Espeland and Stevens write, "Just as commensuration is a considerable social accomplishment, so too the creation of incommensurables requires work. Some party must draw boundaries around the thing whose value is to be kept, or made, distinctive and then defend the boundaries from *encroachment*."<sup>99</sup> Encroachment suggests "advances beyond the usual or proper limit," and is one of the many terms that park defenders use as a synonym for "non-park purpose."

### Why Attend to Central Park Preservation?

In particular, I will discuss the work of preservationists to define and to prevent encroachments into Central Park. Central Park has been at the center of recent debates about equitable park funding, with questions about its care and maintenance being carried out at the

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<sup>99</sup> Wendy Nelson Espeland and Mitchell L. Stevens, "Commensuration as a Social Process" *Annual Review of Sociology* 24 (1998): 328 (emphasis mine).

expense of other city parks. I spoke with advocates who expressed frustration that I even mentioned Central Park to frame a hypothetical example about park policy. And so, before bestowing considerable attention on the park in the chapters to come, I explain how the study of Central Park preservation is important for understanding the broader context of New York City park preservation.

The continuing material presence of 843 acres of public land in the center of Manhattan, free from private development, structures subsequent preservation possibilities. Molotch and colleagues offer a possible explanation for the puzzle of park preservation spreading from a single site to a category of land. They ask how the qualities of a place take shape and persist over time, acquiring and maintaining “durable distinctiveness.” The acquisition of distinctiveness occurs when “social elements cohere” such that we recognize the difference in qualities that make Chicago “the city of broad shoulders” and Paris “the city of light” (to use the authors’ examples). Distinctiveness is durable when the qualities that have cohered into place character then persist, via a process of structuration.<sup>100</sup>

Early land use decisions are one form of “structure-making action”—drawing from, enabled, and constrained by previous decisions that created the possibility for action; and productive of future conditions and constraints. Past preservation efforts inform each new fight through organizations that “harbor memory traces” and through the built environment itself, which manifestly reveals its persistence.<sup>101</sup> Looking at Central Park today, we observe a large reservation of land that has been preserved without housing or commercial development. The endurance of the park, as “physical trace material,” creates subsequent conditions in which land use decisions will be

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<sup>100</sup> Harvey Molotch, William Freudenburg, and Krista E. Paulsen, “History Repeats Itself, But How? City Character, Urban Tradition, and the Accomplishment of Place,” *American Sociological Review* 65 (2000): 791-93. This focus on patterns of action “differentiates place character from *sense of place*”—an individual perception or sentimental “place attachment.” Krista E. Paulsen, “Making Character Concrete: Empirical Strategies for Studying Place Distinction,” *City & Community* 3 (2004): 245.

<sup>101</sup> Molotch et al., 2000: 794.

evaluated.<sup>102</sup> Central Park serves as a rhetorical counterpoint for peripheral park advocates. For example, an opponent of a proposed professional sports stadium in Flushing Meadows Corona Park encouraged readers to “imagine the outrage if a developer proposed a single professional sports stadium...in Central Park or Prospect Park.”<sup>103</sup> Past preservation efforts are a form of “structure-making action” that enable future preservation.

I focus on Central Park for several other reasons. The park’s designers, Frederick Law Olmsted and Calvert Vaux, created a landscape plan with a clear theory of use and design.<sup>104</sup> Numerous civic art, historic preservation, and park advocacy groups have fought to preserve the park, leaving records of their work. And contests over the use and design of Central Park have unfolded in the courts; the reigning legal precedent regarding parkland alienation in New York State was established in a case concerning the lease of Central Park’s Arsenal building. Examining fights over the proper use of Central Park can help us to better understand broader patterns of New York City land preservation.

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In Chapter Two I ask how the lease of a building in Central Park in 1918 came to be seen as a violation of the purpose of the park, and a grievance that could be pursued through the courts. I discuss the resulting court case, which created a (vague) test for identifying a proper park purpose. The park defenders of the time quickly came to realize that they would need other sources of authority to establish and defend park purposes. They located that authority in the writing of the park’s creators, in particular Frederick Law Olmsted. In Chapter Three I describe Olmsted’s theory of the “justifying value of a public park,” and his social/aesthetic project of park building. Later

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<sup>102</sup> Molotch et al., 2000: 794.

<sup>103</sup> Samuel Stein, “No Place for Amateurs: A New Stadium vs. Queens’ Soccer Fields” *Urban Omnibus* (2013), accessed Oct 11, 2017 <http://urbanomnibus.net/2013/02/no-place-for-amateurs-a-new-stadium-vs-queens-soccer-fields>.

<sup>104</sup> See e.g. Charles E. Beveridge and David Schuyler, *The Papers of Frederick Law Olmsted Volume 3: Creating Central Park, 1857-1861* (Baltimore: Johns Hopkins University Press, 1983).

interpreters and organizations have attempted to carry on the aesthetic component of Olmsted's project within a material park that demands constant reproduction.

In Chapters Four and Five I discuss the framing of events and building projects as threats against the park. Parks, as property, constitute a relationship between a diffuse public in perpetuity and the trustees of the public interest in parkland. To functionally protect parkland, this interest must be continually defined and defended. By anchoring the public/trustee relationship through indefinite time—over which “encroachments” accrue as precedent, while material parkland degrades as legible landscape architecture—preservationists construct the concept of parkland as constantly threatened with reversion to commodity land. Successful preservation techniques have disarticulated parks from land, offering justifications for the preservation of parks as e.g. art or scenic landmarks.

In Chapters Six and Seven I look beyond Central Park. In Chapter Six I describe the incorporation of playgrounds into the concept of a proper park purpose. Laura Lawson notes that over the course of the 20<sup>th</sup> century, municipal urban gardens (including children's farms) were frequently established, but seldom institutionalized as permanent land uses. She finds this puzzling because children's farms first arose at the same time as playgrounds, but only playgrounds persisted as a permanent form of urban land use. Lawson suggests that “most people...would be hard pressed to articulate as clear and concise a definition of the function of urban garden programs,” making them difficult to secure as permanent sites.<sup>105</sup> But as I discuss in Chapter Six, the defense of child life, the crusade against vice, the promotion of citizenship, and the civilizing project of organized recreation are not clearly “coherent functions” of a playground, any more than those same projects would be on a children's farm, or a school roof, or a recreation pier. This chapter looks at the vulnerabilities in the design and ideology of parks that allowed the incorporation of playgrounds as permanent features and as constitutive elements of the category of parkland; additionally, it places

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<sup>105</sup> Laura J. Lawson, *City Bountiful: A Century of Community Gardening in America* (Berkeley: University of California Press, 2005), 12.

the promotion of urban recreation within a broader field of infrastructure politics to question why some recreational and play spaces did not in fact become park spaces.

In Chapter Seven I discuss contemporary park preservation mechanisms, including the coupling of precedential case law to a strong doctrinal claim for park protection; the diffusion of compensatory alienation terms from environmental bond funding acts; and the implementation of scenic landmark laws. Together, the chapters ahead offer a historically grounded picture of New York City's public parks as constantly defended and reproduced—in law, administration, and public sentiment—through debates about the meaning of “proper park purposes” and the justifying values of public parkland.

## Chapter Two: A Park is a Pleasure Ground

In Chapter One I established that it is difficult to convert parkland to other uses. However, parks are not inviolate. There is no comprehensive state-level statutory protection for municipal parks. Additionally, while city administrative code spells out the duties and powers of the Parks Commissioner, it does not codify formal mechanisms for parkland protection. In this chapter I review the origins, disputation and circulation of *Williams v. Gallatin*, the 1920 New York State Court of Appeals case in which “the Court began to set out the test to determine what is a public park use.”<sup>1</sup> The definition of what constitutes a park purpose—what can be permissibly built or temporarily allowed to occupy space within a city park—is the determining question in the adjudication of parkland alienation disputes in New York State courts, making this a fateful question for the shape of the city.<sup>2</sup>

### Introduction

In 1918 the Safety Institute of America (SIA) approached the New York City Board of Estimate with the following request: That the city grant the SIA a 10-year lease to operate a museum of industrial safety in Central Park’s Arsenal building; in exchange, the SIA would provide between \$50,000 and \$100,000 to rehabilitate the deteriorating structure and would carry out one of its state-chartered missions, to translate and transmit industrial safety research from the pages of technical manuals to the lay public.

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<sup>1</sup> Christopher Rizzo, “Environmental Law and Justice in New York City, Where a Park is Not Just a Park,” *Pace Environmental Law Review* 18, no. 1 (Winter 2000): 179.

<sup>2</sup> In Chapter Seven I discuss how *Williams v. Gallatin* serves as a justifying citation for the argument that parks should be protected under the public trust doctrine. This claim is deployed to prevent not only improper park *uses*, but also the sale of parkland.

In February 1919, the board of directors of the Parks and Playgrounds Association of New York (PPA) resolved to take legal action to prevent Francis Gallatin, in his capacity as Commissioner of Parks for Manhattan and Richmond, from executing the lease with the SIA. William H. Williams, a Queens businessman and PPA board secretary, stood as the taxpayer plaintiff, with PPA board member William Bradford Roulstone serving as counsel. The PPA, an interest group organization comprising settlement house workers, businessmen, lawyers, politicians, artists, and philanthropists pursued the case to New York State's highest court, the Court of Appeals.

Nearly 100 years later, the decision in *Williams v. Gallatin* stands as precedent in disputes over parkland “alienation,” an imprecise and capacious term that includes the sale, transfer, or leasing of parkland for “non-park” purposes. Judith Kaye, former Chief Judge of the New York State Court of Appeals, wrote in the 2001 decision *Friends of Van Cortlandt Park v. City of New York*, “In the 80 years since *Williams*, our courts have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes...”<sup>3</sup> At stake in the determination of proper “park purposes” is the outcome of development projects that shape the built environment in which we live.

I attempt to address the broader puzzle of the dissertation—how do we explain the enduring preservation of so much parkland when we observe churn in other city land uses—by taking up one possible explanation that I argue is insufficient: in shorthand, “parks are preserved through law.” That shorthand encompasses a range of actors and action. Obviously but nevertheless crucially, the courts can only adjudicate matters brought to them.<sup>4</sup> A long lineage of scholarship in the sociology of law has dissected the anatomy of a legal dispute, starting with the social context in which legal

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<sup>3</sup> *Friends of Van Cortlandt Park v. City of New York*, 750 N.E.2d 1050, 1053 (N.Y. 2001).

<sup>4</sup> William L. F. Felstiner, Richard L. Abel, and Austin Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...,” *Law & Society Review* 15, no. 3/4 (1980-81).

claims are recognized, formulated, and pursued. A grievance rests upon both facts of a case as well as the “subjective perceptions, definitions, and beliefs that an event or circumstance is unwarranted or inappropriate.”<sup>5</sup> Before the precedential case of *William v. Gallatin* precipitated a judicial test of what constitutes a park purpose, there had to exist a prior concept of a park, and a broader context in which the violation of that concept was understood as inappropriate by an organized interest group that chose to pursue its grievance through the courts.<sup>6</sup>

I begin by asking how the lease of an existing building to a state-chartered educational organization carrying out widely admired work came to be seen as an injury remediable through the courts. I introduce the disputed site and the parties to the case as they formulated their respective arguments about the appropriate uses of the site. In presenting the history of the PPA’s fight over the Arsenal, I attend to how “organization, social networks, and local cultures shape[] the uses and consequences of law.”<sup>7</sup> After introducing the facts of the case and establishing the proclivity of the PPA to pursue park preservation through the courts, I then ask how the PPA constructed its legal argument. Together, this is a history of “the origins and content” and “the social context of disputing.”<sup>8</sup> Finally, during the decade after the New York State Court of Appeals decision, I ask how park advocates interpreted the court’s language and applied it to new preservation battles, while coming to terms with the ambiguities of the ruling.

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<sup>5</sup> Richard E. Miller and Austin Sarat, “Grievances, Claims, and Disputes: Assessing the Adversary Culture,” *Law & Society Review* 15, no. 3/4 (1980–81): 526; 538.

<sup>6</sup> Lauren B. Edelman, Gwendolyn Leachman, and Doug McAdam, “On Law, Organizations, and Social Movements,” *Annual Review of Law and Social Science* 6 (2010): 658.

<sup>7</sup> Susan S. Silbey, “After Legal Consciousness,” *Annual Review of Law and Social Science* 1 (2005): 324.

<sup>8</sup> Miller and Sarat, 1980–81: 526.

## Part 1: The Context of Disputing

### The Arsenal

The Arsenal is the only extant structure within Central Park that predates the park's creation.<sup>9</sup> Visitors descend into the park from Fifth Avenue at 64<sup>th</sup> Street and approach the Arsenal by way of a musket-lined staircase, lit by snare drum sconces, under the watch of an eagle perched between pyramid-stacked cannonballs. These renovations were funded by the Federal Works Progress Administration and added between 1935 and 1936, when Robert Moses moved the headquarters of the recently consolidated New York City Park Department into the Arsenal, where it remains to this day. The details speak to the building's brief history as a state arsenal, from its construction in 1851 until 1857, when the city purchased the building from the state under terms that subsumed the Arsenal into the newly authorized Central Park. After the munitions were removed, the building hosted miscellaneous uses. In addition to administrative offices, the Arsenal served as a gift repository for a bizarre collection of animals that had been presented to the park commissioners; a station for the Central Park police precinct; a makeshift home for the American Museum of Natural History from 1869 to 1877; and the equipment and measuring station for the Municipal Weather Bureau.<sup>10</sup>

The Arsenal today, nestled among the buildings and barking sea lions of the Central Park Zoo and set against the Midtown skyline, is hardly as conspicuous as it once was (compare Images 2.1 and 2.2). The curiosities of the building—including the WPA murals that wrap the chandeliered lobby, depicting scenes of New York military history and pastoral recreation—attract the attention of contemporary visitors. The Parks Department welcomes the public, free of charge, to the third

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<sup>9</sup> The shell of Blockhouse No. 1, a fortification dating from the War of 1812, remains in the north woods of the park.

<sup>10</sup> Roy Rosenzweig and Elizabeth Blackmar, *The Park and the People: A History of Central Park* (Ithaca: Cornell University Press, 1992), 340-369.

floor Arsenal Gallery, which hosts a rotating selection of art exhibits.<sup>11</sup> But to imagine an encounter with the Arsenal in 1918, we might keep in mind that there was little love for the structure or veneration of its history.



Image 2.1: "View of Arsenal from 5th Avenue Road," 1862<sup>12</sup>



Image 2.2: View of Arsenal Looking South Along Fifth Avenue, 2016<sup>13</sup>

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<sup>11</sup> Website of the New York City Department of Parks & Recreation, accessed Oct 9, 2017, <https://www.nycgovparks.org/art-and-antiquities/arsenal-gallery>.

<sup>12</sup> Rare Book Division, The New York Public Library, "View of Arsenal from 5th Avenue Road," New York Public Library Digital Collections, accessed Aug 21, 2017, <http://digitalcollections.nypl.org/items/94b97e9a-efd4-833d-e040-e00a18064b52>.

<sup>13</sup> Author photograph, March 2016.

Frederick Law Olmsted and Calvert Vaux, Central Park's original designers, only grudgingly accommodated the Arsenal into their Greensward plan. Champions of the building cannot rely upon the original park design to justify the persistence of the Arsenal. Nor was the building, assessed on its own terms, revered for its artistic or architectural merit. An early guide to the park judged "the ancient castellated edifice" to be "tolerable," while another pronounced, "The Arsenal is a very large building, and is very poorly built."<sup>14</sup> Andrew Haswell Green, a member of the Board of Commissioners of Central Park (1857-1870), found the Arsenal to be "a very inferior structure."<sup>15</sup> Olmsted and Vaux wrote that the Arsenal was "a very unattractive structure, and only tolerably built," although they were as yet unwary of institutions in the park and thought the space would be suitable for a museum.<sup>16</sup> A host of landscape architects, newspaper writers, and municipal reformers shared this dim estimation of the building, but found the structure irredeemable and called for its removal from the park. The PPA fought the SIA lease, in part, by arguing that the occupation of the building would forestall the desired demolition of the Arsenal.

In addition to being unloved, the Arsenal had long been the site of disputes over what properly constituted public and private functions within the park. Frederick Law Olmsted, Jr., urged the removal of the Arsenal, which was, he maintained, a de facto encroachment: "No building can be placed in Central Park without subordinating the interests of the people in the Park to other interests."<sup>17</sup> Sympathetic reformers believed that the mere presence of a building within the park was a potential opening wedge for future development. Gentleman-reformer Richard Welling saw the Arsenal (as well as the Metropolitan Museum of Art) as "menaces," "holding out hope to

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<sup>14</sup> T. Addison Richards, *Guide to The Central Park* (New York: James Miller, 1866), 63; Clarence Cook, *A Description of the New York Central Park* (New York: F. J. Huntington, 1869), 34.

<sup>15</sup> Green conceded that the Arsenal could be remodeled to "apply it to some appropriate purpose connected with the park," Board of Commissioners of Central Park, *Second Annual Report* (New York: Wm. C. Bryant & Co., 1859), 3.

<sup>16</sup> Frederick Law Olmsted and Calvert Vaux, *Description of a Plan for the Improvement of the Central Park* (New York: Sutton, Bowne & Co., 1858), 22. On Olmsted and Vaux's early stance toward institutions in parks, see Henry Hope Reed and Sophia Duckworth, *Central Park: A History and a Guide*, rev. ed. (New York: Clarkson Potter, 1972), 36.

<sup>17</sup> "Park Must be Saved, Says Designer's Son," *NYT*, June 24, 1912.

intruders.”<sup>18</sup> The *New York Times* agreed—the Arsenal not only enticed “would be invaders” of the park, but was ugly to boot.<sup>19</sup> In 1914, when the headquarters of the Department of Parks for the Boroughs of Manhattan and Richmond decamped for the Municipal Building in lower Manhattan, the *Times* wrote that “there is no further excuse for the existence of that ancient building, which has no historic associations, is not beautiful, even as a ruin, and incumbers [sic] ground in the park which would be more useful if transformed into a lawn with flower beds.”<sup>20</sup> The PPA found the old building unsightly; its removal would increase open parkland and put an end to proposals for park “encroachment.”<sup>21</sup> The American Scenic and History Preservation Society concurred that, “If the building is not to be used for park purposes, it should not be occupied by any organization, but should be demolished and the space devoted to lawns.”<sup>22</sup>

In 1915 Cabot Ward, Commissioner of Parks for Manhattan and Richmond, announced his intent to raze the Arsenal. The *Times* suggested that the frequency and persistence of attempts by outside organizations to occupy the building precipitated to this decision. Ward confirmed, “The *forty or more applicants* for [the Arsenal’s] use might as well make plans to find suitable land outside of the city’s park system. I am sure there is none to spare inside.”<sup>23</sup> The Department of Parks Annual Report for 1916, in a discussion on “the fight against park encroachments,” stated that the Arsenal was to be removed in 1917.<sup>24</sup> However, the Arsenal was still standing in 1918 when the Safety Institute of America approached the city about acquiring a lease for the building. It was, by then,

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<sup>18</sup> Richard Welling to Alfred E. Smith, Feb 13, 1930, RWP 12:6.

<sup>19</sup> “Farewell to the Arsenal,” *NYT*, Mar 2, 1915.

<sup>20</sup> “Remove the Old Arsenal,” *NYT*, May 25, 1914; see also “Tear Down the Arsenal—Yes,” *NYT*, May 30, 1912.

<sup>21</sup> Draft letter, George Gordon Battle to the City Editor, Mar 2, 1915, GBP 80: Parks & Playgrounds 1915.

<sup>22</sup> American Scenic and Historic Preservation Society, *Twenty-Sixth Annual Report, 1921* (Albany: J. B. Lyon, 1922), 27. On the ASHPS ethos of preserving only particular buildings and sites that conformed to idealized civic narratives, see Randall Mason, *The Once and Future New York: Historic Preservation and the Modern City* (Minneapolis: University of Minnesota Press, 2009), 174.

<sup>23</sup> “To Raze Arsenal Before June 1<sup>st</sup>,” *NYT*, Mar 2, 1915 (emphasis mine); see also Cabot Ward to George Gordon Battle, Mar 23, 1915, GBP 80: Parks & Playgrounds 1915.

<sup>24</sup> New York City Department of Parks, *Annual Report for 1916*, 79,

[http://home2.nyc.gov/html/records/pdf/govpub/4315annual\\_report\\_nyc\\_dept\\_parks\\_1916\\_part1.pdf](http://home2.nyc.gov/html/records/pdf/govpub/4315annual_report_nyc_dept_parks_1916_part1.pdf).

“going to rack and ruin, and if some one doesn’t do something with it the building will blow out on to Fifth Avenue some day.”<sup>25</sup>

### Safety Institute of America

The Safety Institute of America (SIA) was incorporated “for the prevention of accidents, the elimination or lessening of occupational diseases, and the promotion of industrial welfare through health, efficiency and co-operation.”<sup>26</sup> The organization was founded with educational, research, and public outreach purposes that included the creation of a museum with a lending library and a laboratory with demonstration functions.<sup>27</sup> The SIA believed that its museum work was analogous to the work of a museum of natural history, the latter teaching natural sciences, the former industrial sciences, spreading its message of industrial safety beyond the confines of technical guides and manuals.<sup>28</sup> In 1918, when the SIA requested permission from the city to occupy the Arsenal, its museum was housed on West 24<sup>th</sup> Street.<sup>29</sup> In that year, a visitor to the Safety Museum could view the American Abrasive Metals Company safety coal-hole covers and stair treads; the McNutt Can Sales Company cans and containers for volatile materials; “a novel sandblast booth”; and a state-of-the-art model engine room diorama, sponsored by Aetna and fitted out with safety innovations such as floor treads, handrails for the staircases, and guards around the pulleys and belts.<sup>30</sup>

The subject matter of these exhibits, and the content of the SIA’s bulletin *Safety*, with features such as “The Safe Handling of Acids in Small Quantities,” and “Safety Cans for Rubber

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<sup>25</sup> Al Smith, then serving as President of the New York City Board of Estimate, offering his support for the lease. “City Turns Arsenal Over to a Museum,” *NYT*, Jun 22, 1918.

<sup>26</sup> *Safety: Bulletin of the American Museum of Safety* 2, no. 1 (Jan 1914): 2. The SIA was originally incorporated as the American Museum of Safety and changed its name in 1918.

<sup>27</sup> The SIA’s educational mission was written into its chartered purpose “to disseminate the results of such study, researches and test by lectures, exhibitions and other publications” (L. 1911, Ch. 152).

<sup>28</sup> Frederick L. Hoffman, “The Importance of Museums of Safety to American Industries,” *Safety: Bulletin of the American Museum of Safety* 6, no. 2 (Feb-Mar 1918): 42.

<sup>29</sup> It appears that the SIA sought access to the Arsenal for the publicity that the Central Park location would bring to its cause. Speyer to Battle, Jan 29, 1919, LDW 29: PPANY Correspondence.

<sup>30</sup> *Safety*, Feb-Mar 1918: 49; *Safety*, Jan 1918: 1-23.

Cement,” might read today as dusty and pedantic. But in 1918 there would have been widespread public awareness of the importance of workplace safety and sympathy to the mission of the SIA. The New York State legislature authorized the SIA charter on May 19, 1911, eight weeks after 146 workers died on (or falling from) the locked confines of the Triangle Shirtwaist factory. Al Smith, then New York State Assemblyman, served as vice-chair to the Factory Investigating Committee in the wake of the fire. As president of the Board of Estimate of New York City, and later as governor of New York State, Smith enthusiastically supported the SIA’s petition for access to the Arsenal.<sup>31</sup> PPA members Eugene Philbin, Lillian Wald, and William Schieffelin—who each opposed the lease of the Arsenal to the SIA—helped to form a citizens’ Committee on Safety, which was instrumental in the creation of Smith’s Factory Investigating Commission (L. 1911, Ch. 561).<sup>32</sup> Museum promoters and park defenders alike were aware of the importance and sympathetic to the cause of workplace safety.

#### Parks and Playgrounds Association of New York

Since its founding in 1908, the Parks and Playgrounds Association of New York (PPA) focused on three broad objectives: 1) the promotion of playgrounds and the “play spirit”; 2) the physical expansion of the park system and reform of park management; and 3) the prevention of “encroachments” on park land.<sup>33</sup> In 1920, in a 15-year prospectus of its work, the PPA wrote that the organization “has regarded nothing so important in its mission as the protection of the public

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<sup>31</sup> The plan had the support of Mayor Hylan, Governor Smith, and the president of the New York City Board of Estimate. Special Meeting Minutes, PPA Board of Directors, Feb 7, 1919, LDW 29: PPANY Reports.

<sup>32</sup> “Mass Meeting Calls for New Fire Laws,” NYT, Apr 3, 1911; “Coroner Seeks to Fix Fire Blame,” NYT, Apr 11, 1911.

<sup>33</sup> See: Parks and Playgrounds Association of New York, *Parks and Playgrounds Report for 1913-1915* (New York: PPANY, 1915); Parks and Playgrounds Association of New York, *Statement Relating to Recreation in Greater New York* (New York: PPANY, 1910). The founding of the PPA brought together members of the Outdoor Recreation League, Metropolitan Parks Association, Public Schools Athletic League, and Brooklyn Society for Parks and Playgrounds (Document on the formation of the Playground Association of Greater New York, Jan 1908, LDW 29: PPANY Reports). In 1928 the PPA merged with the Central Park Association and the Battery Park Association to form the Park Association of New York (Battle to Bard, Jun 21, 1928, ASB 25:5). The Park Association merged with the Council for Parks and Playgrounds in 1970 to form the Parks Council, which in 2002 changed its name to New Yorkers for Parks and remains active to this day.

parks from purposes that would impair their usefulness as unrestricted breathing spaces.”<sup>34</sup> The PPA’s anti-encroachment advocacy spanned the city beyond Central Park, including protests against the construction of an armory in Crotona Park (Bronx), a courthouse in City Hall Park (lower Manhattan), and a racetrack in Pelham Bay Park (Bronx).

In 1918 the 23-member board of directors of the PPA contained: two prominent lawyers and one judge; three settlement house workers and one career charity worker; one sculptor and one architect; five businessmen, including William H. Williams, the taxpayer-plaintiff in *Williams v. Gallatin*;<sup>35</sup> three politicians/public servants; a vicar and a bishop; and four lady bountifuls. According to William B. Roulstone, PPA board member and attorney for Mr. Williams, the organization pursued its agenda through “three methods of procedure—mass meetings, taxpayers’ suits and the ballot.”<sup>36</sup> Rosenzweig and Blackmar, in their comprehensive history of the politics of Central Park, refer to Roulstone (and successor Park Association President Nathan Straus, Jr.), as “masters of the sort of pressure-group politics that was gradually displacing (or at least complementing) party politics as the way to assert influence.”<sup>37</sup> The PPA provided the organizational resources and ideology that allowed William H. Williams to identify, frame, and pursue his taxpayer complaint against the SIA Arsenal lease.

### Identification

The PPA had previously fought the occupation of the Arsenal by “worthy” organizations that it nevertheless deemed foreign to park purposes. The organization vigorously opposed a

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<sup>34</sup> Parks and Playgrounds Association of New York, *Parks and Playgrounds Association of the City of New York, 1905-1920* (New York: PPANY, 1920), 13. This report includes the work of the Metropolitan Parks Association from 1905 to 1908.

<sup>35</sup> Williams was a resident of Long Island City, Queens, and President of the Queens Chamber of Commerce. Chamber of Commerce of the Borough of Queens, *Queens Borough* (Brooklyn: Brooklyn Eagle Press, 1913), 11.

<sup>36</sup> “Foes of Park Grabs Unite for Big Fight,” *NYT*, May 13, 1924.

<sup>37</sup> Rosenzweig and Blackmar, 1992, 436. In 1918, Roulstone was 35 years old and three years out of Columbia Law School. As a young lawyer, his friendship with George Gordon Battle secured his position on the PPA board. He was a Kentucky native and a Democrat. “W. B. Roulstone, 70, Fighter for Parks,” *NYT*, Feb 14, 1953; *The National Cyclopaedia of American Biography*, vol. 45 (New York: James T. White, 1962), 475.

proposal by the National Academy of Design in 1909 to remove the Arsenal and build on its site an arts center. The PPA deployed its full range of political, press, and legal strategies to oppose this plan. Members traveled to Albany to lobby against the authorizing legislation for the project and vigilantly monitored the legislative session. The PPA furnished the *New York Times* with editorial material.<sup>38</sup> And the organization took a leadership position on the ad hoc Central Park Protection Committee that brought together charity workers, labor unions, politicians, civic arts organizations, municipal reformers, and neighborhood leagues.<sup>39</sup> In 1912 the PPA fought a proposal to reconstruct the old Lenox Library on the site of the Arsenal, again enlisting press and popular support.<sup>40</sup>

In both cases, the organization rehearsed arguments that would inform its opposition to the SIA lease, such as: the demand for the removal of the Arsenal; the opposition to the private use of a public park, no matter how worthy the cause; the threat that acquiescing to a request would open the floodgates to similar petitions for the use of the park; and the necessity of open space preservation in the face of land scarcity and an ever-growing population. PPA vice-president Lillian Wald opposed the placement of the Lenox Library in Central Park, stating that, “If the park is to be made a repository for beautiful buildings, I do not see why it might not in the course of years be considered logical to give place to the Metropolitan Tower or similar structures of architectural worth.”<sup>41</sup> This argument would reappear in the PPA-sponsored legal briefs filed on behalf of Mr. Williams.<sup>42</sup>

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<sup>38</sup> Stover to Borglum, Apr 24, 1909, GBP 78: Parks & Playgrounds 1909; PPA Executive Committee & Board of Directors meeting, Apr 22, 1909, GBP 78: Parks & Playgrounds 1909.

<sup>39</sup> The ad hoc committee’s “sole object is to preserve Central Park as a park and to prevent the admission within its borders of any new enterprise, no matter how public spirited and desirable it may be.” Central Park Protection Committee petition, GBP 78: Parks & Playgrounds 1909. For an account of the broad scope of the coalition fighting the National Academy plan, see “Unions Join Fight on Park Grab Plan,” *NYT*, Apr 5, 1909.

<sup>40</sup> PPA Board of Directors meeting minutes, Jun 26, 1912, GBP 80: Parks & Playgrounds 1912.

<sup>41</sup> Wald to Spencer, Jun 14, 1912, HSS 116:10.

<sup>42</sup> New York Supreme Court, Appellate Division—First Department, Brief on Behalf of Plaintiff-Appellant, William H. Williams (submitted Oct 18, 1919 by William B. Roulstone), 18-19 (GBP 80: Parks & Playgrounds 1919).

## Framing

In the spring of 1918 the PPA had publicly opposed the construction of ersatz western front trenches in Central Park, a publicity stunt intended to promote the sale of Liberty Loan bonds. The fight never entered court—the demonstration was canceled for lack of available personnel to staff a play battle during a real war.<sup>43</sup> But in the course of its opposition, the PPA refined its arguments for the preservation of the park. The organization created visual propaganda, engaged in internal debates about the purposes of the park, and mobilized a “line in the sand” defense strategy against even the worthiest of causes—selling bonds to fund America’s involvement in the Great War. The SIA requested permission to lease the Arsenal building just three months after the Liberty Loan Corporation withdrew its request to occupy Central Park. As I discuss in Chapter Four, the PPA compiled a list of threats against the park that would serve to frame the SIA’s appeal to occupy the Arsenal not as a singular proposal, but as one move in a long history of attempts to invade the park. In William H. Williams’s petition to the New York State Supreme Court he attached “the list published in The Times by the Parks and Playgrounds Association of various attempts made in recent years to encroach on the park property of the city...” to support his argument that the park should be “preserved inviolate.” In the language honed over a decade of PPA fights, Williams claimed that a safety museum, though commendable, would represent an “opening wedge” to never-ending encroachments on already limited park space.<sup>44</sup>

## The Use of the Taxpayer Suit

The PPA had recently brought two successful suits, in which board member Gutzon Borglum stood as taxpayer-plaintiff, to enjoin the city from what the PPA deemed improper uses of city parkland. Borglum (1867-1941) was active in New York City park advocacy from the founding

<sup>43</sup> American Scenic and Historic Preservation Society, *Twenty-Third Annual Report* (Albany: J. B. Lyon, 1918), 179-95.

<sup>44</sup> “Asks Court to Bar Exhibit in Park,” *NYT*, Jun 17, 1919.

of the Metropolitan Parks Association (MPA) in 1905 until his break with the PPA in 1922; he was particularly active in the early 1910s directing a committee to study the technical preservation of the Central Park landscape, though he is undoubtedly better known as the sculptor of Mount Rushmore and the first sculptor of the Confederate memorial carving in Stone Mountain, Georgia.<sup>45</sup> With legal counsel from PPA president Eugene Philbin, a lawyer and judge,<sup>46</sup> Borglum successfully restrained action on the city's Fort Washington Park and Riverside Drive extension plan, which was approved by Manhattan Borough President John Ahearn without consulting the Commissioner of Parks or the chief Parks landscape architect.<sup>47</sup> While the case for legal standing centered on the improper authorization of construction contracts, the substance of the protest was against the Borough President's hiring of incompetent workers without the direction of expert landscape architects;<sup>48</sup> 300 mature trees would be lost to construction that was "disgraceful in character, without taste or symmetry."<sup>49</sup> In 1916, Borglum, with legal representation from PPA board member George Gordon Battle, successfully obtained an injunction against the Board of Water Supply to prevent the placement of a pumping house in Morningside Park, which was being constructed without the consent of the Parks Commissioner, the chief Parks landscape architect, or the city Art Commission.<sup>50</sup>

The taxpayer suit was a preferred tool of good government reformers, who could claim injury for the city wasting resources, and demand the precise implementation of the rules on the

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<sup>45</sup> Borglum's archives in the Library of Congress contain a trove of untapped material on early park and playground advocacy in New York City. A more popular use of his papers has been to determine whether he was a Klansman of conviction or convenience during his time in Georgia. I didn't delve; Borglum was clear enough about his racist nationalism in, "Art That Is Real and American," *The World's Work* 28 (Jun 1914): 200-217.

<sup>46</sup> Eugene Philbin (1857-1920) served as president of the MPA/PPA from 1905 until 1913, when he was appointed as a justice of the New York State Supreme Court.

<sup>47</sup> PPA Board of Directors meeting minutes, Jun 2, 1910, GBP 79: Parks & Playgrounds 1910. The Committee on Parks of the City Club, chaired by Schieffelin, supported Borglum's investigation into the Riverside Drive extension out of concern that the city was wasting resources by paying for substandard work. Borglum to Philbin, Feb 14, 1908, GBP 78: Parks & Playgrounds 1908.

<sup>48</sup> Philbin, Beekman, Menken & Griscom to Stover, Jun 24, 1910, GBP 79: Parks & Playgrounds 1910.

<sup>49</sup> Borglum to Philbin, Feb 14, 1908, GBP 78: Parks & Playgrounds 1908.

<sup>50</sup> O'Gorman, Battle & Vandiver, Memorandum on Behalf of Plaintiff Gutzon Borglum, Supreme Court—New York County, GBP 80: Parks & Playgrounds 1916-8.

books as a check against patronage.<sup>51</sup> (The reformers coupled this strategy with work to re-write those rulebooks on the basis of scientific management practices.) In New York State, “An Act for the Protection of Tax Payers” (L. 1881, Ch. 531) authorized taxpayers to sue “to prevent any illegal act” by “all officers, agents, commissioners and other persons acting for and on behalf” of a city, as well as “to prevent waste or injury to any property” of the city.<sup>52</sup> Unlike in cases in which a rights claim requires someone to assume the status of victim,<sup>53</sup> the claim in a taxpayer suit is one of collective entitlement—to be governed by representatives who act within the scope and limits of their power.

The PPA possessed within its “repertoire of contention” a clear recognition of the power of the taxpayer suit to enjoin the city from wasteful or illegal action.<sup>54</sup> The board membership and leadership of Eugene Philbin, William Roulstone, and George Gordon Battle, all prominent lawyers, provided the PPA with legal technical expertise and resources, and likely facilitated the PPA’s propensity to pursue its park administration goals through the courts.<sup>55</sup> The PPA also had organizational ties to the Citizens Union, the civic organization that most vigorously deployed the taxpayers’ suit as a strategy to challenge the power of Tammany Hall.<sup>56</sup>

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<sup>51</sup> For a thorough discussion of the taxpayer suit as a method of political reform, see: Linda Upham-Bornstein, “The Taxpayer as Reformer: ‘Pocketbook Politics’ and the Law, 1860-1940” (PhD diss., University of New Hampshire Dept. of History, 2009).

<sup>52</sup> Laws of New York 1881, Chapter 531.

<sup>53</sup> Kristin Bumiller, “Victims in the Shadow of the Law: A Critique of the Model of Legal Protection,” *Signs* 12 (1987).

<sup>54</sup> I mean this in the sense that Tarrow discusses Tilly’s definition of a repertoire. The taxpayer suit was not simply how the PPA made claims for political reform; it was “what they know how to do and what society has come to expect them to choose to do from within a culturally sanctioned and empirically limited set of options.” Sidney Tarrow, “Cycles of Collective Action: Between Moments of Madness and the Repertoire of Contention,” *Social Science History* 17 (1993): 283. For example, Philbin worried about the perception that the PPA was overly litigious, but ultimately believed that its actions in court would be recognized as necessary and valid. There was constant cordial interaction between the Commissioner of Parks and the PPA, which had repeatedly sued him. And we see the normalized expectation of court battles in the budget planning for the Central Park Association. Bard to Van Ingen, Jun 18, 1927, ASB 9:5. (The CPA board overlapped extensively with the PPA board.)

<sup>55</sup> Edelman, Leachman & McAdam (2010: 663) note that, “legal professionals who participate in social movements are likely to contribute to the diffusion of legal norms, legal forms, and legal frames.”

<sup>56</sup> This is another sense in which the term “repertoire” conforms to the Tilly/Tarrow definition above. The taxpayer suit strategy was common among the population of elite reform organizations, many of which shared board members and formed specific issue-oriented coalitions. (On the use of taxpayer suits by the Citizens Union, see Upham-Bornstein, 2009, 56-141.)

The Citizens Union was founded in 1897 as a political party offshoot of the City Club, championing Seth Low's mayoral campaign. In 1909 the organization was reconstituted "from a political party into an advocacy group. It would comment on legislation and candidates" but no longer ran candidate slates.<sup>57</sup> Fellow reformer George McAneny recalled the Citizens Union as "useful in producing facts, but they were no good politically."<sup>58</sup> What this assessment overlooks is the use of *legal action as a political tool*. Under the leadership of William J. Schieffelin, chairman from 1908 to 1941, the Citizens Union shifted its strategy from "electing officials possessing a high degree of integrity" to filing taxpayer suits as a check on Tammany action.<sup>59</sup> Between 1918 and 1926, when New York City was under the leadership of Tammany Mayor John F. Hylan, the Citizens Union launched 15 taxpayer suits against the city in which Schieffelin stood as plaintiff.<sup>60</sup> Schieffelin was an original board member and incorporator of the Metropolitan Parks Association, predecessor organization to the PPA. Schieffelin also served as the chairman on the City Club Committee on Parks, where he directed investigations into inefficient licensing practices for privileges in the parks.<sup>61</sup>

As a political strategy pursued through the courts, taxpayer suits could stall projects, sometimes thwarting them through a tactic of delays. A taxpayer action could function in the sense that Turk defined law as a "weapon" "with which [people] are better able to promote their own ideas and interests against others," i.e. the use of law as an exercise of power. In this case, the PPA sought political power—the "control of decision-making processes" in the service of ideological

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<sup>57</sup> Gregory F. Gilmartin, *Shaping the City: New York and the Municipal Art Society* (New York: Clarkson Potter, 1995), 178.

<sup>58</sup> Reminiscences of George McAneny (1949), 15, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York. Caro refers to the Citizens Union, City Club, American Scenic and Historic Preservation Society, and ilk as "reformer-aristocrats." Robert Caro, *The Power Broker* (New York: Knopf, 1974), 649.

<sup>59</sup> Upham-Bornstein, 2009, 125.

<sup>60</sup> Upham-Bornstein, 2009, 92.

<sup>61</sup> Minutes of Executive Committee and Board of Directors meeting of MPA, Feb 5, 1908, GBP 78: Parks and Playgrounds 1908. For City Club Parks Committee agenda, see David Aronson, "The City Club of New York: 1892-1912," (PhD diss., New York University Dept. of History, 1975), 518-19. Albert Bard served as Schieffelin's lawyer in his first taxpayer suit, in 1909.

power, the “control of definitions of and access to knowledge, beliefs, values,” by using a suit designed to stop the waste of public property as a way to defend a particular definition of what constituted the proper use of parkland.<sup>62</sup> It is unclear if the PPA believed that taxpayer status conferred upon an individual a particular right to make claims against the state, or if these suits tell us something about “Americans’ notions of citizenship,” as Upham-Bornstein contends in her history of the tool.<sup>63</sup> It was perhaps simply a legally viable way to pursue reform goals. The relevance of the tool, under the particular institutional arrangement of the early 20<sup>th</sup>-century New York City charter, was its capacity to bring the designers and aesthetes who oversaw the legacy of landscaped parks into the politics of public resource management. This would help to facilitate the PPA’s move beyond legalistic definitions of park purposes that I discuss in Part Three below.

Charles Stover, Commissioner of Parks for Manhattan and Richmond (1910-1913) came to the Department of Parks from his work as a settlement house worker and playground advocate.<sup>64</sup> He was less committed to maintaining the original design legacy of landscaped parks, and the reformer elites, who initially championed his position as Commissioner, grew disillusioned with his leadership.<sup>65</sup> The PPA battled with Stover over specific maintenance concerns through letters, the newspapers, and in public testimony before the Board of Estimate (regarding, for example, the dedication of funds to carry out a precise course of soil restoration for Central Park). But the PPA posed a broader challenge to Commissioner Stover’s power as a policymaker with the allegation that he had acted, “without the authority of the Landscape Architect *as required by the Charter*.” After enumerating the actions that Stover was attempting without the required permission of the

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<sup>62</sup> Austin T. Turk, “Law as a Weapon in Social Conflict,” *Social Problems* 23 (1976): 280. More prosaically, a taxpayer suit allows one to pester their way through a grudge.

<sup>63</sup> Upham-Bornstein, 2009, 128 (also pp. 48-49 and pp. 60-61).

<sup>64</sup> Stover maintained a lifelong connection with the University Settlement House, and founded the Outdoor Recreation League (see Chapter Six).

<sup>65</sup> E.g. Gibson to Borglum, Jun 19, 1911, GBP 79: Parks & Playgrounds April-June 1911, suggesting that the PPA call for Stover’s removal “for incompetency, inefficiency, and neglect of duty.”

Department of Parks landscape architect, PPA President Eugene Philbin requested permission from his executive committee to:

obtain an injunction from the Supreme Court restraining the Commissioner from acting in the authority of the Landscape Architect...Personally, *I favor the Association insisting upon the law being followed* even though such a course might create serious friction between the Association and Commissioner Stover. It may be that some people will say that we are a litigious body in seeking to gain notoriety by going into the courts, but I do not think that if even such a thing were likely, we should be deterred from performing our duty.<sup>66</sup>

Philbin wrote to Commissioner Stover, reminding him that Gutzon Borglum had secured an injunction against the Fort Washington Park expansion, and that Philbin himself had secured an injunction to prevent the Commissioner of Bronx Parks from acting without the consent of the chief landscape architect. Philbin praised the law requiring the consent of the landscape architect because it “affords the only protection against unwise action by those in charge of the parks...particularly where the action of such officials is prompted by political or personal motives.”<sup>67</sup> Philbin made clear to Commissioner Stover that if he did not defer to the Landscape Architect, the PPA was familiar with and comfortable taking legal action to enjoin public officials from overstepping their delegated powers.

Before discussing the precedential case of *Williams v. Gallatin*, I want to note that other legal tools—administrative law, city code, and legislatively authorized rules for taxpayer standing—established the conditions for disputing in court. While there is no explicit municipal park preservation code in New York State, administrative codes and state session laws have established the conditions and possibility for pursuing judicial decisions regarding proper park purposes.

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The PPA was not fighting a noxious or toxic land use. The SIA was not promoting a politically polarizing cause. And the use of private charitable funds to restore a derelict public

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<sup>66</sup> Philbin to PPA Executive Committee, Mar 15, 1911, GBP 79: Parks & Playgrounds Jan-March 1911 (emphasis mine).

<sup>67</sup> Philbin to Stover, Jul 1, 1910, GBP 79: Parks & Playgrounds 1910.

building could hardly be construed as a boondoggle. Yet even with sympathy for the SIA, the lease of the Arsenal to an educational museum became an actionable legal grievance. The Arsenal lease was challenged by an organization that drew together actors from multiple issue backgrounds, each with a stake in the preservation of open land. They were well versed in framing proposals for the use of parks as threats, and had recourse to the courts within their “repertoire of contention” to challenge matters of city administration.

### PPA Deliberation

On January 16, 1919, the board of directors of the PPA resolved that they were opposed to the use of any portion of the Central Park Arsenal by the SIA. PPA secretary Lulu Morton summarized the arguments against the proposal: “1) That it is an invasion upon park property. 2) That it establishes a precedent which will make it harder to defeat encroachments in the future. 3) That the Association in 1915 supported Commissioner Ward in his proposal to remove the Building entirely and restore the site to park area.”<sup>68</sup> After meeting with a SIA spokesman and soliciting the written opinion of every board member, the PPA on February 7, 1919, again voted to oppose the SIA occupation of the Arsenal, a position in line with the PPA’s “policy of opposing all encroachments on the parks, no matter how worthy the object might seem.” The PPA also expressed its desire for the demolition of the Arsenal “to make way for the necessary park space.”<sup>69</sup>

While several members of the PPA lived around the park, many more did not, and the PPA’s opposition to the use of Central Park for “non-park purposes” was not exclusively based on propinquity. PPA Vice-President Lillian Wald, the director of the Henry Street Settlement who lived and worked on the Lower East Side, cast her vote against the lease, and reiterated her stance that “the project, though not harmful in itself, would lead to other less desirable efforts...if the

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<sup>68</sup> Morton to PPA Board of Directors, Jan 31, 1919, LDW 29: PPANY Correspondence.

<sup>69</sup> Special Meeting Minutes, PPA Board of Directors, Feb 7, 1919, LDW 29: PPANY Reports.

precedent were once established, it would be more difficult to combat such proposals in [the] future.”<sup>70</sup> Gutzon Borglum, who lived at the time in Murray Hill, twenty blocks south and half a mile east of the southern entrance to Central Park, opposed the lease for fear that its temporary terms would extend into a more permanent “occupancy of government property.”<sup>71</sup> I located the home addresses for 21 of the 23 PPA board members circa 1920.<sup>72</sup> Only five board members lived within a half-mile walk of Central Park, and none closer than two blocks from the park. Three board members lived in Brooklyn, two in Queens, one in New Jersey, one on Long Island, and three in lower Manhattan settlement houses. The motivation of self-interested property ownership does not fully explain the pursuit of Central Park preservation by PPA board members.

Nor was the opposition by the PPA to the Arsenal lease motivated by any particular animosity toward the SIA or its mission. For example, the PPA board passed a resolution vowing to help the SIA find a new home for its museum. Even those who voted to oppose the lease repeatedly referred to the SIA’s mission as a noble public service. Still, the board resolved to take legal action if necessary.<sup>73</sup>

Certainly the SIA did not perceive its museum as an encroachment. The SIA believed that there was a “general public benefit” from hosting the museum in the crumbling building, while leaving unaltered the footprint of the park.<sup>74</sup> The SIA planned to invest in the building so that it “will be transformed from the eye-sore it has been for many years into an attractive structure...and in addition it will be serving an educational and humanitarian purpose.”<sup>75</sup> James Speyer, Treasurer of the SIA, reassured the PPA board that, “In no way do we intend to encroach on the open park

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<sup>70</sup> Wald’s secretary to Morton, Feb 4, 1919, LDW 29: PPANY Correspondence. Wald had previously accepted an invitation to join a committee on Central Park restoration, stating that park maintenance was “one of the great needs of the city, and I, personally, am not so far downtown that I am indifferent to the necessity of obtaining public support for preserving this great treasure of the city.” Wald to Borglum, circa 1907, GBP 78: Parks and Playgrounds 1907.

<sup>71</sup> Borglum to Morton, Feb 6, 1919, GBP 80: Parks & Playgrounds 1919.

<sup>72</sup> Addresses collected from the 1919 New York *Social Register* and the 1920 U.S. Census.

<sup>73</sup> Battle to Gallatin, Feb 8, 1919, LDW 29: PPANY Correspondence.

<sup>74</sup> Morton to PPA Board of Directors, Jan 31, 1919, LDW 29: PPANY Correspondence.

<sup>75</sup> “The Safety Institute Will Occupy the Arsenal Building,” *Safety* 7 (Jul-Aug 1919): 150-51.

space...." The SIA board members "would oppose as much as anyone else any encroachment on the open park space which is so necessary to the people of our town. We will absolutely agree not to take one inch of open park space surrounding the building...." Speyer tried to anticipate other points of opposition, assuring the PPA that the museum "in no sense whatsoever, has any commercial motive or advantage, but is undertaken purely for the benefit of the health and sanitation of the working people."<sup>76</sup>

Speyer's arguments did not prevail. However, the decision was not unanimous—the final PPA vote was 13 opposed; 7 in favor; and 3 abstentions. PPA board members who supported the project cited with approval the SIA's commitment to invest \$50,000 to restore the derelict building. One member compared the complementary work of the SIA and PPA, "one caring for the safety of the 'grown-ups' and the other for the protection of children." Others saw the educational museum as a great civic project, or simply did not view the occupation of an existing building as a park encroachment.<sup>77</sup> The definition an encroachment was subject for debate even within an organization whose stated mission was the defense of parks from encroachments.

## **Part 2: The Case in Court**

On April 25, 1919, Park Commissioner Francis Gallatin signed a 10-year lease of the Arsenal building to the Safety Institute of America "under a revocable permit, for the purpose of displaying safety devices for saving life and limb."<sup>78</sup> In June 1919, the PPA filed an injunction in New York State Supreme Court to prevent the execution of the lease.<sup>79</sup> Opposition came down to "a matter of

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<sup>76</sup> Speyer to Battle, Jan 29, 1919, LDW 29: PPANY Correspondence. See also: SIA President Arthur Williams letter to editor, "The Exhibit in the Park," *NYT*, Jun 23, 1919.

<sup>77</sup> Special Meeting Minutes PPA Board of Directors, Feb 7, 1919, LDW 29: PPANY Reports; Morton to PPA Board of Directors, Jan 31, 1919, LDW 29: PPANY Correspondence.

<sup>78</sup> American Scenic and Historic Preservation Society, *Twenty-Sixth Annual Report, 1921* (Albany: J. B. Lyon, 1922), 27.

<sup>79</sup> In New York State, disputes first enter the civil court system through local jurisdictional Supreme Courts. Appeals are heard by the Appellate Divisions of the Supreme Courts, and may be further appealed to the highest court in the state, the Court of Appeals. The Commissioner of Parks serves at the pleasure of the Mayor. Mayor John F. Hylan appointed

principle.” An educational museum, even one dedicated to a “worthy” cause, was nevertheless not a park purpose.<sup>80</sup>

Justice Robert K. Luce of the New York State Supreme Court dismissed William H. Williams’s complaint, stating that the plaintiff had failed to show cause of action. Luce noted that the enabling legislation and subsequent amendments that established Central Park provided for the construction of zoos, museums, and observatories. He wrote that courts had permitted restaurants and horticultural gardens designed for public instruction within public parks, establishing “that educational features as well as the provision for the health and comfort of the public are proper attributes of a public park.” He went on to say, “The argument of the plaintiff is based on his assumption that any use of the lands included in Central Park for purposes other than playgrounds or resting places is illegal; in other words, that a park should consist solely of trees and grass. It is well established that park lands may be put to many uses without violation of law.”<sup>81</sup>

William Roulstone, as counsel for William H. Williams, appealed to the Appellate Division of the State Supreme Court (December 1919) and subsequently to the Court of Appeals (June 1920) “to prevent the improper invasion and encroachment in and upon the park, *and the use of the park for purposes other than park purposes.*”<sup>82</sup>

In both appeals Roulstone first had to establish that Williams had cause of action to bring forth a taxpayer suit (under Section 51 of the General Municipal Code, discussed above). He argued

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Francis D. Gallatin, a lawyer and Tammany sachem, to Commissioner of Parks for Manhattan and Richmond, in February 1919. Gallatin served until his resignation in 1927 during a row with Mayor Walker. Gallatin was obliged to defer all action on the Arsenal lease to Mayor Hylan (Speyer to Johnson, Mar 13, 1918; Hylan to Gallatin, Feb 7, 1919, Hylan Correspondence Received, MANY Box 132: 1424). At other times Commissioner Gallatin explicitly guarded landscaped parks against recreation buildings and playgrounds (Gallatin to Scanlon, Mar 9, 1923, Hylan Correspondence Received, MANY 132: 1421). Gallatin wrote to Borglum (while Williams was still in court) that Central Park was an inappropriate location for playgrounds, no matter how great the general need (Gallatin to Borglum, Jan 17, 1920, GBP 80: Parks & Playgrounds 1920).

<sup>80</sup> Special Meeting Minutes PPA Board of Directors, Feb 7, 1919, LDW 29: PPANY Reports.

<sup>81</sup> Robert K. Luce, “Decisions: Supreme Court—Special Term, Part 1,” *New York Law Journal*, Jul 24, 1919 (clipping in LDW 28: Central Park).

<sup>82</sup> Court of Appeals of the State of New York, Brief for the Plaintiff-Appellant William H. Williams, submitted by William B. Roulstone, May 24, 1920 (emphasis in original) (LDW 28: Central Park).

that Central Park, including the Arsenal, was acquired as a public park, falling under the jurisdiction of the Commissioner of Parks. The City Charter specified the duty of the Commissioner of Parks, to maintain the beauty and utility of all such parks, squares and public places as are situated within his jurisdiction, and to institute and execute all measures for the improvement thereof for ornamental purposes and for the beneficial uses of the people of the city.<sup>83</sup>

When Roulstone wrote that an educational museum would not “serve to maintain the beauty and utility of Central Park or to improve it for ornamentation purposes, or for the beneficial use of the vast majority of people of the city,” and that the lease of the Arsenal would “diminish the opportunities of the people and public of the City of New York to use and enjoy...Central Park as a place of resort, amusement, recreation and exercise...”<sup>84</sup> he was not being florid. He was accusing the Commissioner of acting in dereliction of his *chartered* duty.

Further, the lease of the Arsenal for a museum dedicated to “educational and exhibition purposes” violated the portion of the city charter that stated, “It shall not be lawful to grant, use or occupy, for the purposes of a public fair or *exhibition*, any portion of any park, square or public place.”<sup>85</sup>

In the press Roulstone framed the lease as an example of private interests usurping public property. The presence of the safety museum in the park would allow anyone to pose as a public interest group, “to further his own selfish interest or the interest of a restricted class of people at the expense of the great public at large.”<sup>86</sup> In both the press and in court Roulstone argued that allowing public-serving private associations (e.g. the Red Cross, the YMCA) to “claim...a place in Central Park” would set a precedent that would allow similar groups to make similar claims. But in court the question of law was whether the Commissioner of Parks was acting within his chartered authority,

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<sup>83</sup> Section 612, Charter of the City of New York (1897, amended 1901).

<sup>84</sup> New York Supreme Court, Appellate Division—First Department, Brief on Behalf of Plaintiff-Appellant William H. Williams, submitted by William B. Roulstone, Oct 18, 1919, 4-5 (GBP 80: Parks & Playgrounds 1919).

<sup>85</sup> Section 627, Charter of the City of New York (1897, amended 1901) (emphasis mine).

<sup>86</sup> “Refuses to Enjoin Arsenal Museum,” *NYT*, Jul 25, 1919.

and the specific dangerous precedent would be the illegal arrogation of power to the Commissioner. Admitting an educational institution into Central Park would be analogous to the Commissioner of Parks seizing the authority to sign leases for the construction of public school buildings in parks.<sup>87</sup>

After establishing the plaintiff's right to standing, the question remained: why would the lease of an existing building on the periphery of a park hinder the public enjoyment, denigrate the beauty, or diminish the ornamentation of Central Park? The second point that Roulstone argued to the New York Supreme Court Appellate Division and to the Court of Appeals was that the lease of the Arsenal was a violation of the legislative terms under which Central Park was created.

Central Park was acquired by an act of the State Legislature (L. 1853, Ch. 616) "for the public use, as and for a *public square*," according to the specifications of an 1813 state law authorizing the creation of streets and public squares.<sup>88</sup> Central Park land was acquired "upon the following *trust*": "*In trust nevertheless, That the same be appropriated and kept open for, or as part of a public street, avenue, square, or place for ever, in like manner as the other public streets, avenues, squares and places in the said City are, and of right ought to be...*" (Italics ours.)."<sup>89</sup> In 1857 the State Legislature authorized the sale of the Arsenal to the city "in the same respect and for the same purpose, as if it had been originally contained in the parcel comprising the main portion of the Park."<sup>90</sup>

Roulstone delved into semantics, showing that as a question of meaning, a public place or public square is substantially the same thing as a park, and therefore inviolably dedicated as a place for "pleasure, recreation and amusement"—to the exclusion of all other uses, including the educational purposes of a museum. The definition of a park entered his argument through dictionaries and legal lexicons: "Originally the word 'park' connoted an enclosed space which was

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<sup>87</sup> Roulstone, 1919 Brief, 19.

<sup>88</sup> Additional legislation to implement a commission system of governance (L. 1857, Ch. 771), expand the park's northern boundary from 106<sup>th</sup> to 110<sup>th</sup> Street (L. 1859, Ch. 101) and authorize the issuance of public stock to pay for park improvements (L. 1865, Ch. 26) all reiterate that Central Park had been created as a "public place."

<sup>89</sup> Roulstone, 1920 Brief, 8 (citing L. 1813, Ch. 86, sec. 178, emphasis in original). The specific language of the 1813 law appeared only in Roulstone's 1920 Court of Appeals brief.

<sup>90</sup> Roulstone, 1919 Brief, 14.

destitute of buildings and was used primarily as a place of recreation or exercise.”<sup>91</sup> A park or public square was a “space to be used as a place of recreation, exercise or beautification.”<sup>92</sup> Roulstone drew from cases that had previously relied on the dictionary to define the constitutive characteristics of a park. *Perrin v. NY Cent. R.R. Co.* (1867) offered that, “A park is, in its strict sense, a piece of ground inclosed for purposes of pleasure, exercise, amusement or ornament.”<sup>93</sup> *Perrin*, with no citation, attributed this definition to “lexicographers.”<sup>94</sup> And the English language lexicographers of the day, writing from select urban centers, drew from prosaic definitions of parks in the English tradition, such as: “Park (noun): A piece of ground enclosed for public recreation or amusement; as, ‘Hyde Park, Regent’s Park, Victoria Park, in London,’” and “Park (noun): A large tract of ground kept...in its natural state...for the preservation of game, for walking, riding, and the like.”<sup>95</sup> Roulstone quoted other cases that drew from common knowledge definitions, such as *Shoemaker v. U.S.* (1893): “It is said, in Johnson’s Cyclopedie, that the *Central Park* of New York was the first place deliberately provided for the inhabitants of any city or town in the United States for *exclusive use as a pleasure-ground, for rest and exercise in the open air.*’ (Italics ours.)”<sup>96</sup>

From these dictionaries, legal lexicons, and case law, Roulstone condensed the essential characteristics of a park: that it provide for *pleasure, amusement, and recreation*. Thus, the definition of a park or public square, as used in the enabling legislation for Central Park, should be taken to mean “a plot set apart for the purpose of affording the public a place of pleasure, exercise and amusement and of ornamenting the city.”<sup>97</sup> All other uses of Central Park (including other uses of its Arsenal

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<sup>91</sup> Roulstone, 1919 Brief, 16 (citing: 4 Words and Phrases, 2<sup>nd</sup> series; 1 Coke on Littleton, 233a (Liber 3, Chap. 5); 1 Cooley’s Blackstone, 4<sup>th</sup> ed., Book II, 38; Wharton’s Law Lexicon, 11<sup>th</sup> ed., 625).

<sup>92</sup> Roulstone, 1919 Brief, 17 (citing: 3 Words and Phrases, 2<sup>nd</sup> series; Black’s Law Dictionary, 2<sup>nd</sup> ed.; and *Perrin vs. NY Cent RR Co*, 36 N. Y., 120, 124).

<sup>93</sup> *Perrin v. NY Cent RR Co*, 36 N.Y. 120, 124; 126.

<sup>94</sup> *Perrin v. NY Cent RR Co*, 36 N.Y. 120, 126.

<sup>95</sup> Joseph E. Worcester, *Dictionary of the English Language* (Boston: Hickling, Swan, and Brewer, 1860); Noah Webster, *An American Dictionary of the English Language* (Springfield, MA: G & C Merriam, 1870).

<sup>96</sup> Roulstone, 1920 Brief, 12 (citing *Shoemaker v. U.S.*, 147 U.S. 282, 297 (1893)).

<sup>97</sup> Roulstone, 1920 Brief, 12.

building) would be “an illegal diversion to unauthorized uses of public property.”<sup>98</sup> No matter how flexible the terms “pleasure, amusement, and recreation” may be, we cannot infer from this definition of a park purpose that the legislature authorized Central Park for educational or exhibition purposes. (The museums, horticultural and zoological gardens, and other instructive institutions already residing within New York City parks at the time all occupied parkland by grant of legislative authority. And among those instructional uses of city parkland that had been challenged and subsequently upheld by the courts, “the specific purpose for which park property was being used was to furnish *recreation, exercise or pleasure to the public*, or for the ornamentation of the park”).<sup>99</sup>

In June 1920, the New York State Court of Appeals reversed the lower court judgments. Justice Cuthbert Pound, writing for a unanimous court, found the 10-year lease of the Arsenal to the Safety Institute of America “foreign to park purposes” and issued an elaborate judicial musing that directly echoes Roulstone’s definition of a park purpose:

A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. It need not, and should not, be a mere field or open space, but no objects, however worthy, such as courthouses and schoolhouses, which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred. . . Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of *pleasure, recreation, and amusement*, and thus provide for the welfare of the community.<sup>100</sup>

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<sup>98</sup> Roulstone, 1920 Brief, 12.

<sup>99</sup> Roulstone, 1920 Brief, 20. Roulstone’s citations included New York cases that permitted a license “to sell refreshments, let skates, and check coats and wraps” in Crotona Park, Gredinger v. Higgins, 139 App. Div. 606 (N.Y. 1910); the construction of a monument in Riverside Park, Parsons v. Van Wyck, 56 App. Div. 329 (N.Y. 1900); the extension of an existing privilege to run a restaurant in Riverside Park, Gushee v. City of New York, 42 App. Div. 37 (N.Y. 1899); and permission for an existing horticultural garden in Pelham Bay Park, International Garden Club v. Hennessy, 104 Misc. 141 (N.Y. 1918). Roulstone’s 1920 brief (pg. 18) also heavily excerpted cases from other states in which the courts ruled that municipalities may not authorize the construction of schoolhouses, public highways, town halls, city halls, public streets, public libraries, or country court houses in public parks or public squares. These references were not present in the brief to the lower court.

<sup>100</sup> Williams v. Gallatin, 128 N.E. 121, 122-23 (emphasis mine).

Justice Pound was recalled by his colleagues as a judge whose opinions were “liberal in their interpretation of statute and constitution to the end of upholding legislative action,”<sup>101</sup> and who demonstrated particular concern for “underprivileged groups” including “married women, workingmen, foreigners, the un-conventional, criminals, and the ‘public.’”<sup>102</sup> Justice Pound’s decision in *Williams v. Gallatin* was true to both assessments. Pound deferred to the legislative intent in the specific enabling language that authorized Central Park. And he expressed explicit concern for the “public good” served by the use of parkland.

Contemporary legal scholarship assails the decision as “ambiguous” and “inadequate” to establish the definition of a park purpose as a test of alienation.<sup>103</sup> Park administrators have found it difficult to apply the ruling in practice. Gordon Davis, Commissioner of Parks during the first term of Mayor Ed Koch, derided the decision as offering no more guidance than “flowery theoretical considerations.”<sup>104</sup> In Chapter Seven I will review contemporary interpretations of *Williams v. Gallatin*. But I now turn to the more immediate afterlife of the case, in which park advocates came to recognize that their exclusive reliance on the language of the court decision would be insufficient to ensure ongoing parkland preservation.

### **Part 3: The Public Circulation of the *Williams v. Gallatin* Decision**

In the decade after *Williams v. Gallatin*, park advocates reprinted and circulated the full text of Justice Pound’s decision in their popular publications and public reports. Frederick Law Olmsted, Jr., and Theodora Kimball printed the ruling in their compilation of Olmsted, Sr.’s writings on parks and landscape architecture, calling it, “The great legal bulwark against further encroachments on

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<sup>101</sup> Henry W. Edgerton, “A Liberal Judge: Cuthbert W. Pound,” *Cornell Law Quarterly* 21, no. 1 (1935): 34.

<sup>102</sup> Frank H. Hiscock, “Cuthbert W. Pound, An Appreciation,” *Cornell Law Quarterly* 21, no. 1 (1935): 4.

<sup>103</sup> Cyane Gresham, “Improving Public Trust Protections of Municipal Parkland in New York,” *Fordham Environmental Law Journal* 13 (2001-02), 299.

<sup>104</sup> Gordon Davis, *Report and Determination in the Matter of Christo: The Gates* (New York: Department of Parks and Recreation, 1981), 88.

the Park.”<sup>105</sup> In its 1921 Annual Report, the American Scenic and Historic Preservation Society reprinted the full text of *Williams v. Gallatin*, and the Central Park Association (CPA) included extensive excerpts in its 1926 book, *The Central Park*.<sup>106</sup> The *New York Times* also heavily excerpted the ruling, hailing the decision in favor of “park lovers against encroachment on the city parks...” and declaring that “park purposes” had been emphatically defined.<sup>107</sup>

For several years after *Williams v. Gallatin*, the PPA announced that parks were preserved definitively. The PPA touted its role in securing a decision with far-reaching implications for park preservation. In a brochure printed in 1922, under the heading “Parks for Park Purposes Only,” the PPA wrote that *Williams v. Gallatin*:

...safeguards forever our parks to the people of the City. It carefully defines the meaning of ‘proper park purposes’ in such a manner as to reassure us of the sacredness of property dedicated to the public for park purposes. A precedent has therefore been established clearly setting forth principles which will forever protect the rights of the people to unimpaired breathing spaces. It will serve as a warning to any future attempt, however well meant, to barter away park property.<sup>108</sup>

In 1923 the PPA published a pamphlet citing *Williams v. Gallatin* at length to support its opposition to open cut subway construction through Central Park. The PPA wrote, “To support its contention that the Park may not be used for other than park purposes, the Association cites the *Williams v. Gallatin* decision,” and continued:

[T]he Court of Appeals of this State *has for all time defined the uses to which a public park may be put* and in particular, Central Park of the City of New York...[N]o park may be used for any purpose other than a park purpose and it has defined these purposes. It nowhere has stated that railroads may be built in parks. The Court says, at page 253: ‘A park is a pleasure ground....’<sup>109</sup>

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<sup>105</sup> Frederick Law Olmsted, Jr., and Theodora Kimball, eds., *Forty Years of Landscape Architecture* (New York: G. P. Putnam’s, 1928), 521.

<sup>106</sup> American Scenic and Historic Preservation Society, *Twenty-Sixth Annual Report, 1921* (Albany: J. B. Lyon, 1922), 28-30; The Central Park Association, *The Central Park* (New York: Thomas Seltzer, 1926), 70-71.

<sup>107</sup> “Must Keep Parks for Park Purposes,” *NYT*, Jun 27, 1920.

<sup>108</sup> Parks & Playgrounds Association brochure, Summer Season 1922, RWP 12:8.

<sup>109</sup> Parks & Playgrounds Association pamphlet, Dec 1923, LDW 28: Central Park (emphasis mine).

According the *New York Times*, Roulstone called the decision in *Williams v. Gallatin* a “sweeping victory for those who opposed the use of city parks for other purposes than those for which they were originally designed.”<sup>110</sup> Roulstone wrote in opposition to the placement of an art center within Central Park that, “The park should be forever immune from invasion for non-park purposes...An industrial art school and music center...is a project which does not come within the meaning of park purposes as now defined by the courts (William v. Gallatin, 228 N.Y. 248).”<sup>111</sup> The *Times* quoted Roulstone on the same issue, saying, “The proposition is contrary to the settled law of the State of New York. The Court of Appeals, in Williams vs. Gallatin (228 N.Y. 248), *has immunized parks* from invasions for nonpark purposes, especially schools.”<sup>112</sup> In 1925, in an interview with the *Times* in preparation for the convening of a new Park Conservation Association, Roulstone argued that a proposed Brooklyn University campus in Prospect Park would be illegal “because Justice Pound in his decision in the case of Williams against Gallatin, ruled that a school could not be built in a park. The court held that a school or educational institution was alien to park purpose.”<sup>113</sup>

PPA members also discussed the ruling in administrative and organizational settings. The 1923 brochure, quoted above, reprinted the full testimony of George Gordon Battle and William Roulstone before the Board of Estimate, in which they cited *Williams v. Gallatin* to oppose the construction of a subway through Central Park. In 1922, William H. Williams argued at a meeting of the New York State Chamber of Commerce that the construction of a war memorial in Central Park would contravene the decision in *Williams v. Gallatin*. The Chamber issued a public statement against the memorial.<sup>114</sup> In 1926 Roulstone founded the Battery Park Association, “to induce the city eventually to eliminate all objectionable buildings and structures, to discourage the erection of any

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<sup>110</sup> “Must Keep Parks for Park Purposes,” *NYT*, Jun 27, 1920.

<sup>111</sup> William Bradford Roulstone, “Hylan is Invited to Save the Park,” *NYT*, Mar 23, 1924.

<sup>112</sup> “Public Rallies to Defend Central Park,” *NYT*, Mar 23, 1924 (emphasis mine).

<sup>113</sup> “Park Defenders Plan Fixed Policy,” *NYT*, Feb 15, 1925.

<sup>114</sup> Chamber of Commerce of the State of New York, “War Memorials and Swimming Pools in Central Park Opposed,” *Monthly Bulletin* (Nov 1922), 15.

additional structures in the Park, and to re-landscape it and preserve it.”<sup>115</sup> He would again serve as counsel for William H. Williams, successfully filing a taxpayer suit to rid the Battery of a refreshment stand in a case that relied on *Williams v. Gallatin* for precedent.<sup>116</sup>

For the Parks Department, the ruling offered an expedient way to turn down the many requests it received for the use of parks. Park commissioners could make unpopular decisions, such as denying event permits, while deflecting responsibility to the courts. At the same time, they maintained enough discretion within the ambiguous concept of “park purposes” to support mayoral initiatives that might be at odds with parkland preservation. Joseph Hennessy, Commissioner of Parks for the Borough of the Bronx, rejected the occupation of Pelham Bay Park by the After-care Home for Crippled Children on the grounds that *Williams v. Gallatin* “very clearly defined the purposes of our parks and the limitations to which any buildings therein may be devoted.”<sup>117</sup> He issued a similar rejection to a request by the Catholic Ladies of Charity to occupy a structure in Pelham Bay Park, again citing *Williams v. Gallatin*.<sup>118</sup> Gallatin himself used the ruling to avoid a potentially messy debate about freedom of religious expression in public parks. In denying a request by the New York Federation of Churches to hold Easter services in Central Park, Gallatin wrote, “It seems to me that the law on this matter, as held by the Court of Appeals, on a taxpayers’ action in the case of Williams vs. Gallatin, is very clear. The parks are for park purposes and for park purposes only...”<sup>119</sup>

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<sup>115</sup> Broadway Association, *Broadway: The Grand Canyon of American Business* (New York: Broadway Association, 1926), 165.

<sup>116</sup> *Williams v. Hylan*, 223 App.Div. 48, 227 N.Y.S. 392, affd. 248 N.Y. 616, 162 N.E. 547 (N.Y. 1928).

<sup>117</sup> Hennessy to Hylan, Jul 28, 1920, Mayor Hylan correspondence files, MANY 130: 1403.

<sup>118</sup> Hennessy to Connolly, Apr 26, 1921, Mayor Hylan correspondence files, MANY 130: 1404.

<sup>119</sup> “Easter Services in Park Barred by Commissioner,” *NYT*, Mar 1, 1923.

### Early Application of *Williams v. Gallatin* to Park Policy Debate

In 1922 the PPA boasted of its work preventing the National Sculpture Society from “encroaching” upon Central Park with a temporary sculpture exhibition, stating that, “the Association *had only to point to the law* affecting any change whatever in the park system.”<sup>120</sup> But records of the deliberation show that even those who “pointed to the law” did not rely on legal arguments alone. Most PPA members understood that regardless of the content of a court decision, activities that could be publicly observed on parkland could potentially become legitimized as a proper park purposes.

In the spring of 1922, the National Sculpture Society proposed to organize and fund a temporary exhibition of 50 to 100 sculptures on a lawn in Central Park, just north of the Metropolitan Museum of Art, at 85<sup>th</sup> Street and Fifth Avenue. The sculptures, which could be made available for sale, were to be arranged throughout the site by a landscape architect who would temporarily transform the setting into the style of a formal garden.<sup>121</sup>

The PPA board members who believed that the park was an inappropriate setting for a sculpture exhibition cited *Williams v. Gallatin* “to the effect that parks must not be used for other than legitimate park purposes...”<sup>122</sup> The *Times* reported in detail on the PPA deliberations, quoting Roulstone’s opinion that “a unanimous decision of the Court of Appeals in June, 1920, restraining the city from executing a lease on the Central Park Arsenal for an exhibition, would prevent the sculpture exhibition,” and that a park “must not be used for other than legitimate park purposes.”<sup>123</sup> Four days later, the *Times* again quoted two full paragraphs from the *Williams v. Gallatin* decision and noted that, “Mr. Roulstone interprets the decision as meaning that while the Park Commissioner may himself place sculpture in the park or lay out a formal garden there, he may not permit a society

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<sup>120</sup> Parks and Playgrounds Association brochure, Summer Season, 1922, RWP 12:8 (emphasis mine).

<sup>121</sup> “Sculptors Abandon Park Show Project,” *NYT*, Apr 25, 1922.

<sup>122</sup> Minutes of Special Meeting of PPA Board of Directors, Apr 11, 1922, GBP 80: Parks & Playgrounds 1922.

<sup>123</sup> “Sculpture Exhibit In Park Opposed,” *NYT*, Apr 12, 1922.

to hold an exhibition of sculpture there.”<sup>124</sup> In a statement to Commissioner Gallatin, the PPA wrote that the use of Central Park for a private sculpture exhibition, “would be another contravention of the law as laid down by the Court of Appeals in the case of *Williams v. Gallatin*.” The court had defined the purpose of the park—“to provide means of innocent recreation and refreshment for the weary mind and body is the purpose of the system of public parks”—and the PPA concluded that the “exhibition of sculpture by a private society is not a park purpose.”<sup>125</sup>

However, as with the debate over the Arsenal lease, this position was reached over dissenting opinion, and Justice Pound’s ruling in *Williams v. Gallatin* provided little clarity.<sup>126</sup> The exhibition would be beautiful, and no different in intent than a horticultural garden. Gutzon Borglum, in particular, could not find in *Williams v. Gallatin* “a word or phrase that can be so applied as to exclude the placing of sculpture in the park,” and disagreed with construing sculpture as “an intrusion.”<sup>127</sup>

Gallatin reassured the PPA that, “No one can be more opposed to any encroachment on the parks than I am,” and he would “jealously” guard the parks. The difference was in how he understood the concept of encroachment. He could not “imagine a more useful and beautiful use” of the park than to place a sculpture exhibition, free of charge, in a limited portion of the park without permanently altering the landscape. Given that there were already permanent sculptures in parks, how could a temporary exhibition constitute an encroachment?<sup>128</sup>

Opponents insisted they were not against sculpture in parks, but rather against an organized *exhibition* that might set a precedent for future shows with less meritorious purposes than

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<sup>124</sup> “Societies to Act on Park Sculpture,” NYT, Apr 16, 1922.

<sup>125</sup> Battle to Gallatin, Apr 18, 1922, GBP 80: Parks & Playgrounds 1922.

<sup>126</sup> Minutes of Special Meeting of PPA Board of Directors, Apr 11, 1922, GBP 80: Parks & Playgrounds 1922.

<sup>127</sup> Borglum to Battle, Apr 28, 1922, GBP 80: Parks & Playgrounds 1922. This fight marks a break between Borglum and the PPA.

<sup>128</sup> Gallatin to Battle, Mar 31, 1922, LDW 29: PPANY Correspondence. I discuss the perceived threat of *temporary* “encroachments” in Chapter Four.

sculpture.<sup>129</sup> The subject matter of the sculpture exhibition was less relevant than the message about appropriate park policy that the display would send to future petitioners and park administrators.<sup>130</sup> For example, an opposing member of the National Sculpture Society feared that the precedent of a sculpture exhibition might lead to an automobile show in the park.<sup>131</sup> While the PPA's public statements used the language of *Williams v. Gallatin* as a defense against the sculpture exhibition, its internal discussions were also fraught with the fear of precedent.<sup>132</sup> The PPA's official statement to the Commissioner hedged on both points, stating that, "we believe that it would afford a very dangerous precedent and...we believe that it would be contrary to the law."<sup>133</sup> The strong fear of precedent that ran throughout the PPA debate suggests that its members understood that permissible uses of parks would be allowed in practice through the accretion of observed use, as much as through the interpretation of law.

Ultimately, the PPA commanded enough public and political pressure that the National Sculpture Society withdrew its request for the use of the park. The NSS announced that it would cancel the exhibition to avoid "incur[ring] the criticism of attempting to injure the Park or of creating an unfortunate precedent," while still insisting that the sculpture show "could not be classed as an improper invasion of the Park but as a legitimate development of it along the lines of formal landscape gardening."<sup>134</sup> The question of legitimacy remained unresolved, while the PPA had effectively wielded the threat of negative publicity and public outrage, and not, as it claimed, the threat of the law.

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<sup>129</sup> Wald to Battle, Apr 18, 1922, LDW 29: PPANY Correspondence. Sculpture had been accepted in New York City parks since at least the public unveiling of George Washington astride a horse in Union Square, in 1856. Since 1898 the city's Art Commission (now the Public Design Commission) has overseen the approval of statuary and commemorative art on public property. But the Parks Department dates the first *exhibition* of art in parks to the 1967 show *Sculpture in Environment*, organized by Doris C. Freedman (NYC Department of Parks & Recreation, *The Outdoor Gallery: 40 Years of Public Art in New York City Parks* (NYC Department of Parks & Recreation, 2007).

<sup>130</sup> On fear of precedent: Battle to Borglum, Apr 12, 1922; and Battle to Gallatin, Apr 18, 1922, GBP 80: Parks & Playgrounds 1922.

<sup>131</sup> "To Fight Sculpture Exhibit in Park," NYT, Apr 17, 1922.

<sup>132</sup> Parks & Playgrounds Association brochure, Summer Season 1922, RWP 12:8.

<sup>133</sup> Battle to Gallatin, Apr 18, 1922, GBP 80: Parks & Playgrounds 1922.

<sup>134</sup> Committee of the National Sculpture Society to Gallatin, Apr 22, 1922, GBP 80: Parks & Playgrounds 1922.

## Moving Beyond The Legal Lexicon

Roulstone's arguments evolved as his work with the PPA brought him into contact with municipal art advocates and landscape architects, who had become interested in the management of parks as a form of art preservation. The protection of Central Park depended upon adequately funded and expertly managed maintenance to ensure the legibility of the park as landscape art.<sup>135</sup> The concern with the administration and management of large landscaped parks brought these designers and municipal arts advocates into Roulstone's world of policy and administration.<sup>136</sup>

Roulstone was an original incorporator of the Parks Conservation Association (PCA), organized in 1924 "to conserve parks, playgrounds, and open spaces."<sup>137</sup> Municipal Art Society (MAS) member and civic reformer Richard Welling was also an incorporator. MAS and Fine Arts Federation member Albert Bard was on the board. I cannot trace the original connection between the men, but in 1922, as a representative of the PPA, Roulstone attended a meeting of the Metropolitan District of the New York State Chamber of Commerce to discuss a proposed war memorial for Central Park. Prominent members of the American Society of Landscape Architects and MAS were in attendance, as were future members of the Central Park Association, such as muralist William Van Ingen.<sup>138</sup> Van Ingen had spent years gathering original documents regarding the design and maintenance of Olmsted and Vaux's Greensward Plan that he hoped to publish as a guide to the management and restoration of Central Park.<sup>139</sup> It was Albert Bard who urged Roulstone to focus the efforts of the newly formed PCA on rehabilitating Central Park "as it was originally laid out," "preserved as a great work of landscape art of its own time."<sup>140</sup>

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<sup>135</sup> Philbin to PPA Executive Committee, Jul 13, 1910, GBP 78: Parks and Playgrounds Jan-Aug 1910.

<sup>136</sup> FLO Jr. to Vitale, May 17, 1927, OAR 502:4; FLO Jr. to Herrick, Jul 18, 1927, OAR 503:4.

<sup>137</sup> Constitution of the Parks Conservation Association, Jun 25, 1924, ASB 26:1.

<sup>138</sup> Conference called by Committee on Public Service in the Metropolitan District of the Chamber of Commerce of the State of New York, Oct 23, 1922, ASB 35:5.

<sup>139</sup> MAS to FLO Jr., May 1922, ASB 79:13. See Rosenzweig & Blackmar, 1992, 434 on the abandonment of Van Ingen's publication project in favor of Olmsted, Jr., and Theodora Kimball's collection of Olmsted, Sr.'s writing.

<sup>140</sup> Bard to Roulstone, Jun 18, 1924, ASB 79:13.

In 1926 the Central Park Association (CPA) formed out of the PCA, with Roulstone serving as president. Roulstone continued to mobilize interorganizational coalitions to mount displays of public pressure, worked his connections with newspaper editorial writers to sway them on park policy, and strategically organized internal CPA committees to be chaired by Tammany members in good standing with the city administration.<sup>141</sup> The PCA and CPA, which had many overlapping members with the PPA (they would all merge in 1928), used the same strategies as the PPA to compel administrative policy through the courts (or through the threat of legal action). However, the CPA began to recognize the limits of relying exclusively on the text of court decisions in sustaining park preservation. The CPA wrote that, “Only by making the park worthy of defense can we be sure of permanently defending it,”<sup>142</sup> and it turned its attention to preserving the Central Park landscape on the basis of the park’s original design.<sup>143</sup>

Roulstone’s legal writing also demonstrated new forms of argument for the preservation of parkland, supplementing his reliance on *Williams v. Gallatin* with the writings of Frederick Law Olmsted. In notes for a 1925 case against open cut subway construction in Central Park, Roulstone drew on a philosophy of park purposes that extended beyond the definitions of lexicographers, encyclopedias, and legal lexicons.<sup>144</sup>

Between May and June of 1925, Francis Gallatin, acting as Commissioner of Parks for Manhattan, entered into contracts with three private construction companies, allowing them to occupy a total of approximately 1.5 acres of land within the western boundary of Central Park, at 70<sup>th</sup>, 81<sup>st</sup> and 97<sup>th</sup> Streets, as staging sites for the construction of the Eighth Avenue subway line. The

<sup>141</sup> CPA meeting minutes, Nov 5, 1926, ASB 9:2; CPA meeting minutes, Apr 1, 1927, ASB 9:3; CPA meeting minutes, Sep 27, 1927, ASB 9:3; Roulstone to Civic Organizations, Mar 3, 1926, RWP 12:6. Roulstone had the ear of the mayor and a knack for press strategy (Shurtleff, May 9, 1927, OAR, 502:4; Roulstone to FLO Jr., Sep 7, 1927, OAR 503:4).

<sup>142</sup> “Park Defense and Tribute,” NYT, Jan 12, 1926.

<sup>143</sup> Roulstone was instrumental in the (failed) attempt to bring the Olmsted Brothers firm to New York to direct the rehabilitation of Central Park. See e.g. Gallagher to FLO Jr., Mar 31, 1926, OAR, 503:3.

<sup>144</sup> William Roulstone, *Notes for the People of the State of New York ex rel v. Hylan* (circa 1925). These notes were written as drafts for an order of mandamus requesting the halt to subway construction operations in Central Park, and are found in the archives of the Parks Council, PCR 5:28 (Point One is filed separately in PCR 5:25).

sites, surrounded by eight-foot-high fencing, contained machine shops, offices, air compressors, and other construction items, all placed in the park out of convenience and not necessity. The contractors altered the physical landscape by digging drainage ditches, laying cement foundations, and removing vegetation.<sup>145</sup>

Roulstone still insisted that, “There is but one way to preserve Central Park from present and future invasions—given population growth, land scarcity and the slippery slope of precedent—and that is to adhere to the decision in *Williams v. Gallatin*, to reiterate that parks are for park purposes only and that machines and compressor plants have no place whatsoever in a park.”<sup>146</sup> But he did not rely exclusively on the definition of a park purpose as expressed in legislative intent and case law. Subway construction would damage not only the land under construction, but also the broader *idea* and *experience* of the park. Roulstone wrote:

A clear understanding of the purpose of a park reveal[s] that injury or damage to a portion is not confined to that portion but extends to the surrounding area. The essence of a park consists in the purposes which it subserves. A destruction of the purposes must necessarily to that extent destroy the park. Parks differ from vacant ground only in the purposes which they subserve...First, to give the body and soul a feeling of freedom and escape from the confinement of streets and buildings. Second, to furnish quiet, rest, recreation, and the beauties of nature to the tired urban population. In order to effectuate the first purpose Olmsted decided that artificial construction (of any kind) was out of place in a park. The scenery should simulate nature and contrast with the city and civilization. Artificial construction was, therefore, to be avoided. It was a reminder of the cities and its buildings, giving rise to a feeling of confinement. Artificial construction, therefore, was a most effective method of *destroying the park as a park*.<sup>147</sup>

The structures necessary to support subway construction would damage not only the underlying land, but the entire purpose of the park—not as laid out in the authorizing legislation or dictionary definitions, but in the intention of the artist to exert an effect on the eye and the mind.

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<sup>145</sup> Roulstone, *Notes for the People v. Hylan*.

<sup>146</sup> Roulstone, *Notes for the People v. Hylan*, Point 3, 16.

<sup>147</sup> Roulstone, *Notes for the People v. Hylan*, Point 3, 17 (emphasis mine). Roulstone quoted at length from Olmsted’s 1870 speech, “Public Parks and the Enlargement of Towns.” As part of a larger block quote, he underlined Olmsted’s passage on the intent of the park to bring tranquility to the minds of men. The CPA, of which Roulstone was president, opened its 1926 guide to Central Park (in which the text of *Williams v. Gallatin* is quoted extensively) with the epigraph from Frederick Law Olmsted, “Where building begins, the Park ends,” showing a reliance on both legal and artistic defenses of the park.

Roulstone repeated Olmsted's example from *A Consideration of the Justifying Value of a Public Park*: a sculpture, though inoffensively small and possibly of artistic merit itself, when placed upon a landscape that had been coherently designed to bring about "a feeling of distance" and "sense of freedom," intruded on and ruined the effect of the vista, thus ruining the entire purpose of the park. Roulstone wrote that wherever the subway fencing and structures were visible, "the eye conveys to the mind the impression of confinement and artificial construction....The illusion of nature which makes the park a park is destroyed."<sup>148</sup> Without the hand of Olmsted shaping land into landscape, the park was nothing more than vacant ground or a patch of dirt.

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<sup>148</sup> Roulstone, *Notes for the People v. Hylan*, Point 3, n/p.

### Chapter Three: Frederick Law Olmsted as Artist and Authority in the Ongoing Preservation of Central Park

Frederick Law Olmsted has been claimed as an environmentalist; a recreationist; a genius, a visionary, and an exemplary American; the first city planner; a promoter, variously, of freedom, democracy, elitism, neoliberalism, our nation's urban future, and anti-urban rural idealism. Academic work on Olmsted includes a prosopography of his early intellectual milieu, an analysis of his antebellum writings from the South, and a consideration of park planning as a form of social control.<sup>1</sup> There are tomes on Olmsted and the Chicago World's Fair, Olmsted and the National Parks, Olmsted in Buffalo, Stanford, and at the Biltmore. There is an Olmsted for every era. In the early 1970s, Olmsted emerges as an "environmental engineer,"<sup>2</sup> and "this nation's most comprehensive environmental planner and designer."<sup>3</sup> Olmsted has been deployed to support and to discredit contemporary park planning. At a public hearing on the use and safety of Central Park, a State Assemblyman testified that although the sport had not been invented when the park was built, "I am sure Olmsted would have put in basketball courts had he known about basketball."<sup>4</sup> When discussing the expansion of tennis courts in Central Park, the *New York Times* headline read, "Olmsted Never Said Tennis."<sup>5</sup> Enter at any angle into a park planning debate by asking, "What would Olmsted do?"

Olmsted lived an extraordinary life, and we can read his biography as a social history of the American 19<sup>th</sup> century. He was born in 1822 in a version of Hartford, Connecticut, a New England

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<sup>1</sup> Charles Beveridge, "Frederick Law Olmsted: The Formative Years 1822-1865" (PhD diss., University of Wisconsin, Madison, Dept. of History, 1966); Dana F. White and Victor A. Kramer, eds., *Olmsted South: Old South Critic/New South Planner* (Westport, CT: Greenwood Press, 1979); Paul S. Boyer, *Urban Masses and Moral Order in America, 1820-1920*, (Cambridge, MA: Harvard University Press, 1978).

<sup>2</sup> See: Elizabeth Barlow, *Frederick Law Olmsted's New York* (New York: Praeger, 1972); and Robert Smithson, "Frederick Law Olmsted and the Dialectical Landscape," in Jack Flam, ed., *Robert Smithson: The Collected Writings* (Berkeley, University of California Press, 1996 [1973]). Smithson's interest in Olmsted was piqued by Barlow's exhibit.

<sup>3</sup> Albert Fein, *Frederick Law Olmsted and the American Environmental Tradition* (New York: G. Braziller, 1972), 3.

<sup>4</sup> State Assemblyman Edward Sullivan, quoted in Citizens Task Force on the Use and Security of Central Park, *Central Park: The Heart of the City* (1990), 111 (MAS Greenacre Library).

<sup>5</sup> "Olmsted Never Said Tennis," NYT, Dec 31, 1972.

town of 7,000, that we could hardly recognize today. He lived to work on the design of the World's Columbian Exposition in 1893, in a Chicago with all of the contours of the modern American industrial city. (Olmsted died in 1903 at McLean Hospital in Belmont, Massachusetts, where he had resided since 1898; before his senility set in, he had designed the hospital grounds.)<sup>6</sup> In his early years he sailed to China, wrote a travelogue of an American visitor to England (which included an inspiring visit to Birkenhead Park), and tried his hand at gentleman farming on Staten Island.<sup>7</sup> Olmsted wrote 75 dispatches of a Northern traveller in the antebellum South for the *New-York Daily Times* and the *New York Daily Tribune* (1852-54) and three volumes recounting 14 months of southern travel (later compiled as *The Cotton Kingdom*).<sup>8</sup> He was a publishing partner at Putnam's Monthly Magazine (1855-57) in the company of Charles A. Dana and Parke Godwin, both of whom supported Olmsted's bid to serve as superintendent of the newly authorized Central Park in 1857.<sup>9</sup> During the Civil War Olmsted served as general secretary of the U.S. Sanitary Commission (1861-63), and then headed west to California to manage the Mariposa gold mining estate (1863-1865). While in California, he was appointed by the governor as the head of the Yosemite Commission, and in this capacity oversaw early surveying work of the land that would become Yosemite (National) Park. (His son, Frederick Law Olmsted, Jr., drafted key passages of the 1916 Organic Act that established the national parks.) In addition to his work in New York with Calvert Vaux designing Central, Prospect, Riverside, and Morningside Parks, Olmsted also worked on the planned community of Riverside, Illinois (1869); Washington Park, Jackson Park, the Midway Plaisance, and

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<sup>6</sup> Charles Capen McLaughlin, ed., *The Papers of Frederick Law Olmsted Volume 1: The Formative Years, 1822-1852* (Baltimore: Johns Hopkins University Press, 1977), 45.

<sup>7</sup> On Birkenhead Park, see: Frederick Law Olmsted, *Walks and Talks of an American Farmer in England* (New York: G.P. Putnam, 1852), 78-83.

<sup>8</sup> Frederick Law Olmsted, *A Journey in the Seaboard Slave States* (New York: Dix & Edwards, 1856); Frederick Law Olmsted, *A Journey Through Texas* (New York: Dix, Edwards & Co, 1857); Frederick Law Olmsted, *A Journey in the Back Country* (New York: Mason Brothers, 1860).

<sup>9</sup> Laura Wood Roper, "'Mr. Law' and Putnam's Monthly Magazine: A Note on a Phase in the Career of Frederick Law Olmsted," *American Literature* 26 (1954): 88-93. Olmsted assumed the superintendent position in 1857, a year before he and Vaux won the (anonymous) design contest with their Greensward Plan.

parkways along Drexel Boulevard and today's Martin Luther King Jr. Drive in Chicago (1871); a master plan for the campus of Stanford University (1886); the Buffalo Park system; and Boston's Emerald Necklace (1881). This is not close to a comprehensive list of his life's work.

Olmsted's collected writings, from his papers held in the Library of Congress, have been complied and edited by a dozen scholars, and printed in nine volumes and three supplemental editions. As of the summer of 2017, the final volume of the *Papers of Frederick Law Olmsted*, a project that began in 1972, is in preparation for publication. Olmsted's collaborator, the English architect and park-builder Calvert Vaux, is worthy of his own treatment as an artistic visionary. I am aware that I am slighting him, for both historical and expedient reasons.<sup>10</sup> It is in no way a judgment of Vaux's contributions to park design to acknowledge that park defenders have more often turned to Olmsted's extensive writing to justify their preservation arguments. In this chapter I describe Olmsted's writing on parks as an introduction to subsequent discussions, which appear throughout this dissertation, about how Olmsted has been prevailed upon as an authority to guide park policy and preservation.

I cannot do justice to the richness of Olmsted's biography or to the scope of his life's work. Instead I bring together existing scholarship on Olmsted, and well-known passages of his own writing, to help interpret the subsequent uses of Olmsted by park preservationists. In Part 1, I discuss three points regarding Olmsted's social theory and landscape practice: 1. Central Park, and other large pastoral parks, were social projects accomplished through landscape design; 2. The "justifying value" of a large public park was the cultivation of beauty as a functionalist salve for

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<sup>10</sup> While Olmsted left a 45-year-long editing project in the vastness of his writing and records, Vaux's collection, held at the New York Public Library, is contained in a single box (.3 linear feet). There are other interpretations of the long history of deference to Olmsted over Vaux. It conforms to the artist as lone genius narrative, for one. For a full treatment of Vaux, see: Francis R. Kowsky, *Country, Park & City: the Architecture and Life of Calvert Vaux* (New York: Oxford University Press, 1998).

urban society; and 3. Landscape design was a temporal art that demanded the oversight and care of an artist to allow park scenery to mature into its intended form over time.

## Part 1: Olmsted's Social Theory and Landscape Practice

### Park Building as a Social Project

Writing in 1852 to his childhood friend, Charles Loring Brace, Olmsted described a visit to the Redbank Phalanx and his support of Fourierism (for others!), “The advantages by making knowledge, intellectual & moral culture, and esthetic culture more easy—popular—that is, the advantages by *democratizing* religion, refinement & information, I am inclined to think might be equally great among the *associated*.”<sup>11</sup> Historian Paul Boyer writes that Olmsted was impressed by “the development of environmental analogues to social ideals.”<sup>12</sup> Olmsted described his work on the design of Central Park, six years later, as a service to “the cause of civilization.”<sup>13</sup> Charles Beveridge writes that for Olmsted, Central Park was both a demonstration of “democratic development” and a rebuke, showing conservative skeptics that it was possible “to raise the cultural level of all classes.”<sup>14</sup> The design of Central Park was an intentional project of republican institution building. This was a broader passion of Olmsted’s, expressed, for example, in another letter to Brace (who had served as the executive of the Children’s Aid Society since March 1853): “Go ahead with the Children’s Aid and get up parks, gardens, music, dancing schools, reunions which will be so attractive as to force into contact the good & bad, the gentlemanly and the rowdy. And the state ought to assist these sort of things.”<sup>15</sup> Olmsted wrote this passage in a letter recounting a visit with Samuel Perkins Allison, a

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<sup>11</sup> Olmsted to Charles Loring Brace, Jul 26, 1852, in McLaughlin, ed., 1977, 377 (emphasis in original).

<sup>12</sup> Boyer (1978, 238) writes, “For Charles Fourier, the material expression of his social vision had been the phalanstery; for Olmsted, it was the park.”

<sup>13</sup> Charles E. Beveridge and David Schuyler, eds., *The Papers of Frederick Law Olmsted Volume 3: Creating Central Park, 1857-1861* (Baltimore: Johns Hopkins University Press, 1983), 6.

<sup>14</sup> Beveridge and Schuyler, 1983, 6.

<sup>15</sup> FLO to Brace, Dec 1, 1853, in Charles E. Beveridge & Charles Capen McLaughlin, eds., *The Papers of Frederick Law Olmsted Volume 2: Slavery and the South, 1852-1857* (Baltimore: Johns Hopkins University Press, 1977), 232-6.

slave-owning Nashville aristocrat and a friend of Olmsted's brother from Yale. The meeting had left Olmsted rattled and in want of "elevating" institutions worthy of and productive of true republican democracy, something to counter Allison's claim of Southern cultural superiority.<sup>16</sup>

Olmsted's theory of park design also drew from the teachings of his Hartford neighbor, Horace Bushnell.<sup>17</sup> Bushnell (1802-1876), a liberal theologian and Congregational minister, believed that "the influence that people exerted unconsciously on each other was often the most powerful force in the molding of habits and beliefs."<sup>18</sup> In his sermon, *Unconsciousness Influence*, Bushnell wrote, "We overrun the boundaries of our personality—we flow together...And thus our life and our conduct are ever propagating themselves, by a law of social contagion, throughout the circles and time in which we live."<sup>19</sup>

We see echoes of Bushnell's thinking in Olmsted's talk, *Public Parks and the Enlargement of Towns*, read before the American Social Science Association in 1870. Olmsted conceded that civilization was progressing on an inexorable path toward urbanization, and argued that we should therefore make cities as uplifting and accommodating to human wellbeing as possible. Olmsted believed that this inevitable urbanization was on the whole a positive tendency, given the advantages of taste and culture to be found in cities. Olmsted worried, however, about the effect of urban life on the psyche and the quality of fellow feeling that stems from interactions in the constrained urban environment. Olmsted pondered the mental burden created by a task even so simple as crossing a crowded city street:

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<sup>16</sup> Beveridge calls this encounter a "sobering" and "pivotal experience" for Olmsted, that left him embarrassed about "the fruits of free-labor society," and recommitted to "the mission of reforming and civilizing the North..." Beveridge and McLaughlin, 1977, 16-17.

<sup>17</sup> Charles E. Beveridge and Paul Rocheleau, *Frederick Law Olmsted: Designing the American Landscape* (New York: Universe Publishing, 1998), 12.

<sup>18</sup> Beveridge, 1966: 17.

<sup>19</sup> Horace Bushnell, *Unconscious Influence: A Sermon* (London: Partridge and Oakey, 1852 [1846]). Bushnell was instrumental in establishing the first large public park in Hartford, CT (today's Bushnell Park). See: Peter C. Baldwin, *Domesticating the Street: The Reform of Public Space in Hartford 1850-1930* (Columbus: Ohio State University Press, 1999).

Our minds are thus brought into close dealings with other minds without any friendly flowing toward them. Much of the intercourse between men when engaged in the pursuit of commerce has the same tendency—a tendency to regard others in a hard if not always hardening way.<sup>20</sup>

For Olmsted, civilization would progress only if city life could offer “relief” and allow its residents to “maintain a temperate, good-natured, and healthy state of mind.”<sup>21</sup> Recreation was one way to mitigate the impending wretchedness of city life conducted in hardened commerce.

Following Bushnell, Olmsted was concerned with *receptive* recreation, which “causes us to receive pleasure without conscious exertion.”<sup>22</sup> The antidote to the streets could be found in pastoral parks that provided beauty and solitude, while also allowing people to come together in common association free from the psychic harms of the commercial city. This precluded the trappings of the street within the park’s boundaries. While the institutional form of the park was a concertedly urban project, the beauty of the physical form of park was indeed defined in opposition to the city: “Building can be brought within the business of the Park proper only as it will aid escape from buildings. Where building for other purposes begins, there the Park ends.”<sup>23</sup> (That is to say, the park’s beauty was defined against the city; but Olmsted (and Central Park) were not “anti-urban”.)

The coming together was as important as the escape. Olmsted’s “associationist” project was tied to a romantic aesthetic,<sup>24</sup> developed in the service of “the transformation of society.”<sup>25</sup> This was an experience that could only be achieved in naturally composed expanses of space; it could not be accomplished through a system of small parks or periodic trips to the countryside. For Olmsted,

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<sup>20</sup> Frederick Law Olmsted, *Public Parks and the Enlargement of Towns* (Cambridge, MA: Riverside Press, 1870), 11.

<sup>21</sup> Olmsted, 1870, 11.

<sup>22</sup> Olmsted, 1870, 17.

<sup>23</sup> Frederick Law Olmsted, *The Spoils of the Park* (1882), 6, <https://archive.org/details/spoilsparkwitha01olmsg00>.

<sup>24</sup> Menard describes the particular meaning of “associationism” in the context of Olmsted’s work as “a model of how we experience the beauty and sublimity of nature as a ‘reflection of our own inward emotions’—and of how this experience can enlarge our sense of freedom and virtue,” drawing from Archibald Alison (*Essays on the Nature and Principles of Taste*, 1790). Andrew Menard, “The Enlarged Freedom of Frederick Law Olmsted,” *The New England Quarterly* 83, no. 3 (2010): 531.

<sup>25</sup> Irving D. Fisher, *Frederick Law Olmsted and the City Planning Movement in the United States* (Ann Arbor, MI: UMI Research Press, 1986), 104.

character development was inextricably linked to social encounters engineered by the built environment. There was a vital social project in designing a space in which people could exist together, surrounded by beauty. This common association of people surrounded by beauty could also strengthen democratic impulses. Thomas Bender writes that for Olmsted, “Art, in the form of the park, would provide a shared cultural experience that would overcome the divisions and competitions of urban society.”<sup>26</sup> (Bender argues that Olmsted’s reform project was predicated on the spread of democratic culture, but could not always be sustained through democratic politics.)<sup>27</sup> Olmsted described his vision of park building, of constructing places where “people shall be attracted together and encouraged to assimilate”—as a project in service to the ongoing vitality of democracy. It was a necessary function of the state to “cultivate taste” and to lessen the “materialism” that drew people away from “the enjoyment of simple and sensible social life in our community.”<sup>28</sup>

### “The Justifying Value of A Public Park”

In *A Consideration of the Justifying Value of A Public Park* (1881), Olmsted argued that it was pennywise and pound foolish to opt for the expedient maintenance of large pastoral parks. But it was difficult for politicians to allocate resources to parks if the public could not see the value in the expense of proper park design and care. “There is a difficulty in discussing questions of cost and value in parks, lying in the fact that the public is so far from a common understanding of what the

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<sup>26</sup> Thomas Bender, *New York Intellect* (New York: Knopf, 1987), 201.

<sup>27</sup> Bender, 1987, 199-202. Bender writes that for Olmsted, “democratic culture...was a matter of the extension of his own notion of culture,” driven not so much by elite sympathies as by his artistic prerogative (1987, 201).

<sup>28</sup> Frederick Law Olmsted [Yeoman, pseud.], “Letters on the Production, Industry, and Resources of the Slave States, Number 46,” *New-York Daily Times*, Jan 12, 1854.

unadulterated substance of a park may be.”<sup>29</sup> In place of inherent value, Olmsted argued that public opinion must coalesce around “the *lasting conditions of accruing value* in a park.”<sup>30</sup>

In particular, if public officials were unwilling to fund the ongoing maintenance and care of a (large) park, it would become more and more difficult over time to “dispossess[ ] the mind of ideas which are associated with an object when, through lapse of time and change of circumstances, the nature of that object and its conditions of value have been radically changed.”<sup>31</sup> A park is a “gradual merging together of elements of value originally detached” which for years will remain apparently disconnected as they take time to grow into the mature forms of their designers’ imaginations. In this unformed state, the value of a park will not be discernable, and there is “no assurance in law, custom or public common sense” that a park, once built, will grow into its intended form.<sup>32</sup>

The task of Olmsted’s justificatory project was to argue for the value of the park as a work in progress, a space that would grow in functional necessity over time. The growth trajectory of a park full of twiggy trees and scruffy shrubs, not yet a melding of landscape form into the desired artistic effect, must not be altered. The park as a work in progress was particularly vulnerable to change because there was nothing inherent in the land that would allow the public or administrators to properly assess the park’s purpose through observed use or through the (immature) design. If we rely on observed use, we obtain no coherent traction on the purpose of a park:

In one European public park we find a race-course, with its grandstand, stables, pool-room and betting ring; in another, popular diversions of the class which we elsewhere look to Barnum to provide. In one there is a theater with ballet-dancing; in another, soldiers firing field-pieces at a target...it is impossible to find any line of principle between many favored and neglected propositions. Usage, therefore, in this respect, decides nothing.

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<sup>29</sup> Frederick Law Olmsted, *A Consideration of the Justifying Value of a Public Park* (Boston: Tolman & White, 1881), 6.

<sup>30</sup> Olmsted, 1881, 6 (emphasis mine).

<sup>31</sup> Olmsted, 1881, 11.

<sup>32</sup> Olmsted, 1881, 3-4.

Nor does usage decide the form of the landscape (straight or winding roads, open vistas or closed hedges).<sup>33</sup> And if we define the purpose of parks as the provision of recreation, we leave everything to the discretion of administrators: “Recreation is so broad a term...that to devote public funds to recreation is little less than to give a free rein to the personal tastes, whims and speculations of those entrusted with the administration of them.”<sup>34</sup>

For Olmsted, the only justification for the vast expenditure and the disruption to the city grid caused by appropriating so much land for Central Park was the provision of scenic beauty set apart from the physical conditions of the city (particularly when simple physical recreation could be accommodated in smaller dispersed facilities throughout the city). Olmsted, writing in 1881, argued that while 25 years prior there had been no public parks in America apart from spaces more properly considered town squares, plazas, or parade grounds, there was now great public expenditure and demand for such spaces in every major city across the country. The relief that city-dwellers sought in scenic beauty (shaped by nature and crafted by the landscape artist) could only be the expression of the “genius of civilization” demanding the conditions that facilitated its persistence. Modern life in cities of bustling commerce induced “vital exhaustion,” “nervous irritation” and “constitutional depression.”<sup>35</sup> Olmsted concluded that if a park does not address “these evils” there is no justification for the cost of parks. This created primary and secondary purposes of parks, and a hierarchy of justifications:

That other objects than the cultivation of beauty of natural scenery may be associated with it economically, in a park, I am not disposed to deny; but that all such other objects should be held strictly subordinate to that, in order to justify the purchase and holding of these large properties, I am inclined to think, cannot be successfully disputed.<sup>36</sup>

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<sup>33</sup> Olmsted, 1881, 14-15.

<sup>34</sup> Olmsted, 1881, 14.

<sup>35</sup> Olmsted, 1881, 19.

<sup>36</sup> Olmsted, 1881, 20.

## Artistic Oversight of the Dialectical Landscape

The taking of land for what would become Central Park was authorized in 1853, before the park had been designed. In 1857 Olmsted was serving as the park's first Superintendent when he was approached by Vaux to collaborate in the anonymous design competition for the park. In the submission for their winning entry (the 33<sup>rd</sup> of 33 proposals received), known as the "Greensward Plan," Olmsted and Vaux wrote,

A wise forecast of the future gave the proposed park the name of Central....Only twenty years ago Union Square was 'out of town;' twenty years hence, the town will have enclosed the Central Park. Let us consider, therefore, what will at that time be satisfactory, for it is then that the design will have to be really judged. No longer an open suburb, our ground will have around it a continuous high wall of brick, stone and marble. The adjoining shores will be lined with commercial docks and warehouses; steamboat and ferry landings, railroad stations, hotels, theatres, factories, will be on all sides of it and above it: all [of] which our park must be made to fit.<sup>37</sup>

Olmsted's imagination of the future was relational between two ever-changing entities—the park as it matured, and the city as it grew. Land artist Robert Smithson referred to this as Olmsted's "dialectical landscape." Central Park is "a process of ongoing relationships existing in a physical region."<sup>38</sup>

The imagination of the growing city supported the social project of the park, while the growing park—as an artistic creation—required artistic guidance throughout its maturation. In 1870, Olmsted wrote in *Public Parks and the Enlargement of Towns*, "It must be remembered, also, that the Park is not planned for such use as is now made of it, but with regard to the future use, when it will be in the centre of a population of two millions hemmed in by water at a short distance on all sides; and that much of the work done upon it is, for this reason, as yet quite barren of results."<sup>39</sup>

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<sup>37</sup> Beveridge & Schuyler, 1983, 120.

<sup>38</sup> Smithson, 1996 [1973], 160.

<sup>39</sup> Olmsted, 1870, 31.

Figure 3.1: Population of Manhattan, New York (1820-1910)<sup>40</sup>

Year	Manhattan Population
1820	123,706
1830	202,589
1840	312,710
1850	515,547
1860	813,669
1870	942,292
1880	1,164,673
1890	1,441,216
1900	1,850,093
1910	2,331,542

Olmsted and Vaux wrote to the President of the Board of the Department of Public Parks, in January 1872, that the city's rapid expansion would increase the pressures on Central Park to accommodate "a desultory collection of miscellaneous entertainments." Against this unorganized vision of the park as a perpetually renewable space for eclectic diversions, the park's original designers warned that:

The only solid ground of resistance to dangers of this class will be found to rest in the conviction that the Park throughout is a single work of art, and as such, subject to the primary law of every work of art, namely, that it shall be framed upon a single, noble motive, to which the design of all its parts, in some more or less subtle way, shall be confluent and helpful.<sup>41</sup>

In 1857 New York State authorized a governing body, the Board of Commissioners of Central Park, whose members were appointed by the "predominantly Republican" state legislature.<sup>42</sup> In 1870, "An Act to Reorganize the Local Government of the City of New York" devolved park governance to the city under the authority of the newly formed Department of Parks (which operated from 1870 until the consolidation of Greater New York in 1898). The new department was under the control of the (Tammany) mayor, who now had the power to appoint and fire members

<sup>40</sup> Ira Rosenwaike, *Population History of New York City* (Syracuse: Syracuse University Press, 1972).

<sup>41</sup> Frederick Law Olmsted & Calvert Vaux to H. G. Stebbins, President of the Department of Public Parks, in *Second Annual Report of the Board of Commissioners of the Department of Public Parks* (New York: William C. Bryant & Co., 1872), 78.

<sup>42</sup> Elizabeth Blackmar and Roy Rosenzweig, "Central Park," in Kenneth T. Jackson, ed., *The Encyclopedia of New York City*, 2<sup>nd</sup> edition (New Haven: Yale University Press, 2010), 222-24.

of the Board.<sup>43</sup> The preservationist interpretation claims that, “Since 1871 the management of the City parks has been a political matter.”<sup>44</sup> Of course from the moment the state authorized the taking of private land in the service of a vast public works project, the management of the park had been a political matter. Olmsted maintained a contentious relationship with the state-appointed Republican gentlemen who served on the Board of Commissioners, and later with the city-appointed Democrats in the Department of Parks.<sup>45</sup> In 1861, in a threat to resign from his position as architect-in-chief and superintendent of Central Park over a dispute with the park’s Board of Commissioners, Olmsted asserted his status as an artist, and hence his indispensable role in the oversight of the continued production of the park:

I shall venture to assume to myself the title of artist and to add that no sculptor, painter or architect can have anything like the difficulties in sketching and conveying a knowledge of his design to those who employ him... *The design must be almost exclusively in my imagination.* No one but myself can feel, and without feeling no one can understand at the present time, the true value or purport of much that is done on the park, or much that needs to be done. Consequently, except under my guidance these pictures can never be perfectly realized and if I am interrupted and another hand takes up the tools, the interior purpose which has actuated me will be very liable to be thwarted, and confusion and a vague discord result.<sup>46</sup>

But the task of translating the design of Central Park from the imagination of Frederick Law Olmsted into the horticultural, artistic, and political endeavor of stewarding Central Park would necessarily end with the life of the artist (if not sooner with his final dismissal from the Department). In the second part of this chapter, I examine how Olmsted’s friends, family, and the press carried on his legacy. I conclude by discussing the particular task of re-creating the physical entity of Central Park as a coherent piece of (Olmsted) art.

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<sup>43</sup> David M. Scobey, *Empire City: The Making and Meaning of the New York City Landscape* (Philadelphia: Temple University Press, 2002), 34.

<sup>44</sup> The Central Park Association, *The Central Park* (New York: Thomas Seltzer, 1926), 47.

<sup>45</sup> See Charles E. Beveridge, Carolyn F. Hoffman, & Kenneth Hawkins, eds., *The Papers of Frederick Law Olmsted Volume VII: Parks, Politics, and Patronage 1874-1882* (Baltimore: Johns Hopkins University Press, 2007), 3-5.

<sup>46</sup> Olmsted cited in Melvin Kalfus, *Frederick Law Olmsted: The Passion of a Public Artist* (New York: NYU Press, 1991), 221. Kalfus argues that Olmsted claimed artistic authority out of both a true conviction of his métier and because it was the only ground of unassailable authority he could marshal against the tightfisted Central Park Board of Commissioners. The claim to artistic authority was both honest and shrewdly political.

## Part 2: The Early Defenders of The Greensward Legacy

The legacy of Olmsted, Vaux, and the Greensward Plan was carried on in several ways.

Samuel Parsons, who worked and trained with Vaux, provided continuity in design ideology, working within the Department of Parks until 1911. Olmsted's sons were propagators, protectors, and interpreters of his legacy. And Olmsted's friends in various prominent publications defended his park creations, and the friends of his downstream interpreters later took up the same cause.

Landscape gardener Samuel Parsons (1844-1923) was a protégé and later professional partner of Calvert Vaux, and it was through Vaux's intervention, in 1881, that Parsons was appointed to the position of "superintending gardener" in Central Park.<sup>47</sup> Parsons saw himself as the defender of the Greensward Plan, and wrote, "Recognizing that it would always be easier to defend and preserve the designs as worked by Olmsted and Vaux in the [Parks] Department than out of it, I determined never to resign."<sup>48</sup> Parsons was eventually forced from his employment with the Department of Parks in 1911; Reed and Duckworth refer to his departure as "the close of the 'Greensward Dynasty,'" and the beginning of the downfall of the maintenance of the park's landscape.<sup>49</sup> This is difficult to assess as a claim of relative disorder. In 1881 the *New York Tribune* was already lamenting the demise of the park. But there are archival records from the early 1910s that document organized civic efforts, spearheaded by Gutzon Borglum of the PPA, to restore degrading soil conditions and tend to the failing health of the trees within Central Park. It seems fair to assume that as the trees and plantings in the park reached their sixth decade, in an increasingly

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<sup>47</sup> Francis R. Kowsky, "Introduction to the Reprint Edition," in Samuel Parsons, *The Art of Landscape Gardening* (Amherst: University of Massachusetts Press, 2009 [1915]), xxiii.

<sup>48</sup> Samuel Parsons, *Memories of Samuel Parsons: Landscape Architect of the Department of Public Parks, New York*, Edited by Mabel Parsons (New York: G.P. Putnam's Sons, 1926), 12. Parsons insisted that, "All the troubles of the New York Park Department have arisen from failure to understand the value of expert advice" (1926, 90).

<sup>49</sup> Henry Hope Reed and Sophia Duckworth, *Central Park: A History and a Guide*, rev. ed. (New York: Clarkson Potter, 1972 [1967]), 39.

sooty city, they were in need of concerted maintenance. And by that time no one with a hand in the original park remained within the Department of Parks to oversee this care.<sup>50</sup>

### The Olmsted Brothers

John Charles Olmsted (1852-1920) and Frederick Law Olmsted, Jr., (1870-1957) carried forward their father's ideas about the connection between landscape design and the social theory of public parks. They did so in their private practice, and in their institutional promotion of the profession of landscape architecture. They established the firm Olmsted Brothers in 1898, and were two of the eleven founding members of the American Society of Landscape Architects (ASLA) in 1899 (along with Samuel Parsons and Downing Vaux, son of Calvert). And they were faithful defenders and interpreters of their father's work. In one example, Olmsted, Jr., counseled Manhattan Park Commissioner Walter Herrick against development in Central Park, offering his advice by saying, "I shall take this position...as the son of my father."<sup>51</sup>

Olmsted, Jr., defended the construction and maintenance of large parks in nearly identical terms expressed by his father in *Justifying Value*. Olmsted, Jr., wrote of the extensive land use and considerable expense of large park construction, "Only the purpose of providing beautiful scenery, of a kind thoroughly contrasting with city life and measurably sequestered from all its sights and sounds, can justify this heavy cost..." Scattered parcels of land would suffice for common recreation.<sup>52</sup> But in the defense of pastoral parks, the brothers deployed their father's ideas to justify

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<sup>50</sup> Memo on "Central Park Conditions," n/a, n/d circa 1909, GBP 78: Parks and Playgrounds 1909. The PPA collaborated with Samuel Parsons to create work plans for the park, and requested funding from Commissioner Stover based on specific landscape restoration needs (PPA to Stover, Aug 31, 1910, GBP 78: Parks and Playgrounds Jan-Aug, 1910). On the difficulty of securing maintenance funds, see meeting minutes of the Central Park Committee in GBP 79: Parks & Playgrounds 1910.

<sup>51</sup> FLO, Jr. to Herrick, Dec 29, 1931, OAR B37, Reel 26 (502RM).

<sup>52</sup> Frederick Law Olmsted, Jr., and John Nolan, "The Normal Requirements of American Towns and Cities in Respect to Public Open Spaces," *Charities and the Commons* 16, no. 14 (1906): 424.

total preservation. John C. Olmsted argued that if parks such as Central Park could become repositories for buildings like the Metropolitan Museum of Art,

In that case a large public park is little more than a tract of beautiful vacant building lots which the public is temporarily enjoying as a playground until it shall be gradually required for one public or semi-public building after another. If there is no principle upon which the advocates of the first semi-public building can be refused a site, there is no logical reason for refusing sites to any subsequent projects of a like sort.

He predicted that after letting down the bar, “there will be a stampede to secure beautiful building sites free of cost...almost indefinitely.”<sup>53</sup> (I will discuss this “floodgate” argument in Chapter Four.)

### The Press and the Preservation of the Greensward Landscape

When William Bradford Roulstone resigned as president of the Central Park Association in 1928, he wrote that no man could accomplish the work of preservation “without the strong support which the New York Times and other newspapers have given these labors” and he thanked, in particular, *Times* editor John H. Finley, who “wielded the editorial pen” in protection of the parks, and “who alone is a perfect wall of protection to Central Park.”<sup>54</sup> As Samuel Parsons noted in the early 1920s in his memoir of a lifetime of professional service to the Central Park, “The press exhibits a remarkable unanimity in seeking to protect the [Greensward] design from self-seeking exploiters and mercenary or self-deceiving visionaries.”<sup>55</sup> 30 years earlier William Stiles, a friend of Olmsted and a champion of his ideas as the editor of *Garden and Forest*, wrote “It is known to every one who is familiar with the history of Central Park that the newspapers of the city have saved it from ruin more than once, when even its legally constituted custodians were eager to surrender it.”<sup>56</sup>

While editing *Garden and Forest*, Stiles also continued in his position writing for the *New York*

<sup>53</sup> John C. Olmsted, “The True Purpose of a Large Public Park,” *Garden and Forest* (May 26, 1897): 212-213.

<sup>54</sup> Announcement of Resignation of William B. Roulstone as President of Central Park Association, Mar 1928, PCR 5:24. Finley retired from the *Times* in 1938. Roulstone wrote to Harold B. Stokes of the *Times* that, “Mr. Adolph Ochs, in the fall of 1925, asked me to form the Central Park Association,” Jul 3, 1928, PCR 5:27. This is the only reference to this request I have encountered in my archival research.

<sup>55</sup> Parsons, 1926, xxi.

<sup>56</sup> “Organized Protection for Parks,” *Garden and Forest* (Jan 1, 1890), 1.

*Tribune*.<sup>57</sup> The *New York Tribune* was a strong ally for Olmsted and Vaux in their political battles with the Department of Parks, and deferred to their expertise as artists.<sup>58</sup> Olmsted and Stiles maintained a mutually beneficial correspondence. Stiles helped to place pieces on park management in the *Tribune* at Olmsted's request, while in turn alerting Olmsted to current threats to Central Park (beginning in the early 1880s, Olmsted had transferred his practice to Brookline, Massachusetts).<sup>59</sup> Parsons singled out Stiles as a writer "on the alert to help [the parks]...in any way he could."<sup>60</sup>

Olmsted recruited Stiles to the editorial position at *Garden and Forest: A Journal of Horticulture, Landscape Art, and Forestry*, which was published between 1888 to 1897, and edited together with Charles Sprague Sargent, the director of Arnold Arboretum.<sup>61</sup> Shen Hou writes that, "Unmistakably, this was a magazine for and by city people,"<sup>62</sup> and the journal frequently printed defenses of public parks alongside content on plant taxonomy and flower cultivation (e.g. the January 1, 1890 edition opens with an argument against the use of Central Park for the World's Fair in the piece "Organized Protection for Parks," and continues with pieces on "The Deciduous Cypress," and "The Art of Gardening—An Historical Sketch"). Stiles defended Olmsted's "justifying value" of the large public park, and understood that the journal's role was to arouse public sentiment in the service of park preservation, writing that a park was "only safe when public sentiment is intelligently and actively interested in its behalf."<sup>63</sup> Stiles wrote,

The only security which urban parks can have against destructive invasion of one kind or another is a universal public appreciation of the truth that their real purpose is the refreshment of mind and body which simple rural scenery alone furnishes.<sup>64</sup>

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<sup>57</sup> Shen Hou, *The City Natural: Garden and Forest Magazine and the Rise of American Environmentalism* (Pittsburgh: University of Pittsburgh Press, 2013), 40.

<sup>58</sup> In one editorial, the paper wrote, "We don't put cobblers in charge of the water supply or unseasoned men as generals—why should we entrust Central Park to anyone but experts." "Central Park Management," *New York Daily Tribune*, Oct 30, 1881; See also: "Save the Park," *New York Daily Tribune*, Oct 26, 1881.

<sup>59</sup> See Ethan Carr, ed., *The Papers of Frederick Law Olmsted, Volume VIII: The Early Boston Years, 1882-1890* (Baltimore: Johns Hopkins University Press, 2013), 412; 419.

<sup>60</sup> Parsons, 1926, 18.

<sup>61</sup> Hou, 2013, 40.

<sup>62</sup> Hou, 2013, xi.

<sup>63</sup> "Organized Protection for Parks," *Garden and Forest* (Jan 1, 1890): 1.

<sup>64</sup> "The Use of City Parks," *Garden and Forest* (Jul 29, 1891): 349.

During an effort to repeal legislation that had authorized the construction of a racetrack in Central Park, Stiles penned editorials on March 9 and March 30, 1892 (among several dozen he would write about city parks in the journal). Stiles reminded the gentlemen who would plow a road through Central Park that the park's purpose had been clear from its inception—the growth of the city demanded the preservation of an exclusively pastoral landscape.<sup>65</sup>

By the 1910s the *New York Times* had “turned itself into the house organ for park preservationists.”<sup>66</sup> Rosenzweig and Blackmar cite, for example, the 29 editorials opposing the placement of the National Academy of Design in Central Park published by the *Times* in the single month of April 1909.<sup>67</sup> Former *New York Times* publisher and scion, Arthur H. Sulzberger, is reported to have said, “Sometimes the editors of the *New York Times* seem to think that they invented the idea of Central Park.”<sup>68</sup> In an authorized early history of the paper, *Times* reporter Elmer Davis (providing an inside if not impartial view) remarked on the pet projects of the paper, repeating faithfully the preservationist dedication to the maintenance of parks for passive enjoyment:

One of the hobbies of the [*New York Times*] has been the protection of the city parks....The number and variety of the schemes for the invasion of city parks, especially Central Park, would be inconceivable to those who have not had occasion to study them...It has seemed to the management of *The Times* that the most practical use of Central Park, or any other park, is to keep it as a park—as a place where residents of the city may get into the open air and make some effort to get back to a sort of nature.<sup>69</sup>

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Civil society organizations have also taken up the cause of Central Park preservation in the Olmsted tradition. The Central Park Association (CPA) was organized in 1926 “for the preservation and rehabilitation of Central Park in accordance with its original design as the greatest single work of

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<sup>65</sup> “The Proposed Speed-road in Central Park,” *Garden and Forest* (Mar 9, 1892): 109.

<sup>66</sup> Rosenzweig and Blackmar, 1992, 420.

<sup>67</sup> Rosenzweig and Blackmar, 1992, 382.

<sup>68</sup> Reminiscences of Nathan Straus, Jr. (1950), page 63, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York. However, during Robert Moses's tenure as park commissioner (1934-1960), the *New York Times* was often silent on matters of parkland encroachment, which I discuss in greater detail in Chapter Four.

<sup>69</sup> Elmer Davis, *History of the New York Times, 1851-1921* (New York: The New York Times, 1921), 301-02.

art in the City of New York.”<sup>70</sup> In its first year, the CPA published a book on the history of Central Park. Its main objective was, “to prove that the Park is primarily a landscape park, having a design peculiar unto itself and worthy of protection from misuse and neglect.”<sup>71</sup> In the next section, I discuss the work of the Central Park Association, and the difficulty of protecting “the *lasting conditions of accruing value*”<sup>72</sup> in a park that by 1926 was a decaying material composition.

### Part 3: The Challenge of Preserving Olmsted’s Landscape Art

It is a particular feat to stabilize the design of a biotic object that forms part of the lived urban environment. Central Park remains considerably the same park as it was created. Of the 843 acres of the original park, 843 acres remain. Though altered from its original plan, the park is relatively unchanged in the sense that it has not been redesigned as a formal garden or a memorial grove or a beaux-arts monument.<sup>73</sup> In contrast, some proposed (but unsuccessful) alterations would have subverted the original design with features such as a road the width of a city block running through the center of the park in the model of the Champs-Élysées,<sup>74</sup> the dedication of the park’s western edge to a horseracing track,<sup>75</sup> or a transverse 79<sup>th</sup> Street boulevard connecting the Metropolitan Museum of Art to the Museum of Natural History, terminating in a proposed memorial to Theodore Roosevelt. The physical bounds of the park could easily remain the same while leaving the landscape open to ceaseless reinterpretation and redesign.<sup>76</sup>

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<sup>70</sup> CPA brochure, Mar 1, 1926, ASB 9:7.

<sup>71</sup> CPA, 1926, 62.

<sup>72</sup> Olmsted, 1881, 6 (emphasis mine).

<sup>73</sup> Features that were introduced to the park after the completion of its original design include: the Metropolitan Museum of Art, the zoo, 19 peripheral playgrounds, 30 tennis courts, Wollman Rink, Delacorte Theater, Lasker Pool, snack kiosks, service areas, and parking (see Reed & Duckworth, 1972).

<sup>74</sup> Ernest Flagg, “The Plan of New York and How to Improve It,” *Scribner’s Magazine* 36, no. 2 (1904).

<sup>75</sup> Richard Welling, *As the Twig is Bent* (New York: Putnam’s, 1942).

<sup>76</sup> A growth machine model might predict park preservation as an act of adjacent land value intensification. But it is equally plausible that a park with museums, grand monuments and formal gardens could have the same effect on adjacent land and mobilize the same self-interest. This model says nothing about the enduring attachment to the design ideology of the 19<sup>th</sup>-century *rus in urbe* pastoral landscape.

The ground on which Central Park was built had originally been part of the city's common land holdings. In 1852 the city sold at auction 800 lots on the future site of Central Park, to be reacquired through eminent domain and dedicated to the public in perpetuity before the decade was through.<sup>77</sup> The park was crafted on land previously occupied by "squatters' shacks, bone-boiling works, 'swill-mills' and hog farms,"<sup>78</sup> and, left out of earlier histories, it uprooted Seneca Village, an established African American community with churches, schools, and cemeteries.<sup>79</sup> But the production of the park was not accomplished when Olmsted and Vaux laid down their drafting tools, nor when the final horse carted away the last of the 4,825,000 cubic yards of earth that were removed in the transformation of craggy land into a pastoral landscape.

Even if the Central Park Association (CPA) and other park defenders could have successfully prevented the introduction of all new structures and uses into Central Park, they would not have succeeded in their stated mission to preserve the park, if for no other reason than that the park, as a degradable biotic system, requires constant (re)production. I understand preservation to be an act of 1) constant re-creation and reconstruction of the ever-degrading material landscape, and 2) the perpetuation of a landscape ideology.

"A material approach treats cultural objects as *objects*—things with a 'biography' whose 'social life' has tangible effects on meaning making," and can help us to understand the park as a particular object that is open to intervention and preservation.<sup>80</sup> The work that park defenders in the CPA undertook to stabilize the meaning of the park was not simply an act of "framing" perceptions of the park as Olmsted and Vaux's creation of art, but a struggle for the ability to continually

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<sup>77</sup> Edward K. Spann, *The New Metropolis: New York City, 1840-1857* (New York: Columbia University Press, 1981), 161.

<sup>78</sup> Reed and Duckworth, 1972, 19.

<sup>79</sup> See Rosenzweig and Blackmar, 1992, 65-73.

<sup>80</sup> Terence E. McDonnell, "Cultural Objects as Objects: Materiality, Urban Space, and the Interpretation of AIDS Campaigns in Accra, Ghana," *American Journal of Sociology* 115, no.6 (2010): 1803. Also: Arjun Appadurai, "Introduction: Commodities and the Politics of Value," pp. 3-63 in Arjun Appadurai, ed., *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press, 1986).

(re)produce a polyvalent and mutable space in the mold of a singular *art object*.<sup>81</sup> As Griswold and colleagues have observed, “The legibility of artworks as meaningful intentional ‘objects’ tends to be a rather fragile achievement.”<sup>82</sup> McDonnell writes that “*legibility* is the capacity for audiences to read the intended meaning of an object.” It “is an affordance that depends on audience capacity,” such as the ability of nurses to read the scribbles of doctors.<sup>83</sup> Central Park was legible as a particular social project at the time of its creation—to the Transcendentalists, Fourierists, and liberal Christians in the tradition of Bushnell, “All could accept the park as a unifying institution: a catalyst in the creation of a homogenous democratic culture.”<sup>84</sup> The task of park preservationists who came after Olmsted was to ensure that the park remained legible as an artistic project, though it is less clear that the social project attached to his aesthetic theory has been legibly reproduced.

### The Physical Park

The park is a biotic system of earth matter and the elements that grow therein. For short, I will refer to this as land, meaning the physical terrestrial realm of the park through which we move. I recognize that this simple classification draws on a set of assumptions. Even basic elements such as land and air are configured into “park” in different ways in response to different problems. During the construction of a subway beneath Central Park, how far down must one dig before exiting the realm of the park? Can park preservation laws prevent the skyward extension of shadow-casting buildings?

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<sup>81</sup> Griswold et al.’s work suggests that it would be incorrect to make any inferences about art reception from artist (or preservationist) intention. No matter how much work preservationists engage in to fix the meaning of the park, the way that people interact with the space will shape their ability to make meaning of it. The pertinent question is not how “place-meaning” sticks, but rather how and to what end advocates argued that a piece of urban land was actually a coherent and singular object of art that existed in a state of constant threat. Wendy Griswold, Gemma Mangione, and Terence E. McDonnell, “Objects, Words, and Bodies in Space: Bringing Materiality into Cultural Analysis,” *Qualitative Sociology* 36, no. 4 (2013).

<sup>82</sup> Fernando Domínguez Rubio, “Preserving the Unpreservable: Docile and Unruly Objects at MoMA,” *Theory & Society* 43, no. 6 (2014): 622.

<sup>83</sup> McDonnell, 2010: 1807-08.

<sup>84</sup> Fein, 1972, 9.

The park is large. Its 843 acres extend from Fifth to Eighth Avenues, and run the length of Manhattan from 59<sup>th</sup> to 110<sup>th</sup> Streets, a perimeter of approximately 6.2 miles enclosing 150 city blocks. The park contains diverse landscape features, from the receiving reservoir, to the thickets of the Ramble, to the open green of the Sheep Meadow. The sheer size and diversity of features facilitate at least two claims for park alterations: any given project will take only a small portion of the park; and the park can be decomposed into smaller units, so that altering a single piece of the park won't mar the experience of a stroll through the Ramble or an afternoon ball game.

The park has a physical form that has persisted through time, filled with biological and physical elements that in their unattended state move toward decay. The park's filling was originally the top to bottom creation of its designers, Olmsted and Vaux. The plant life is the expression of an intentional design, and it requires considerable human intervention to remain legible as design. As plant life, it grows and decays, expressing seasons and life cycles. This produces physical markers of time (changing colors, dead plants, spring buds). Without maintenance intervention we would observe markers of this constant cycle of growth and decay: piles of leaves, weeds on lawns, and trees expressing the stress of growth in city air and soil. The continual process of physical landscape change means that the full effect of the park's design can never be experienced or ascertained in a single time or from a given perspective, and may lead to a misreading of the artists' intentions for the landscape. Olmsted wrote of the role of the landscape architect,

What artist, so noble...as he, who with far-reaching conception of beauty and designing power, sketches the outline, writes the colours, and directs the shadows of a picture so great that Nature shall be employed upon it for generations, before the work he has arranged for her shall realize his intentions.<sup>85</sup>

But this made the design of the park vulnerable to alteration. In the fifty intervening years between the planting of the trees and the maturation of their full effect, there are any number of moments when an efficient bureaucrat or party hack might opt for a landscape treatment that thwarts the full

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<sup>85</sup> Olmsted, 1852, 133.

expression of the park design. And one hundred years from the planting date, when trees begin to die or rot, how should their effect be replicated? There will never be a single moment of achievement, but a constant process of ongoing park making.

The park is also filled with physical infrastructure with its own lifespan that arcs toward decay: wrought iron bridges rust, paved pathways crumble, the bricks of the Arsenal loosen. Roulstone worried that the park's tendency toward decay rendered it illegible as art: "The Central Park is, taken in its entirety, essentially a work of art. The public does not appreciate that fact, because in its present appearance there are times when it seems to be anything but an eye-sore."<sup>86</sup> The act of caring for an object that persists in a state of constantly forestalled decay is analogous to the process of art preservation. As Domínguez Rubio has shown in his ethnographic investigation of MoMA, the persistence of legible art works requires intervention by both technical restorers and interpretive curators, and their roles are not always clear as different media behave in more or less predictable ways.<sup>87</sup> The biotic and physical park requires constant maintenance intervention. The crafting of maintenance policy opens the possibility to read the park as a bundle of decomposable elements, subject to the same efficiency maxims as other city property. Robert Moses suggested replacing the old iron bridges with concrete. Samuel Parsons documented his constant struggle to preserve the park's trees against expedient landscape butchers (how much easier it would be to trim a hedgerow). And a paved plaza is less expensive to maintain and more difficult to destroy than a Kentucky bluegrass lawn.

### The Logic of Art Preservation and The Artist as Authority

The Central Park Association relied on the writing of Olmsted and Vaux to guide its private fundraising and public lobbying efforts for the restoration and management of the park: "Our

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<sup>86</sup> William Roulstone, "Calls on the State to Safeguard the Park," *NYT*, Mar 16, 1924.

<sup>87</sup> Domínguez Rubio, 2014.

greatest authorities on Central Park are the writings of Olmsted and Vaux. These and the opinions of the early Park Board are a large part of our Park Bible, our constitution.”<sup>88</sup> Olmsted and Vaux’s writing guided the CPA’s policy agenda for the construction of playgrounds in Central Park. CPA president Roulstone argued that, “the advice of the landscape architect should have the greatest weight in deciding questions affecting parks and playgrounds. That again leads us back to the source of our own attitude toward Central Park—Olmsted and Vaux.”<sup>89</sup>

To preserve Central Park, “the greatest single work of art in New York,” defenders were called upon to erect “a wall of moral protection so that *well-meaning people* and others will not encroach upon it.”<sup>90</sup> Those well-meaning people were just as often ignorant elites as hapless bureaucrats or the fearsome “people.” Elite reformer Albert Bard urged the elite American Scenic and Historic Preservation Society not to lend its name to plans for a memorial to Theodore Roosevelt, “unless they are of a character which the Senior Olmsted would clearly have approved of, as shown by his plans and writings relating to Central Park.”<sup>91</sup>

The greatest threat to the park was ignorance of the park’s purpose, and the remedy could be found in the writings of Olmsted and Vaux.<sup>92</sup> These writings should be treated with the force of law. Samuel Parsons argued that the Department of Parks should compile a library of Central Park’s founding documents, which “could be used like a *law library* in the settlement of disputed legal cases. When a citizen came with excellent intentions or otherwise, he could be met with authoritative statements from the master designers of the park.”<sup>93</sup> The CPA published a (faithful Olmstedian)

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<sup>88</sup> CPA, 1926, 63.

<sup>89</sup> Roulstone to CPA Directors, Dec 16, 1927, PCR 5:25. CPA members held positions on many other civic organizations that shared opinions about proper park use and purposes. For example, the Citizens Union took up the CPA’s position and concurred that all “mechanical apparatus” (e.g. new play equipment) should be eschewed in favor of a “natural playground in accordance with the original plans of Olmsted & Vaux,” Bard to Peters, Dec 2, 1927, PCR 5:29.

<sup>90</sup> Roulstone quoted in, “Says Central Park Is Best Work of Art,” NYT, Mar 6, 1926.

<sup>91</sup> Bard to Compton, Aug 9, 1928, ASB 25:5.

<sup>92</sup> Samuel Parsons, “History of the Development of Central Park,” *Proceedings of the New York State Historical Association* 17 (1919): 170.

<sup>93</sup> Parsons, 1926, 15 (emphasis mine).

history and guide to the park, *The Central Park* (1926), and promoted Mabel Parsons's edited recollections of her father, Samuel Parsons.<sup>94</sup> A memo on CPA strategy included among seven points of action: "Advertise the Samuel Parsons book in order to inform the public more fully of park history and the need for sticking to the policy of maintaining the Park as designed."<sup>95</sup> The records of the CPA demonstrate its engagement with the press as it pursued its agenda of restoring the park in the tradition of Olmsted and Vaux. CPA President Roulstone reported that his meetings with the editor of the *Times*, as well as the *Herald Tribune*, had resulted in editorials "in accord with our program for Central Park rehabilitation."<sup>96</sup>

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Because the "park is a work of art, designed to produce certain effects on the mind of men,"<sup>97</sup> the construction of e.g. a building in the park would not only mar the views, but would destroy the purpose for which the vista was created. Muralist William Van Ingen, who reintroduced the (select) public to the writings of Olmsted and Vaux through his letters, editorials and interviews with the *New York Times*,<sup>98</sup> wrote that attacks on Central Park "cannot be corrected unless you get the idea that the park system is a sequential affair...If you establish an idea that the thing is a permanent arrangement, then you may bring up your argument as to why" a particular improvement should be carried out.<sup>99</sup>

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<sup>94</sup> CPA, 1926; Parsons, 1926.

<sup>95</sup> CPA executive committee meeting notes, n/d circa 1927, ASB 9:4. Before the Parsons and CPA volumes (and before William Van Ingen published original documents on the park in the *NYT* (1922-1926) and Olmsted, Jr., and Theodora Kimball published a volume of Olmsted, Sr.'s writing in 1928), there were few, if any, historical documents relating to the park in public circulation. In 1907 Olmsted, Jr., referred Charles Lamb to speak directly with Samuel Parsons regarding Lamb's inquiries into the park. FLO Jr. to Lamb, Dec 27, 1907, OAR B37, Reel 26 (502A).

<sup>96</sup> CPA directors meeting minutes, Apr 1, 1927, ASB 9:3.

<sup>97</sup> Olmsted quoted in Robert Twombly, ed., *Frederick Law Olmsted: Essential Texts* (New York: W.W. Norton, 2010), 200.

<sup>98</sup> For example: W. B. Van Ingen, "Central Park—As it Was in the Beginning," *NYT*, Dec 24, 1922; W. B. Van Ingen, "Landscape Illusions of Central Park," *NYT*, May 13, 1923; W.B. Van Ingen, "Central Park Fathers Had Uphill Job," *NYT*, Sep 5, 1926.

<sup>99</sup> Howard Bradstreet & W. B. Van Ingen, "Discussion of Parks and Recreation," *Proceedings of the Academy of Political Science in the City of New York* 5 (1915): 152.

Without the unifying concept of the park landscape that Van Ingen promoted with reference to the work of Olmsted and Vaux, there is a viable reading of the park as a decomposable bundle of constituent parts. When the park is decomposable into its rocks, trees, grass, and paths, the value of any manifestation of those elements can be questioned. In 1924, Mayor Hylan defended to the Board of Estimate his plan to appropriate six rocky acres of Central Park for an art center, saying:

We justify the use of the *unused spot* by the educational and recreational use which we plan to make of it....The conversion of a *rocky waste* into a center of education and recreation is in line with such humane requirements...We do not dispute that there is beauty unadorned in rocky slopes. This cannot be said, however, of *shapeless rocks* which are so placed as to be an eyesore as well as a menace.<sup>100</sup>

In the art historical imagination of the park preservationists, treating the park as art provided a logic of preservation by analogy: art is not decomposable into constituent “useless” and “useful” parts. In this analogy, we would not cut away the corner of a Renaissance portrait because it contained mottled drapery and not an angelic face: “In a picturesque composition such as a landscaped park the position of every grove, outcrop of rock, line of a walk and body of water has been thought out in terms of design. Central Park is no different from a large classical mural in fresco, a vast historical canvas or a traditional relief teeming with figures.”<sup>101</sup> Nor would we deface a picture, a parallel that Roulstone drew when he argued that, “To cut across [Central Park’s] face with a huge building...will not do, any more than to cut a gash across the face of a portrait.”<sup>102</sup> Frederick Law Olmsted, Jr., argued for the preservation of Central Park against changing tastes by noting that, “One does not burn up a Titian or a Rembrandt because he feels more fully in sympathy with the work of John Sargent.”<sup>103</sup> (Frederick Law Olmsted, Jr., and Theodora Kimball’s 1928 volume of Olmsted, Sr.’s papers was entitled *Central Park, as a Work of Art and a Great Municipal Enterprise*).<sup>104</sup>

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<sup>100</sup> “Hylan Attacks Foes of Park Grab,” *NYT*, Mar 26, 1924 (emphasis mine).

<sup>101</sup> Reed and Duckworth, 1972, 55.

<sup>102</sup> “Says Central Park Is Best Work of Art,” *NYT*, Mar 6, 1926.

<sup>103</sup> FLO, Jr., quoted in Rosenzweig and Blackmar, 1992, 428.

<sup>104</sup> FLO, Jr., also delivered at least one public speech with the title “Central Park as a Work of Art,” National Arts Club to Roulstone, Mar 1, 1928, PRC 5:27.

## Managing Landscape Art

The production of the park is an ongoing activity, and preservationists struggled to ensure that the original design was faithfully, continually, reproduced. However, this reproduction could never be the same task twice. There was a constantly expanding set of category-level definitions of what constituted a proper park purpose that could be used to reproduce (i.e. maintain) the park. By 1926, when the Central Park Association organized to defend the park as a work of art, a major shift had already occurred in the management of parks, from places of quiet passive leisure to sites of active recreation.<sup>105</sup> When the oversight of parks was defined by the trainees and disciples of Olmsted and Vaux, the possibility of faithful Greensward Plan reproduction could still be thwarted by budgetary politics or overreaching Tammany flunkies. There was even more peril when the Greensward legacy, by virtue of its physical manifestation in a city park, could be overseen by a social service provider or athletic leader. In part, this is why the staunch preservationists had to insist that Central Park was articulated to the field of art and not to park management.

Following the logic of the preservationists, the only way to continually recreate Central Park as Central Park (under a legal system that uses as a test of alienation the conformity of parks to proper “park purposes”—a broad and ever-expanding standard for the provision of recreation, leisure, and enjoyment) is to ensure that the purpose of the park be defined exclusively by its creators, and that the authority to speak for those creators be placed outside of the normal system of land management. And the promotion of the park as art suggests that there are no terms on which other forms of public good (constructing schools, alleviating housing shortages, supporting arts

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<sup>105</sup> Lebert Howard Weir, *Park Recreation Areas in the United States* (Bulletin of the US Bureau of Labor Statistics Washington, D. C.: Government Printing Office, 1928), 57. Across the country, in cities with at least 500,000 residents in 1920, parks administrators controlled: “admin buildings, art galleries, bandstands, bathhouses, boathouses, cabins, clubhouses, casinos, conservatories, docks, dwelling houses, field houses, grand stands, moving picture booths, museums, outdoor theaters, dance pavilions, eating pavilions, refreshment stands, shelter houses, shops, storehouses, toilet buildings, zoos, beaches, bridle paths, drives, picnic places, tables” (Weir, 1928, 58). As I will discuss in Chapter Six, after the reform park era it would be possible to reproduce the park *qua* park in the form of a playground.

education) can legitimately be introduced into the park, if the park is of a kind with a Rembrandt and not with a plot of city land.

The park as art required a form of management that privileged artistic oversight. Parsons wrote,

The Park, I contend, is as much a work of art as is a piece of sculpture...No one would think of applying ordinary Civil Service rules to the construction of a noble statue...I am sure that I am not exaggerating when I assert that the construction of a great park by Olmsted and Vaux should be treated in the same exceptional way that was accorded, for instance, the Sherman statue by St. Gaudens.<sup>106</sup>

Landscape architect Ferruccio Vitale argued that landscape decay posed a threat to proper artistic maintenance of the park by erasing evidence that there had ever been an artistic design to maintain. To offer visitors a space for enjoyment and relaxation, Central Park needed an expert landscape artist who could discern the nearly illegible design and guide its restoration.<sup>107</sup> In the 1920s there were several independent efforts to establish formal plans to remedy the park's physical decay (and hence artistic illegibility).

To carry out its mission of restoring Central Park in the tradition of the Greensward Plan, the CPA lobbied to bring the Olmsted Brothers firm to New York to design a plan for the restoration of the park.<sup>108</sup> In the spring of 1926, CPA president William Roulstone wrote to the Olmsted Brothers firm stating that, "A survey and report upon Central Park from you would be invaluable in our task of inspiring the City to rehabilitate Central Park in conformity with its original design and character." Roulstone requested that the report contain historical material from original park documents that would offer "proof" that,

a) ...Central Park was intended to be, and was designed as, a landscape park; that it is not in any sense a formalized, or European type of city park; b) that it is an artistic entity; that unless its artistic integrity be destroyed, it is not susceptible to formalization or use as a

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<sup>106</sup> Parsons, 1926, 65.

<sup>107</sup> Vitale to Mayor Walker, May 10, 1927, OAR Reel 26 File 502:4.

<sup>108</sup> FLO, Jr., made a \$2,000 gift to the CPA to cover his fee for a preliminary study. CPA Executive Committee minutes, Jul 12, 1927, ASB 9:3.

building site for any structures or monumental buildings other than for purely park purposes, and by the phrase ‘park purposes’ we understand simply the connotation of healthful outdoor recreation, exercise, enjoyment, and relief from the oppression of city streets and buildings...; c) that to change its historic and original plan by introducing ‘improvements’ or embellishments, especially of architectural grandeur, would mean its mutilation, indeed its obliteration, as a landscape park.<sup>109</sup>

The city instead chose forester and landscape architect Hermann Merkel to draft a restoration plan for Central Park.<sup>110</sup> Merkel’s plan offered something of a compromise between artistic preservation and expedient administration. Merkel wrote that Central Park was, “still the work of art of a great master in his profession, and of incalculable value to the City of New York, neglected though it has been,” and that the “esthetic value of the Park...more than warrants the expenditures and care needed to restore and preserve it.”<sup>111</sup> In a glimpse at the conditions in the park at the time, one of Merkel’s recommendations stated that, “The policy of burning paper and rubbish in the open, and allowing fires to disfigure the rocks or lawns, should be discontinued.”<sup>112</sup> And yet in his report, Merkel often opted for practical maintenance over fidelity to the original design, such as his recommendation to replace the old iron park benches with concrete, “the concrete seat being more durable and requiring less maintenance.”<sup>113</sup>

Olmsted, Jr., whose rehabilitation plan for the park had been rejected by the mayor in favor of Merkel’s plan, had a clear read on the political situation. Writing to Arthur Shurtliff, President of the American Society of Landscape Architects (ASLA), Olmsted, Jr., argued that a restoration plan on paper was much less important than the institutions that would spearhead the park’s rehabilitation. Because of this he urged the ASLA against releasing its own document on the park. He argued that any changes to the park that might be documented in such a plan would allow people who wanted to radically alter the park to point and say, “Even the ASLA knows the park

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<sup>109</sup> Roulstone to Olmsted Brothers, Apr 9, 1926, OAR Reel 26 File 502:3.

<sup>110</sup> At the time Merkel (1873-1938) was working as Superintendent of the Westchester County Park Commission, and had previously worked as a forester at the Bronx Zoological Park (Bronx Zoo).

<sup>111</sup> Hermann W. Merkel, *Report on Survey of Central Park with Recommendations* (New York: 1927), 5.

<sup>112</sup> Merkel, 1927, 6.

<sup>113</sup> Merkel, 1927, 18.

must change.” Olmsted, Jr., instead recommended that the ASLA keep an eye on the progress of the Merkel plan, make friends, offer support where it could, and fight if it must. Because Commissioner Herrick had already rejected the Olmsted Brothers employment offer once, “Nothing would be gained by trying to shove Olmsted Brothers down his throat. It would only tend to make him positively hostile to the Olmsted name and to the American Society of Landscape Architects.” Olmsted, Jr., wrote that while the ASLA could offer advice to city leaders, “you can’t force them to take it unless you make yourself a real force in New York politics considered as a whole.”<sup>114</sup>

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<sup>114</sup> FLO Jr., to Shurtleff, Dec 30, 1927 OAR B37, Reel 26 (503:4).

## Chapter Four: Constructing the Threatened Park: Precedent & Event Policy

In this chapter I discuss the construction of Central Park as a “threatened” space, and examine administrative event policy as it imagines and propagates an ideal public of the park and the park ideal. First, I discuss a piece of visual propaganda, a map of Central Park as it would appear if every proposal for the park’s alteration had come to pass. The map, circulated widely by park preservationists, illustrates the threat of precedent to the ongoing maintenance of Central Park as a legible Olmsted and Vaux landscape. The map demonstrates the position of “line in the sand” preservationists, who fear that once one park alteration has been permitted, there is little justification for saying no to another.

The map conflates temporary events and permanent buildings as equal “incursions.” In the second part of the chapter, I consider the particular framing of transitory events as a threat to the integrity of Central Park. Why would a parade be seen as an incursion on the same scale as the construction of a public housing complex in the park? (In the next chapter, I discuss the (perceived) threat posed by placing buildings in pastoral parks.)

### **Part 1: Representing Threats Against Central Park**

I begin by discussing the work of park advocates to frame the nature of threats against Central Park. In particular, I look at the use of a map showing the park as it would appear today had every plan for its “improvement” been allowed to pass. Central Park preservationists have used this visual propaganda to 1) establish the severity of the threat of even a single park “encroachment,” and 2) to limit debate about potentially valid “park purposes.” By assessing all proposed changes (“threats”) to the park as non-park purposes, park defenders have flattened distinctions of worth and claimed a universal public against which to frame all other park uses as “special interests.”

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Robert Wheelwright, a landscape architect and key figure in the institutionalization of the profession, compiled a list describing years of “attacks” on Central Park, published in 1910 in the inaugural edition of *Landscape Architecture*, the professional journal of the American Society of Landscape Architects.<sup>1</sup> It had been 52 years since the creation of Olmsted and Vaux’s Greensward Plan, and Wheelwright’s list was already extensive.<sup>2</sup> To amplify the severity of his thesis that Central Park was the subject of unrelenting attacks, Wheelwright wrote that he had intended to use a map as a visual tool, but soon realized that were he to include even a fraction of the attempts, “there would be no park space left on such a plan.”<sup>3</sup>

Wheelwright’s article appears to have circulated widely. The 1911 Annual Report of the American Scenic and Historic Preservation Society devoted four pages to the “schemes which have been advanced for [Central Park’s] mutilation, dismemberment or perversion,” drawing directly from Wheelwright.<sup>4</sup> In January, 1916, the *New York Times* used Wheelwright’s litany to support its editorial opposition to a masquerade theater performance in Central Park, citing Wheelwright’s claim that a map could not possibly have captured all “menaces” to the park, and recapitulating the list of attempted park invasions. Each masquerade, added to each monument, and to each public works project, “would have obliterated [Central Park] completely.”<sup>5</sup> On March 22, 1918, in opposition to the construction of model Western Front trenches on Central Park’s North Meadow, the *Times* published an editorial that again summarized Wheelwright, warning that a permissive stance toward “park improvement” plans would have cumulatively destroyed the park.

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<sup>1</sup> The journal was founded by Wheelwright, who served as editor from 1910 to 1920. Wheelwright also established the Department of Landscape Architecture at the University of Pennsylvania in 1924.

<sup>2</sup> Robert Wheelwright, “The Attacks on Central Park,” *Landscape Architecture* 1, no. 1 (1910).

<sup>3</sup> Wheelwright, 1910: 11.

<sup>4</sup> American Scenic and Historic Preservation Society, *Sixteenth Annual Report, 1911* (Albany: J. B. Lyon, 1911), 484-88.

<sup>5</sup> “Many Grabs at the Park: Space Not Large Enough for All Things Sought to be Put There,” *NYT*, Jan 14, 1916.

The written litanies presented threats against the park as numerous, unrelenting, and incrementally destructive. Defenders hit upon an enduring piece of propaganda when they converted the invasion litany into the visual representation of the map (Image 4.1).

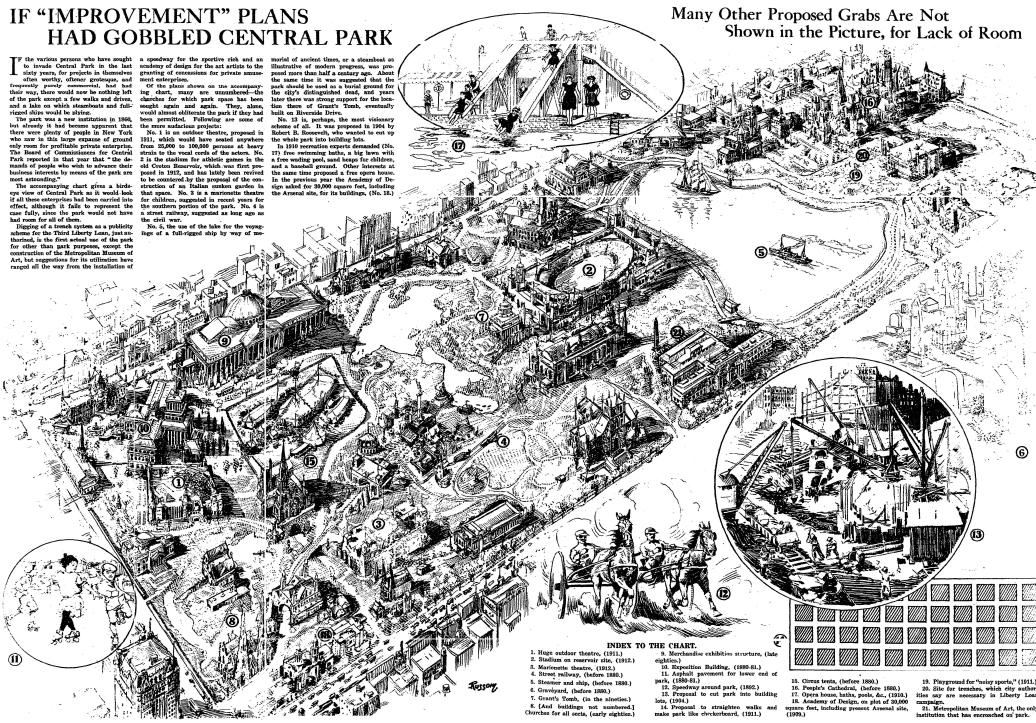


Image 4.1: "If 'Improvement' Plans Had Gobbled Central Park"<sup>6</sup>

On March 31, 1918, the *New York Times* published a map with the headline, "If 'Improvement' Plans Had Gobbled Central Park," accompanied by an index to 21 schemes for park "improvement"—"often worthy, oftener grotesque, and frequently purely commercial" projects proposed over the life of the park—crammed into the park's 843 acres. While the written inventories suggest ongoing danger, the map represents the park as a coherent unit and shows each discrete development decision situated beside its collective ramifications. Illustrations spill from the boundaries into surrounding city space, giving credence to the article's subheading: "Many Other Proposed Grabs Are Not Shown in the Picture, for Lack of Room."<sup>7</sup>

<sup>6</sup> "If 'Improvement' Plans Had Gobbled Central Park," *NYT*, Mar 31, 1918.

<sup>7</sup> Ibid.

The *Times* would again publish this image, cropped to the boundaries of the park, in 1924. It was replicated in the August 1924 edition of *The American City Magazine*, and reprinted in Frederick Law Olmsted, Jr., and Theodora Kimball's 1928 edited volume of the landscape architecture writings of Frederick Law Olmsted, Sr.<sup>8</sup> Richard Welling created a 12<sup>2/3</sup> by 8<sup>1/2</sup> foot Photostat reproduction of the *Times* map, which he employed as a teaching aid in the many youth civic leagues and school government clubs in which he was involved.<sup>9</sup> Appendix B contains a list of seven versions of the map that appeared from 1918 to 1970, and the additional publications in which the images circulated.

### Reading the Map

Park preservationists used the map to suggest: 1) A single incursion will spark a “domino effect” of development—any alteration of the park provides the precedent for future alterations; and 2) Park defense requires constant vigilance; the park is forever under threat. The map, according to Gilmartin, “managed to convey a sense of Central Park’s fragility; of how hard it was to maintain the integrity of an artwork made of dirt and trees and shrubs; and of how, over time, even little changes to the park would transform it into something unrecognizable.”<sup>10</sup> In another reading, Rosenzweig and Blackmar argue that the failure of these many proposals to come to pass shows how difficult it is to form consensus in a heterogeneous city: “The significant lesson to be drawn from the

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<sup>8</sup> “Central Park Again In Danger: 80-Year Battle Goes On Despite Consistent Repulses,” *NYT*, Mar 16, 1924; “Saving the Parks for their Proper Purposes,” *The American City Magazine* 31, August 1924: 93-94. Frederick Law Olmsted, Jr. and Theodora Kimball, eds., *Forty Years of Landscape Architecture, being the Professional Papers of Frederick Law Olmsted* (Cambridge: MIT Press, 1973 [1928]), 517. The Olmsted, Jr., and Kimball edition reproduced the 1924 image from *American City*.

<sup>9</sup> Richard Welling, *As the Twig is Bent* (New York: Putnam's, 1942), 53. The Museum of the City of New York currently holds Welling's map. Rosenzweig and Blackmar (1992) and Gilmartin (1995) both cite Welling as the originator of the map. Gilmartin writes—without citation—that Welling “talked the *Times* into publishing” the map, which was illustrated by Vernon Howe Bailey (Gregory F. Gilmartin, *Shaping the City: New York and the Municipal Art Society* (New York: Clarkson Potter, 1995), 253). The document to which Welling refers as “his map,” in the holding of MCNY (Welling to Scholle, Jun 3, 1938, RWP 12:7), is clearly labeled “reprinted from the New York Times.” Welling's map contains the *Times* Mar 31, 1918 image with an altered legend (dates have been removed, as have some labels, including the Met Museum). From this I cannot say who first conceived of translating Wheelwright's list into an image.

<sup>10</sup> Gilmartin, 1995, 253-54.

map...was not that the park was vulnerable to change but that changes were so hard to achieve.”<sup>11</sup>

This, however, is not the context in which the map was propagated by defenders. Rather, it was reprinted in pamphlets such as “Going...Going...Gone: A Plea to Stop Invasions of Park Land,” and used as an illustration, such as Image 4.2, to oppose the construction of a stables complex within Central Park. The 1924 drawing—already proclaiming an 80-year-long battle—was used in this pamphlet from 1969 to show an unending struggle. The black arrow pointing to the 1924 *Times* publication date was photocopied as part of the pamphlet design, and is not an editorial doodle produced by a reader.

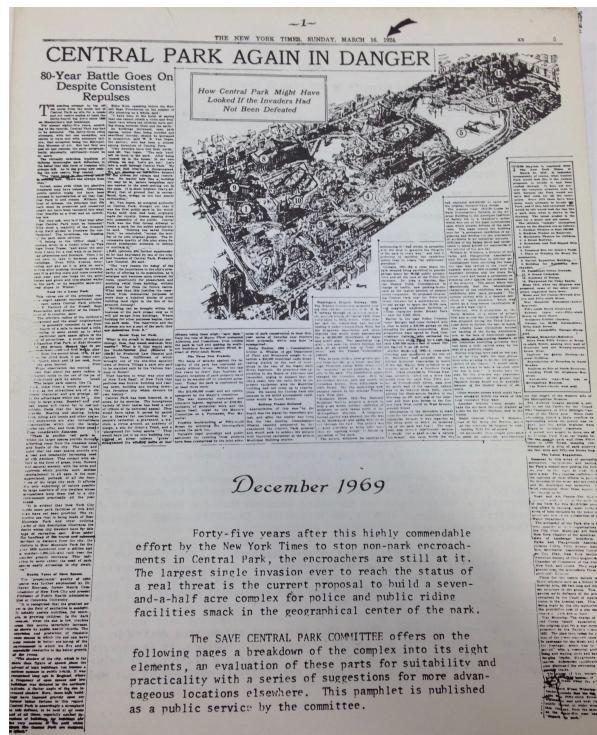


Image 4.2: “Central Park Again In Danger,” Save Central Park Committee, 1969  
Courtesy of the archival collections of the Municipal Art Society of New York<sup>12</sup>

The map conveys a particular vision of the park and its history. As a piece of visual technology, it works to constrain the possibilities of how the park can be read. Though it uses the visual language of a map, it is not a direct representation of the space of the park. Nor is it a faithful

<sup>11</sup> Rosenzweig & Blackmar, 1992, 438.

<sup>12</sup> MAS Greenacre Reference Library, Clipping file: Parks—Manhattan—Central Park 1960-1979.

historical record. Of the seven map versions that I encountered, one contains no legend, and only two maps contain legends with dates. Only one presents a complete set of accurate dates. Icons are not proportional. A statue of the Buddha is represented at the same scale as a public housing complex. The iconic comparability of all threats, large and small, practical and fanciful, obscures the legal and political processes that could bring these plans to fruition.

The map also conflates events, buildings, memorials, and market incursions. If each were debated on its own merits, the proposals might require different logics of defense and justification.<sup>13</sup> For example, the placement of memorial sculptures in public spaces invokes the politics of representation and remembrance.<sup>14</sup> The use of public parkland for the construction of public works projects demands the evaluation of trade offs between competing public goods. Donor legacy structures might make visible the spoils of the growth machine. Events are often contentious moments in which behavior in public space is patrolled.<sup>15</sup> Events also appropriate common space for particular uses (e.g. a baseball game on the Great Lawn precludes the unrestricted use of the lawn), partitioning the commons for private use. On the map, the politics of development, commemoration, and use are all conflated as equal “invasions,” “threats,” or “encroachments.”

In Bonnell’s study of Soviet political art she describes propaganda posters as “designed to conjure up new modes of thinking” about the temporal organization of the world.<sup>16</sup> The park map is a visual tool that represents time solidified in space.<sup>17</sup> The map gives temporal weight to passing events, conflating permanent and temporary incursions (such as buildings and festivals). Projects proposed at various points spanning decades are placed on the same spatial and visual plane,

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<sup>13</sup> Luc Boltanski and Laurent Thévenot, *On Justification: Economies of Worth* (Princeton, NJ: Princeton University Press, 2006).

<sup>14</sup> Geneviève Zubrzycki, *The Crosses of Auschwitz* (Chicago: University of Chicago Press, 2006).

<sup>15</sup> Geneviève Zubrzycki, “Aesthetic Revolt and the Remaking of National Identity in Québec, 1960–1969,” *Theory and Society* 42, no. 5 (2013): 439–42.

<sup>16</sup> Victoria Bonnell, *Iconography of Power: Soviet Political Posters under Lenin and Stalin* (Berkeley: University of California Press, 1997), 14.

<sup>17</sup> Bonnell, 1997, 14.

showing how single decisions aggregate and ramify through time. The deliberation over a project (or event) at one moment contributes to a cumulative effect on the park's landscape. This emphasizes the idea of the park as an object that was designed to endure beyond any contemporary debate.

### Naturalizing Existing Incursions

The most glaring existing “incursion” into Central Park is the Metropolitan Museum of Art (the Met), and it is worth briefly noting the conditions of its construction and subsequent reception. The Met was built on an odd parcel of land within the park. As Morrison Heckscher explains, “The area had never been integral to the park design...in the 1858 Greensward Plan it was a playground, and in the 1859 revision it was labeled simply ‘Unfinished Ground.’”<sup>18</sup> Olmsted and Vaux, in 1872, referred to the plot as peripheral to the artistry of the Greensward design: “There are along the [park’s] boundary, several small spaces of ground, buildings within which, if properly designed, will not affect the park landscapes, and which, regarding the Park as a work of art...may be considered extraneous.”<sup>19</sup>

Reformers came to believe that the introduction of the Met into the park was an error—“made while the few park protectors of those days were napping”—that “must never be repeated.”<sup>20</sup> The presence of the Met in the park confirms the preservationists’ fears of precedent. In 1909, proponents of a plan to construct a building for the National Academy of Design on the Arsenal site argued that its placement in Central Park “will be following the precedent set by the establishment of the Metropolitan Museum of Art in Central Park.”<sup>21</sup> When Mayor Hylan proposed the construction of an art center in Central Park, his supporters could point to the Met and claim that,

<sup>18</sup> Morrison Heckscher, *Creating Central Park* (New Haven: Yale University Press, 2008).

<sup>19</sup> Frederick Law Olmsted and Calvert Vaux, “A Consideration of Motives, Requirements, and Restrictions Applicable to the General Scheme of the Park,” *Second Annual Report of the Board of Commissioners of the Department of Public Parks* (New York: William C. Bryant & Co., 1872), 85. Olmsted came to see the Met as a “deduction” from the “park proper.” Frederick Law Olmsted, *The Spoils of the Park* (1882), <https://archive.org/details/spoilsparkwitha01olmsgoog>, 6.

<sup>20</sup> “The Park Question,” *NYT*, Jul 21, 1916.

<sup>21</sup> American Scenic and Historic Preservation Society, *Fourteenth Annual Report, 1909* (Albany: J. B. Lyon, 1909), 65-66.

“The erection of the Metropolitan Museum of Art has not harmed the park.”<sup>22</sup> Richard Welling thought that the “devilish part” of the Met’s presence in Central Park was that “the Museum goes on creeping into the park like a glacier and it is always appealed to as a precedent.”<sup>23</sup>

The map naturalizes certain features, such as the Met, through exclusion. The original 1918 *New York Times* map listed the Met with the caption “the only institution that has encroached on park.” The legend item disappeared from Richard Welling’s replica, and was also deleted from the 1924 *Times* map reprint. The versions of the map created in the 1960s do not show widely popular recreational alterations to the park, including the zoo, Wollman Rink, and Lasker Pool. In 1970 the *New York Times* printed a version of the map with cartoonish illustrations, superimposed over an aerial photograph of Central Park that was situated to show Lasker Pool in the foreground.<sup>24</sup> This was not a commentary on the pool as an encroachment, but simply the given space over which the proposed alterations might have been enacted. Excluding pools, rinks, theaters, zoos, and museums from the map severs sensorial meaning, blocking visual connections to the park as it might be recalled in experience.<sup>25</sup> This discourages reflection on the possibility that incursions might promote “legitimate” park purposes such as enjoyment or recreation.

### Map Discussion

In 1911, architect Frank Miles Day spoke to a national conference on city planning. In his speech, Day held parks in high regard while also allowing that certain conditions justified the placement of buildings in parks. He suggested that after examining the type of space and the type of building, one should apply the “reasonable exercise of common sense in each particular case rather

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<sup>22</sup> “Hylan Attacks Foes of Park Grab; Hears His Plan Denounced,” *NYT*, Mar 26, 1924.

<sup>23</sup> Welling to Moses, Mar 14, 1935, RWP 12:7 [Original letter reads “it it [sic] always appealed to,” altered for clarity]. See also: Welling to Ogden on “the awful precedent of the Metropolitan Museum,” Feb 27, 1931, RWP 12:7. On the danger of the museum as precedent, see: Bard to Agar, Mar 21, 1924, ASB 80:5.

<sup>24</sup> Linda Amster, “Land Values off Central Park Are Zooming,” *NYT*, Mar 1, 1970.

<sup>25</sup> Zubrzycki, 2013.

than an attempt to establish rules that permit of no exceptions.”<sup>26</sup> He provided a set of evaluative criteria:

*First*, that the service to the public of the proposed building will be greater than the service of open ground plus the use to which that ground may be put without building on it. *Second*, that the increased public service due to the erection of the building shall be an affair not only of the immediate future, but of the distant future, for it is quite conceivable that the utility of the ground as mere open space may advance much more rapidly than the utility of the intended building.<sup>27</sup>

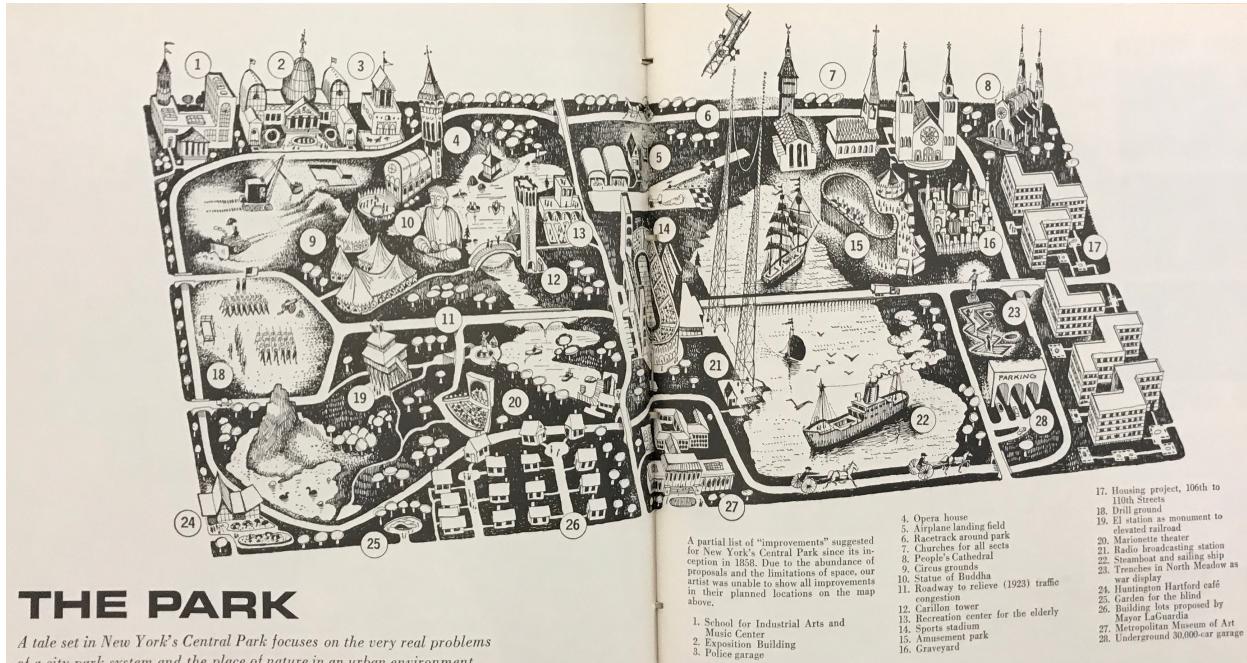
The possibility of a deliberative approach to building in parks, as suggested by Day, requires at a minimum a conception of who constitutes the public and a metric of public good. Day’s criteria also suggest that a theory of city growth should inform contemporary land use decision making, placing current park policies in a temporal framework similar to that suggested by the incursion map.

Park defenders, however, refused to entertain such questions. Among the “improvements” depicted in the 1918 *New York Times* map were a peripheral speedway for trotting horses, the Academy of Design, a marionette theatre, a proposal to cut the park into building lots, and a site for Grant’s Tomb. Some proposals, such as the speedway, would serve recreational park interests, but for an elite few. Others, such as the Academy of Design, would cultivate popular arts appreciation. The commemoration of presidents, the promotion of education, the provision of childhood diversions such as puppet shows and circus tents—defenders of a hard line against encroachments have viewed all as potential threats, and with no clear standard of evaluation with which to judge one potential public good against another, the only recourse was the absolute line of defense against all alterations to the original Greensward design, carried out in the name of the public. Park defenders recruited a universal public as the beneficiaries of their policies, in contrast to “special interests” represented by other park uses.

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<sup>26</sup> Frank Miles Day, “The Location of Public Buildings in Parks and Other Open Spaces,” *Proceedings of the Third National Conference on City Planning* (Cambridge, MA: The University Press, 1911), 53.

<sup>27</sup> Day, 1911, 55-56.



## THE PARK

A tale set in New York's Central Park focuses on the very real problems of a city park system and the place of nature in an urban environment

Image 4.3. Central Park "Improvement" Map, 1967

From *Natural History*, August/September 1967, copyright © Natural History Magazine, Inc., 1967<sup>28</sup>

Icon 23 in Image 4.3 depicts a small man with a machine gun hovering over grooves in the park's surface, representing the proposal to use the park as a staging ground for replica Western Front trenches in a push to sell Liberty Loan war bonds. In March 1918, with no premonition of the end of war, conscientious citizens grappled with the highest possible public good to come from the use of the parkland. The Parks and Playgrounds Association (PPA), while ultimately on record in opposition to the trench demonstration, originally took a split vote on the proposal. William Roulstone, usually averse to any deviation from the Greensward Plan, felt "very keenly about aiding anything that had to do with the war situation even to the sacrifice of the best interests of the Park."<sup>29</sup> (Mayor Hylan was particularly displeased with members of the PPA and MAS who appeared before the Board of Estimate in opposition to the trenches, stating, "I would advise the art artists to take a vacation till the war is over.")<sup>30</sup> The proposal received approval from every city agency

<sup>28</sup> Reproduced courtesy of *Natural History* magazine.

<sup>29</sup> PPA special meeting minutes, Mar 22, 1918, LWP 29: PPA Reports.

<sup>30</sup> Mayor Hylan quoted in, "Vote for Trenches in Central Park Over Protests," *NYT*, Mar 23, 1918.

involved in the formal review process. The project was only averted when the Adjutant-General of the Army, in the throes of a very real war, would grant no more than 24-hour absences to his officers to staff the ersatz trenches. The Liberty Loan committee decided that without the soldiers it could not “present a vivid and realistic idea of the trench life,” and canceled the demonstration.<sup>31</sup> (Albert Bard asked, “Why not advertise the war by smashing the windows in the City Hall?” If this seems outrageous, why should we not treat landscape architecture with the same veneration as architecture, or at least recognize the investment in city property that would be destroyed by the “pseudo-spectacle”?).<sup>32</sup> The inclusion of the trenches in the “improvement” maps obscures a lively debate about the subversion of public land for other public purposes. The trenches become simply one more threat against which defenders must constantly guard, and not the subject matter for public deliberation.

In contrast, the 1885 “debate” about placing Ulysses S. Grant’s tomb in Central Park barely raged. The selection of the Central Park site by President Grant’s family was reported on July 25, 1885.<sup>33</sup> By July 29, 1885 Mayor Grace had diverted the project from Central Park, whose character, he argued, “was formed and could not be changed.”<sup>34</sup> City leaders never truly considered bending the design of the park to the desires of the monument committee. But Grant’s Tomb is represented on the map with equal size and presenting an equal threat as the trenches. It does not matter if the proposal nearly came to be or was never a contender. Defenders framed all proposals as comparable threats: “The almost impossible thing for innovators to realize is that every single one of the fifty

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<sup>31</sup> American Scenic and Historic Preservation Society, *Twenty-Third Annual Report, 1918* (Albany: J. B. Lyon, 1918), 192.

<sup>32</sup> Albert S. Bard, “Editorial Notes,” *Bulletin of the Municipal Art Society of New York* no. 14 (Second Quarter 1918), GRL Folder: Newsletters 1918.

<sup>33</sup> “To Rest in Central Park: New York Honored as General Grant’s Burial Place,” *NYT*, Jul 25, 1885.

<sup>34</sup> “Riverside Park Chosen: A Tomb at the End of the Drive for Gen. Grant,” *NYT*, Jul 29, 1885.

innovations proposed in the last fifty years looked like a veritable trifle at the time of innovation, and only by treating each as a mountain instead of a molehill have we succeeded as far as we have succeeded.”<sup>35</sup>

“Line in the sand” strategies for deliberating park policy flatten distinctions of worth. This can be seen in the Parks and Playgrounds Association’s “fundamental and unswerving” opposition to all park encroachments. The design, audience, purpose, temporality, and public benefit of the proposals were irrelevant:

*Some of these schemes have been worthy of purpose and some have not, but the Association has made no distinction and has considered them as forerunners of a vicious precedent which in time would make serious and heavy inroads on the already too limited park spaces in this City.*<sup>36</sup>

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When the Municipal Art Society demanded that, “the primary and unique purposes of [Central] park shall automatically govern in any conflict with secondary uses no matter how appealing the latter may seem in themselves,” there was no question how those “primary purposes” were to be defined—Olmsted and Vaux’s writing on the park set the terms. This is clear in MAS’s reference to the “dominant and justifying purpose” of the park, a term Olmsted used to defend the preservation of Central Park as a pastoral landscape dedicated to beauty. MAS wrote:

[T]he real danger is that each compromise with the ‘dominant and justifying purpose’ of the park makes it that much easier to compromise again...Each little breach in the dike not only irrevocably destroys one particular and irreplaceable part of the park but it digs a channel for the next breach, and the next, and the next.<sup>37</sup>

The passage above was printed in a pamphlet that reproduced the 1924 *New York Times* version of the Central Park incursion map. Depicted on that map, which construed each proposal for altered park use as a “little breach in the dike,” were transitory events, including the trenches, a masquerade, and a temporary sculpture exhibit.

<sup>35</sup> Welling to Governor Alfred E. Smith, Feb 13, 1930, writing in opposition to the use of Central Park land as a memorial to (Welling’s close college friend) Theodore Roosevelt, RWP 12:6.

<sup>36</sup> PPA brochure, Summer Season, 1922, RWP 12:8. It is notable that the PPA refers to “park spaces.” The rhetorical defense of Central Park easily slid into the category of parks.

<sup>37</sup> Harmon Goldstone, “The Proposed Huntington Hartford Pavilion at the Southeast Corner of Central Park,” Jul 3, 1960, GRL Clipping File: Parks—Manhattan—Central Park 1960-1979.

In Part 2 of this chapter, I look at the conditions under which transitory events have been framed as a threat to the “dominant and justifying purpose” of Central Park. I discuss the event policies promoted by park commissioners from Robert Moses to Gordon Davis, and connect the Commissioners’ assessments of how parks serve public needs to the proper (or threatening) role that events play in Central Park. I begin with Robert Moses for two reasons: First, in the reaction to the liberalized use policy of the 1960s we find the clearest articulation of the connection between the ideology of the purpose of Central Park and the need to preserve the landscape from overuse (i.e. events). The liberalized use policies of the 1960s were in turn a reaction against the policies of Robert Moses and his successor, Newbold Morris. This chapter presents a reaction against a reaction in park use policy in order to situate a particular administrative logic that treats events as threats. Second, this chapter picks up where Chapter Three ended. The downstream interpreters of Olmsted and Vaux’s park legacy had failed to secure a city contract for the Olmsted Brothers firm to draft a restoration plan for Central Park. Robert Moses veered even further, treating Central Park as “essentially a playground,”<sup>38</sup> a mode of park use not always compatible with the original Olmsted and Vaux ideology or design. This set the stage for the reclamation of Olmsted and Vaux’s legacy as a potential source of policy guidance during the years of “rediscovery and restoration” (1965 to 1989).

## **Part 2: Administrative Event Policy, From Robert Moses to Gordon Davis**

The Parks Department refers to the period from 1965 to 1989 as years of “Rediscovery and Restoration.”<sup>39</sup> A popular assessment is that the era marked a new concentration “on special public

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<sup>38</sup> Rosenzweig & Blackmar, 1992, 449.

<sup>39</sup> Website of the New York City Department of Parks & Recreation, accessed Oct 9, 2017, <http://www.nycgovparks.org/about/history/timeline/rediscovery-restoration>. A review of Park Department press releases from Moses’s tenure shows that there were certainly many events programmed throughout the city parks. Events included formal sporting tournaments (fishing contests, handball matches, ice skating races); traditional celebrations that might be marked by a government or school calendar (tree lighting ceremonies and caroling, July 4<sup>th</sup>

events and festivals which brought hundreds of thousands of people back into the parks and created a new constituency for park development.”<sup>40</sup> Because this “rediscovery” of the parks was framed against the unprecedented tenure of Robert Moses as Park Commissioner (January 1934 to May 1960; and the continuation of his policies under his successor, Newbold Morris from May 1960 to January 1966), I begin by briefly discussing Moses’s unique position as Park Commissioner.

### Robert Moses

In the opening weeks of the LaGuardia administration, William Roulstone wrote to the Mayor with a note of caution—although Robert Moses was “probably the ablest and most experienced park man in our state” there was a threat in vesting too much power in a single administrative position, and a danger “if there is no check whatever upon him, if there is no council or park board for consultation, if there is no landscape architect whose judgment and experience must be considered.” Roulstone called his message “a friendly word of warning.”<sup>41</sup> It went unheeded.

Moses immediately abolished the position of landscape architect, which had previously held chartered powers to oversee park design (the violation of which could be grounds for a taxpayer suit, as discussed in Chapter Two). Moses also consolidated the park system, which since the unification of Greater New York in 1898 had been managed by distinct borough commissioners.<sup>42</sup>

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marching bands); or more “traditional” cultural diversions (marionette theater shows for children, classical music concerts for adults). The “revolution” in programming, beginning with the term of Thomas Hoving, may have been more stylistic than anything: the promotion of unstructured events such as “be-ins,” banishing cars and opening the roads to bicycling, and performances by rock and roll bands. In the descriptions below I suggest that these events did draw increased numbers of participants, explicitly promoted a philosophy of enjoyment, and engaged New Yorkers in less formally structured activities within the parks.

<sup>40</sup> August Heckscher, “Mid Term Report to Mayor John V. Lindsay,” Dec 1, 1967, MANY John V. Lindsay Departmental Files (Parks) MN45093 Roll 93. See also James Sanders, “Adventure Playground,” in *America’s Mayor: John Lindsay and the Reinvention of New York*, edited by Sam Roberts (New York: Columbia University Press, 2010), 84-101.

<sup>41</sup> Roulstone to LaGuardia, Jan 12, 1934, PCR 5:25.

<sup>42</sup> A word on subsequent nomenclature: the department was organized from 1934 to 1968 as the New York City Park Department; from 1968 to 1976 as Parks, Recreation & Cultural Affairs Administration; and from 1976 to the present as the Department of Parks & Recreation.

“The first bill [Mayor Fiorello] La Guardia submitted to the state legislature, drafted by Moses... gave the commissioner vast new power, *and* arranged for him to hold multiple city and state posts.”<sup>43</sup> Robert Moses served as New York City Park Commissioner, while simultaneously holding positions as the Chairman of the Triborough Bridge Authority, head of the State Parks Council, and member of the City Planning Commission, among others. When Moses assumed power at the helm of the city Park Department there were “seven separate governmental agencies concerned with parks and major roads in the New York metropolitan area...Robert Moses was in charge of all of them.”<sup>44</sup> With the power he arrogated from those numerous offices, Moses acquired land and secured construction capital through channels unavailable to other park commissioners, and his tenure is recalled in superlatives of growth. As a later commissioner would lament, “The strength of the Department under Moses was the result of its *de facto* status as an operating subdivision of the TBTA (the lynch pin of Moses’ public authority empire). Once Parks was put out on the street to fend for itself, it began to fall apart.”<sup>45</sup> (Moses used the tolls and the bond-levying power of the TBTA (the Triborough Bridge and Tunnel Authority) to leverage capital for his other departments, including the city Park Department.)

Moses had begun his career at the Bureau of Municipal Research, and the city’s reformers were initially thrilled that one of their own would efficiently manage the parks. Harmon Goldstone, a past president of the Municipal Art Society, said of the early reformer infatuation with Robert Moses that, “The general feeling was...that Moses was a hero...And I think I said later in some speech, ‘I spend half my life on platforms handing him awards, and the other half attacking him in the press.’ But, in the beginning—oh, we just thought he was marvelous. He was the one person

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<sup>43</sup> Rosenzweig & Blackmar, 1992, 448-49.

<sup>44</sup> Caro, 1974, 362. The agencies were: the Long Island State Park Commission, the New York State Council of Parks, the Jones Beach State Park Authority, the Bethpage State Park Authority, the New York City Park Department, the Triborough Bridge Authority, and the Marine Parkway Authority.

<sup>45</sup> Gordon Davis to Eloise Hirsch & Peter French, “RE: 1980 Objectives,” MANY Mayor Koch Departmental Correspondence (Parks) MN 41105, Roll 104 (225:7).

who could get things done in the city, and he was also an ‘idealist’...He was our hero. Now later...”<sup>46</sup> Moses also deployed Park Department workers to good visual effect—benches were painted, walkways were paved, trashcans were installed—at least superficially signaling care for the parks.

Moses worked from a presentist philosophy of land use planning. He wrote, “It is much better, if a choice is forced on us, to acquire one block in a congested part of Manhattan than ten acres in the open area of Richmond Borough.”<sup>47</sup> It was simply better, without regard to the ecological functions of 10 acres of open land, or the possibility that those acres should be acquired now against the appreciation of land values or projections of population growth. Moses prioritized bringing recreation to “the people” as an immediate and existing body politic. Frances Perkins famously said of Moses, “He loves the public, but not as people. The public is just *the* public. It’s a great amorphous mass to him; it needs to be bathed, it needs to be aired, it needs recreation, but not for personal reasons—just to make it a better public.”<sup>48</sup> In a 1938 article entitled “You Can Trust the Public,” Moses wrote, “I believe in bigger and better construction for public recreation because I am satisfied that it makes better people.”<sup>49</sup> Jones Beach State Park, opened in 1929 and built with ample parking and concessions, is one of the best examples of this public recreation philosophy in practice. And, as Rosenzweig and Blackmar write, Moses brought this “push for order and cleanliness, the emphasis on ‘wholesome’ recreational programs and facilities,” to the oversight of Central Park.<sup>50</sup>

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<sup>46</sup> Anthony C. Wood, “An Interview with Harmon Goldstone,” *Village Views* 4, no. 3 (1987): 21. The initial thrall to Moses’s leadership can be seen in a letter from Mrs. Sulzberger to Park Association members, “For the past five years your Association has been urging park reforms many of which, we are happy to inform you, are now being successfully carried out by Park Commissioner Moses.” Moses was addressing a longstanding list of concerns, including the reform of concessions and the clearance of a colony of summer homes from Wolfe’s Pond Park in Staten Island. Sulzberger was more concerned with the threat posed to parks by the uneducated public, who would destroy the parks through “thoughtless vandalism,” Sulzberger to Park Association, Mar 16, 1934, ASB 25:7.

<sup>47</sup> Robert Moses, *Working for the People: Promise and Performance in Public Service* (New York: Harper, 1956), 135.

<sup>48</sup> Frances Perkins, quoted in Caro, 1974, 318.

<sup>49</sup> Robert Moses, “You Can Trust the Public,” *The American Magazine*, July 1938.

<sup>50</sup> They write that Moses “was out to... ‘Jones Beachify’ Central Park.” Rosenzweig & Blackmar, 1992, 453.

With a few notable exceptions, the city's organized park advocates capitulated to Moses.<sup>51</sup> Rosenzweig and Blackmar suggest several reasons, including Moses's background as a municipal reformer, and his friendship with Iphigene Ochs Sulzberger, who served as president of the Park Association for nearly all of Moses's tenure. Sulzberger and Moses were close family friends and members of the same social set, and she rarely defied him. When Moses threatened to dismantle Castle Clinton in Battery Park, historic preservationists came to the cause. Albert Bard wrote to President Harry Truman urging him to approve a bill moving through Congress that would transfer Castle Clinton to the federal government "for preservation as a national shrine." Bard wrote that Robert Moses was "the only real objector to the bill" (on account of a grudge). "Mrs. Sulzberger, the president of the Park Association, is a close friend of Mr. Moses, and that Association's opposition to the [bill] is merely her personal echo of Mr. Moses' opposition."<sup>52</sup> Former City Club president and fusion-ticket Manhattan Borough President George McAneny served as the chair of the "informal Citizens Committee" that successfully opposed Robert Moses's plan to construct a Manhattan-Brooklyn bridge with a base in Battery Park.<sup>53</sup> McAneny recounted that Moses retaliated by closing and dismantling the popular aquarium, housed in Castle Clinton within Battery Park.<sup>54</sup> McAneny, who had served as executive manager of the *New York Times* from 1916 to 1921, reported that, "I had very good press support in my campaign. The *Times* was the only one that didn't support me,

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<sup>51</sup> For a notable case study of opposition to Moses's plan to pave a half-acre of Central Park for use as a parking lot, see: John B. Keeley, *Moses on the Green* (Alabama: University of Alabama Press Inter-University Case Series 45, 1959).

<sup>52</sup> Albert Bard to President Harry S. Truman, Jul 31, 1946, ASB 22:1. Bard had resigned from the board of the Park Association in protest of the organization's support for Moses's Battery bridge project. He accused the Park Association of "the complete abandonment...of its principles," Bard to Dunn, Jan 18, 1940, ASB 25:7. Bard wrote to Sulzberger, incredulous that she was "blinded" by Moses's claims that his bridge would not harm the park, and accused the Park Association of "abandoning its purpose of the 'preservation of the city parks' as avowed on its own letterhead," May 20, 1939, ASB 25:7.

<sup>53</sup> George McAneny (1869-1953) served in a number of civic capacities—President of the City Club of New York (1906-1909), Manhattan Borough President (1910-1913), President of the Board of Aldermen (1914-1916), and President of the Regional Plan Association (1930-1953). He took over the American Scenic and Historic Preservation Society in 1942.

<sup>54</sup> Reminiscences of George McAneny (1949), page 71, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

which means that Mrs. Sulzberger is an old family friend of Bob Moses and she stuck by the Park Commissioner solely for that reason to help him.”<sup>55</sup>

The end of Robert Moses’s rule of the Park Department opened up new questions about the appropriate uses of the city parks. But the real break in policy happened with the election of Mayor John V. Lindsay, who assumed office on January 1, 1966. Caro describes Newbold Morris, Park Commissioner from May 1960 to January 1966, as beholden to and captivated by Moses (whose staff remained in place after his departure). Caro called Morris “Park Commissioner only in name.”<sup>56</sup> Three months into Commissioner Morris’s term, *The New Yorker* ran a cartoon of two bums sitting on a park bench musing, “I fail to see any difference between the administration of Robert Moses and the administration of Newbold Morris.”<sup>57</sup> (For all of the differences in policy between the “Moses era” and the “Hoving era” (discussed below), it would be difficult to find a more elite cluster of pedigrees in the civil service than those of the four men, a nearly extinct variety of liberal Republican, who headed the New York City parks from 1934 to 1972.)<sup>58</sup>

### Central Park “Happenings” and “Occurrences”

When Park Commissioner Thomas P. F. Hoving took office in 1966, he implemented a series of reforms in park programming. In 1965, Hoving penned mayoral candidate John V.

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<sup>55</sup> Ibid., 81.

<sup>56</sup> Caro, 1974, 1064-65. Thomas Hoving less kindly referred to Morris as, “nothing more than Bob Moses’ poodle.” Thomas Hoving, “Chapter 25: The White Paper,” *Artful Tom, a Memoir* (2009), <http://www.artnet.com/magazineus/features/hoving/artful-tom-chapter-twenty-five6-3-09.asp>. (As a historical document, Hoving’s self-published memoir is, generously, unreliable).

<sup>57</sup> James Stevenson, *The New Yorker*, Sep 10, 1960, 37. Before his work in the Park Department, Morris served a dedicated career in public service, including his position as President of the City Council (1938-1945); he also served on the boards of the Lincoln Center, and of the Henry Street Settlement (22 years, nine as board president).

<sup>58</sup> Robert Moses grew up in the company of “our crowd” (Caro, 1974, 33). Newbold Morris descended from Gouverneur Morris, signatory to the Declaration of Independence and namesake of a wide swath of the Bronx (Morrisania) once held in the family estate. Thomas Hoving’s father, Walter Hoving, was the president of Tiffany & Co. And Heckscher State Park, Heckscher Art Museum, and Central Park’s Heckscher Playground all bear the name of Commissioner August Heckscher III’s grandfather, the industrialist August Heckscher. Moses held a Ph.D. in Political Science from Columbia and Hoving a Ph.D. in Art History from Princeton (he later served as director of the Met). All but Hoving were Yalies.

Lindsay's *White Paper on Parks*. The paper presented nuts-and-bolts management strategies, grand plans, and idealistic principles. It issued a call "for sweeping reform of the parks and a renewed pleasure in their use: and their use by *all* the people."<sup>59</sup> In 1967, *The New Yorker* published John McPhee's biographical treatment of Hoving's "brilliant" 14 months at the helm of Parks, capturing the flair for showmanship that Hoving himself boasted of in a play on his initials, "Publicity Forever."<sup>60</sup> McPhee contrasted the start of the 1965 Central Park summer concert series, when the Goldman Band played to 500 people, to Hoving's "turn-of-the century" costume party that kicked off the 1966 season with the 53-piece band playing for a crowd of 35,000.<sup>61</sup> Hoving announced that, "Only by making total use of these parks can New Yorkers call them their own."<sup>62</sup>

Hoving's successor, August Heckscher III, "a lovely man, dignified, with snow-white hair and a halo of good manners,"<sup>63</sup> came to the Park Department after serving as director of the Twentieth Century Fund, and prior to that as Special Consultant on the Arts to President Kennedy. Heckscher was "a cultural mandarin of the Great Society,"<sup>64</sup> and he brought with him the belief that parks were vital spaces for the health of civil society.<sup>65</sup> At the Twentieth Century Fund he had worked extensively with Sebastian de Grazia on *Of Time, Work, and Leisure*, published by the Fund in 1962.<sup>66</sup> Heckscher had previously published his own books, including a volume written with Raymond Aron in 1957, *Diversity of Worlds: France and the United States Look at their Common Problems*,

<sup>59</sup> Arthur Rosenblatt, "Open Space Design: New York Shows How in its Park Program," *Architectural Record*, Aug 1967: 112. Rosenblatt was director of the Office of Design Consultant, a position created by Hoving.

<sup>60</sup> "Thomas Hoving, Remaker of the Met, Dies at 78," *NYT*, Dec 10, 2009.

<sup>61</sup> John McPhee, "A Roomful of Hovings," *New Yorker*, May 20, 1967, 49-137.

<sup>62</sup> New York City Department of Parks, "Mammoth Party-in-the-Park For All New Yorkers," Press Release, Jun 9, 1966, [http://home2.nyc.gov/html/records/pdf/govpub/42561966\\_press\\_releases\\_part2.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42561966_press_releases_part2.pdf).

<sup>63</sup> Barry Gottehrer, *The Mayor's Man* (New York: Doubleday, 1975), 250.

<sup>64</sup> Timothy M. Rohan, "The Breuer Effect," *Art in America*, May 1, 2015, <http://www.artinamericamagazine.com/news-features/magazine/the-breuer-effect>.

<sup>65</sup> August Heckscher, "Recreation and the Urban Crisis," Keynote address to the National Park and Recreation Association, Dec 4, 1967, MANY, John V. Lindsay Departmental Files, 1966-1973, MN #45092, Roll 92.

<sup>66</sup> Heckscher wrote of the book, "I worked with [de Grazia] very closely...the thesis of that book was that although we had more time off from work it didn't necessarily mean that we were more free and when we had more leisure, that free time and leisure were not the same thing necessarily for all," Oral history interview with August Heckscher, May 25-Dec 29 1970, Archives of American Art, Smithsonian Institution, <https://www.aaa.si.edu/collections/interviews/oral-history-interview-august-heckscher-12562>.

and in 1962 the sole-authored *The Public Happiness*, “one theme of which was this need for the fuller expression of the kind of discontents which ordinarily fester within a social order and leave an impression of complacency and blandness.”<sup>67</sup> When Heckscher became Commissioner, the parks would play a role in countering this: “I wanted, on the contrary, people to deal with the city as a whole and with the parks in particular as the areas where they could act out and express the interests of their lives.”<sup>68</sup> (Heckscher famously replaced prohibition signs in parks with ones that read, “Yes, Enjoy!”<sup>69</sup>). When asked if he would maintain “Hoving Happenings,” Heckscher responded that he anticipated the slightly less catchy “Heckscher Occurrences.” He envisioned “a cultural event, still colorful and popular, but keyed to occasions in the urban year or marking moments that people should care to enjoy together,” events that could become traditions, as opposed to spectacles.<sup>70</sup>

The current mythology of Central Park discusses the opening of the park to new uses as a time when the park went to ruin. But we should disentangle liberal use policy from inadequate funding. The infrequently considered alternate possibility was a Central Park with decaying infrastructure and no life. Aside from the preservationists at the time, the countervailing force in use policy came from “law-and-order types.” Rick Perlstein writes that, “Paul Fino, the antibusing congressman from Queens, said Lindsay was giving ‘the city’s punks, Vietnicks, and banana-sniffers flag-burning rights in Central Park,’ to which Commissioner Heckscher “replied that the law-and-order types were ‘scared by the abundance of life.’”<sup>71</sup> Heckscher saw the threat of civil unrest in the suppression of this “abundance.” He wrote in his memoir that he was approached by a group of

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<sup>67</sup> Reminiscences of August Heckscher (1978), page 12, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

<sup>68</sup> Ibid.

<sup>69</sup> New York City Department of Parks, “Out With the ‘No’ in With the ‘Yes’ as City Beaches Open,” Press Release, May 20, 1968, [http://home2.nyc.gov/html/records/pdf/govpub/42651968\\_press\\_releases\\_part2.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42651968_press_releases_part2.pdf).

<sup>70</sup> August Heckscher, *Alive in the City: Memoir of an Ex-Commissioner* (New York: Scribner’s, 1974), 160.

<sup>71</sup> Vincent Cannato, *Ungovernable City* (New York: Basic Books, 2001), 144-46, quoted in Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York: Scribner, 2008), 185-6.

hippies with a request for a permit to hold a “love-in” at Bethesda Fountain in Central Park.<sup>72</sup> He knew that if he refused they would show up in protest and conflict would erupt; if he conceded he would be pilloried in the press and held responsible for “some rather odd occurrences.” So he suggested to the “strangely garbed” kids that, “the essence of their proposed love-in was (to put it mildly) its unbureaucratic nature. Therefore, it seemed contradictory to want a bureaucrat’s blessing... ‘Come in,’ I said in effect; ‘Central Park is open to all...’”<sup>73</sup>

When Robert Moses criticized these policies, Heckscher responded, “We cannot turn backward to the 30-year-old sterile designs and concepts of Robert Moses. If a vote was taken right now on my policies and Mayor Lindsay’s policies on park programming, and on that of a few carping critics like Robert Moses and Henry Reed, we would win overwhelmingly.”<sup>74</sup> Heckscher claimed that Reed (whose work as Central Park curator I discuss below) and Moses were “out of touch with the people, while we in the administration are in touch with them.”<sup>75</sup> If that formulation is immodest, it is clear that Heckscher saw the parks as a “safety valve” for social unrest. He recalled the “public atmosphere” of 1967 as “highly excitable” and “in the midst of that, the parks played their role.” He continued,

The parks were the outdoor stage, if you will, on which these great dramas were acted out... the parks ought to be the safety valve for all this protest... There were those on the other hand who felt the parks were green enclaves with pretty lawns that ought to be kept from being trampled on. Well, I hoped the lawns could be restored and that no damage would be permanent, but in the meanwhile, and at that period of emotionalism and crisis, I thought it was a glorious thing that New York should show in the public sphere this outburst of, and this expression of, all the passions of the social order.<sup>76</sup>

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<sup>72</sup> As a refined 55-year-old in a jacket and bowtie, whose political sensibilities were formed during the New Deal, Heckscher encountered the hippies with a generous bemusement. The first wave of “flower children,” before the hardening of the drug culture and the “dissolute” yippies, were “vague in spirit and gentle and rather lost.” Heckscher, 1974, 156-7.

<sup>73</sup> Heckscher, 1974, 156.

<sup>74</sup> Heckscher, quoted in, “City Orders Halt to Farm in Park,” *NYT*, Jun 30, 1967.

<sup>75</sup> Ibid. For a sense of the disruption these events caused to traditional administrative sensibilities, the same article reported that City Clerk Herman Katz refused to perform a Parks Department-sponsored “wed in” for 30 couples in Prospect Park. (Heckscher lamented, “For a city clerk Mr. Katz is very unromantic”).

<sup>76</sup> Reminiscences of August Heckscher (1978), pages 9-10, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

## The Threat of “Central Park a Go Go” to the Olmsted and Vaux Landscape

But in the eyes of preservationists, Hoving and Heckscher’s liberal policies on events, festivals, concerts, be-ins, and mass gatherings in Central Park came into conflict with the preservation of the material landscape.

Thomas Hoving wrote in his memoir that when he was appointed to craft mayoral candidate John V. Lindsay’s *White Paper on Parks* (1965), he “devoured every book on the development of parks in New York City, including the life of abolitionist and parks designer supreme Frederick Law Olmsted, who with Calvert Vaux had created Central and Prospect parks.”<sup>77</sup> Hoving also proposed and created the official but purely ceremonial position of “curator” for Central and Prospect Parks.<sup>78</sup> The curators proved to be a thorn in the side of the commissioners. Prospect Park curator Clay Lancaster caused an uproar when he urged the removal of the park’s popular skating rink and band shell to return the landscape to its “pristine beauty” and promote “*legitimate recreation*” including “horseback riding, driving in horse and buggies, walking, lawn tennis, croquet, and children’s games.” When pressed that buggy rides might no longer suit popular tastes, Mr. Lancaster responded, “Then let us reeducate the people.”<sup>79</sup>

Hoving in turn frustrated and infuriated his curators. Central Park curator Henry Hope Reed fumed at Hoving’s policies and public proclamations, such as, “We’re going to open up Central Park and have—one might say—a Central Park a Go Go.”<sup>80</sup> Reed complained that Hoving’s “object is to

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<sup>77</sup> Thomas Hoving, Chapter 25, *Artful Tom* (2009).

<sup>78</sup> “In order to prevent the thoughtless and tasteless alteration or destruction of some of the universally good original features of the Olmsted design, I propose the appointment of a Curator of Central Park. This would be an individual who knows intimately the history of the park and who would be able to give professional advice on the repair and reconstruction of its original elements.” John V. Lindsay, *White Paper on Parks* (1965), 13. On the frustrating limits of curator power, see: Reed to Rubinow, Jul 6, 1966, HHR 4:2.

<sup>79</sup> “Future of Parks Stirs Civic Clash: Hoving Rules Out Dismissal of Curator in Brooklyn,” *NYT*, Jan 28, 1966.

<sup>80</sup> “Outdoorsman of the Big City,” *Life*, Apr 29, 1966, 39-42. Reed served as Central Park curator during the first term of Mayor John Lindsay (1966-1970), and was a member of the Friends of Central Park and the Greensward Foundation.

achieve ‘maximum use’...to get crowds in the park for happenings, water-skiing on the Lake, kite-flying, etc. etc. That these crowds do damage to the park is a matter of indifference to him.”<sup>81</sup>

Reed, in particular, revived the use of the writings of Olmsted (and Vaux) as a source of authority for the preservation of Central Park. Before Reed assumed the curator position, he had proposed a “pamphlet or a short book containing Olmsted’s views on park use” to deploy in arguments with the Art Commission and the Park Commissioner. “What it amounts to is [a] guide, a rein...to keep the Park Department within bounds. Then those interested can always say ‘Turn to page x....here [sic] what the scripture says.’”<sup>82</sup> (Just as the CPA had referred to Olmsted’s writing as a “bible,” Reed was now treating it as “scripture”.) The one meaningful expectation for his position as curator, set forth in the *White Paper*, was the preparation of a historically informed guide to Central Park. Reed travelled to Washington, D.C., to consult the Olmsted papers at the Library of Congress, and in 1967 published his book with Sophia Duckworth, *Central Park: A Guide and History* (reprinted in 1972). This book was in turn cited in 1970s and 1980s Central Park restoration plans.

Reed and Duckworth’s *Central Park* guide contained its own version of the Central Park encroachment map, illustrated by Ken Fitzgerald (the full two-page spread listed 33 “improvements” to the park, proposed between 1900 and 1964).<sup>83</sup> In his writing and consulting work, Reed also championed the framing of the park as art and the concomitant sense of threat that entailed. Reed urged Commissioner Heckscher to reject a memorial fountain in Central Park from Mrs. Oscar Hammerstein, by comparing forms of artistry: “Were I to approach [Mrs. Hammerstein] with the

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<sup>81</sup> Reed to Jeannette Minturn, Aug 11, 1966, HHR 4:2. Reed asked Minturn, President of the New York Chapter of the ASLA, to issue a critical statement on the landscape effects of “Hoving’s Happenings.”

<sup>82</sup> Reed to Whit, sharing a photocopy of Olmsted’s writing on Central Park from Olmsted, Jr., and Kimball (1928), Feb 28, 1965, WNS 135: MAS 1963-65.

<sup>83</sup> Henry Hope Reed and Sophia Duckworth, *Central Park: A History and a Guide*, rev. ed. (New York: Clarkson Potter, 1972 [1967]), 42-43.

notion of improving one of the lyrics of her late husband's songs, she would show me the door.”<sup>84</sup>

And Reed wrote to Robert Makla, president of the Friends of Central Park, that,

It is my conviction that only when those privileged thanks to wealth, education and leisure mention the names of Frederick Law Olmsted and Calvert Vaux, the designers of Central Park, with the ease that they mention the names of Picasso, Henry Moore or those of the latest artists of contemporary nihilism will our great parks begin to know some protection.<sup>85</sup>

The Friends of Central Park, of which Reed was a member, took the absolutist stance that Central Park was purely for passive recreation and the pleasures of the rural landscape. The group argued that Central Park (and Prospect Park) “ought to be treated as works of art with the same interrelation of parts as a painting or a symphony; that they are not self-regulating wildernesses, but carefully contrived landscapes stemming from the same historical impulse that gave rise to the Hudson River School in painting.”<sup>86</sup>

A comparison of Reed and Heckscher's attitudes toward the guidance that Olmsted offered in crafting park use policy could not be starker. Heckscher described Reed as a man possessed of a “rear-view perspicacity” that “qualified him admirably to advise the commissioner on projects of repair and restoration; but it gave a strange slant to his counsels when he ventured to say how the park should meet the needs of the living generation.”<sup>87</sup> In one representative example of Reed's communication with Heckscher, which I quote at length to show his perception of events as “invasions” and his to-the-letter reliance on Olmsted to direct park policy, Reed wrote:

The so-called ‘Be-In’ of March 26<sup>th</sup> [1967] has already confirmed my fear that a precedent has been set. You will see from the enclosed advertisements taken from the Village Voice

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<sup>84</sup> Reed to Heckscher, Jan 4, 1968, HHR 4:2.

<sup>85</sup> Reed to Makla, Sep 10, 1969, HHR 20:40. Gilmartin (1995, 355) wrote that Reed's “favorite insult [was] to call someone ‘a hopeless modernist.’”

<sup>86</sup> Peter Canby, “Friends of the Parks: A New York-Based Alliance Fights to Restore Olmsted's Vision,” *Horticulture: The Magazine of American Gardening* LXI, no. 10 (1983). Olmsted and Vaux designed Prospect Park (Brooklyn) in 1866. I do not discuss Prospect Park in this chapter. Olmsted and Vaux learned from demands put on Central Park, and designed a separate museum campus and athletic ground outside of the bounds of Prospect Park.

<sup>87</sup> Heckscher, 1974, 244. Heckscher found the appointment of the curator position “imprudent,” because it came without a salary or a budget, and yet created a visible platform. Because of this attention, Heckscher argued that he could not have fired Reed for the controversy that would have ensued (Reminiscences of August Heckscher (1978), page 27, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York).

that it is to be repeated on April 8 and April 15, in all probability with larger crowds. From the opening of the park in 1856 there have been constant attempts to make use of the park for assemblies, parades, protest meetings, etc. Frederick Law Olmsted and his successors were vigorous to any threats of such invasions. If you turn to page 433 of Volume II of Frederick Law Olmsted, Landscape Architect, 1822-1903, edited by Frederick Law Olmsted Jr., and Theodora Kimball, you will see a report of Olmsted to the then President of the Department of Public Parks, dated May 16, 1877. It offers a description of the damage done by crowds on the occasion of the dedication of the Halleck Statue. Should you care to have additional comments I will gladly write to Washington to obtain correspondence of Olmsted on the subject...<sup>88</sup>

While Reed promoted an unyielding fidelity to Olmsted and Vaux, Heckscher also saw himself as working within Olmsted's tradition. Asked what he thought Olmsted's intentions were, Heckscher responded with great admiration that Olmsted, ranking with Melville, was "one of the authentic geniuses in our American Life." But while Olmsted's *design* of Central Park should "be held inviolate," his ideas about park use should not hold sway "for all future time." Central Park could be used for a party or rally or festival, which "didn't hurt the park in any long-range way" and could always be cleaned up in the sober light of Monday morning.<sup>89</sup>

### The Hangover to "The Hoving Era"

Between February 12 and February 27, 2005, Christo and Jeanne-Claude's *The Gates*, an installation of saffron nylon banners mounted to 7,503 posts traversing 23 miles of park pathways, greeted visitors to Central Park. As with any public art installation, the reactions were as varied as the public. But the assessment of note was that the project was right for the park in the right moment. When the permits were granted in 2003, former Parks Commissioner Gordon Davis (1978-1983) said of the project with approval, "[Central] Park is gloriously reclaimed. The project will only highlight its splendor."<sup>90</sup> When *The Gates* was first proposed, in 1979, it was Davis who had

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<sup>88</sup> Reed to Heckscher, Apr 5, 1967, HHR 4:2. There is no record of Heckscher taking up the offer of research assistance.

<sup>89</sup> Reminiscences of August Heckscher (1978), pages 71-72, Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

<sup>90</sup> Robin Pogrebin, "City to Let Christo Do Central Park Art Project," *NYT*, Jan 23, 2003.

rejected the bid. His permit denial, penned in 1981, is a remarkable piece of writing, covering 107 pages and several dozen appendices.<sup>91</sup> I discuss Davis's shift in event policy away from "the Hoving Era,"<sup>92</sup> and consider how Davis's arguments in rejecting *The Gates* connected the defense of the park landscape to the promotion of a particular park ideology.

When Davis assumed his position as Commissioner of Parks, on January 23, 1978, he succeeded five commissioners who had served since Heckscher's resignation on December 31, 1972. He looked around and found the department in disarray, "By 1977 the policies initiated by Parks Commissioner Thomas Hoving in the mid-1960's of opening up Central Park to 'the people' by permitting a wide variety of events and special functions had for the most part gone haywire."<sup>93</sup> Davis did not indict the activities as wrong *per se*, but found them unregulated and out of control. Davis wrote to Mayor Koch, in 1978, that,

The number of permits issued for Central Park increased by 40% between 1976 and 1977...The situation today is dramatically different from the so-called 'Hoving' era when parks were, in fact, opened up for the first time (with few exceptions, Moses and Newbold Morris allowed no 'events' in the parks). In the Hoving era one major and one minor organized event might be scheduled on a weekend. In contrast, earlier this year the Department issued permits for four major events occurring at overlapping times on one day.<sup>94</sup>

In his rejection of Christo's permit, Davis asked, "What had gone wrong?," and answered, "During a period when the Department was highly politicized, the question of 'what is an appropriate park use?' simply ceased to be asked."<sup>95</sup> This statement can be refuted with a trove of archival evidence from the early 1970s that documents active discussions among community boards, Parks Department administrators, and park advocacy groups to determine the appropriate uses of

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<sup>91</sup> For a similar assessment, see Rosenzweig & Blackmar, 1992, 505.

<sup>92</sup> Hoving was a great showman who initiated the post-Moses event policies, and his name seems to have attached to the era of be-ins and spectacles, though he served as Commissioner for only 14 months, from January, 1966 to March, 1967.

<sup>93</sup> Gordon J. Davis, *Report and Determination in the Matter of Christo: The Gates* (New York City Department of Parks and Recreation, 1981), 50.

<sup>94</sup> Davis to Koch, Apr 21 1978, Weekly Report on Departmental Activities and Priorities, MANY Mayor Koch Departmental Correspondence (Parks), MN #41104, Roll 104 225:5.

<sup>95</sup> Davis, 1981, 55.

the city parks. Perhaps by “highly politicized” Davis meant that the commissioners, in particular August Heckscher, focused on the use of parks as outlets for civil discontent. It is true that the term “park purpose” did not figure into Heckscher’s criteria for granting permits for events on the Sheep Meadow, which included: “1. Is it of public benefit—really entertaining, lively, enjoyable? 2. Is it in good taste? 3. Can it conveniently be held elsewhere? 4. Will it cause permanent or long-term damage to the area?”<sup>96</sup> The point that will become salient in Davis’s report is that Heckscher’s fourth criterion was insufficient; even without landscape damage, events could cause ideological damage to the park.

Davis was using this permit rejection to justify a changing policy of park use, set rhetorically against a portrait of the threats of the past, real or imagined.<sup>97</sup> Davis argued that his policy for the parks would be one of “balance”—neither the Moses-era edict to “Keep Off the Grass!” nor the Lindsay-era exhortation to “Enjoy!,” but “the application of a common sense rule of reason, informed by both a physical and historical understanding of the Park.”<sup>98</sup>

When Christo and Jeanne-Claude submitted their application to the Parks Department to use Central Park as the site of a massive art installation, the Department was in the midst of a reordering of its policies and priorities. In Central Park, the newly established Central Park Conservancy was working on a restoration plan for the park in the tradition of Olmsted and Vaux, and the Department had implemented new regulations on the use of the Sheep Meadow. The Department hosted a “farewell” concert to the old meadow-as-event-space, and Davis stated that when the restored lawn reopened, “It will not just be open as it was before.” There would be “limitations,” and “controls.” Davis said in the *Times* that this was “an educational project” to

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<sup>96</sup> August Heckscher, “Policy Statement on the Use of Central Park’s Sheep Meadow,” Sep 6, 1967, PCR 9:29. Heckscher wrote that he also considered the balance between landscape conservation and recreation.

<sup>97</sup> Davis said, “The Christo Report to me was like going away to a seminar or retreat for eight weeks...Christo became the foil...I used Christo to do something that government rarely, if ever, on the municipal level does, which is to sit down and think.” Reminiscences of Gordon Davis (Session 8, Jun 24, 1982), page 376 in Columbia Center for Oral History Archives, Rare Book & Manuscript Library, Columbia University in the City of New York.

<sup>98</sup> Davis, 1981, 57.

determine if the public could learn to respect the grassy field or ‘if the public insisted it be used and abused as before.’”<sup>99</sup> (As much as the early 1980s use policies were a reaction against permitting excesses, they also reflected an altered imagination of the public; no longer a roiling political collective in need of expressive space, the public was unruly and in need of education.)<sup>100</sup>

Christo and Jeanne-Claude, in their original permit application, seemed less concerned with the public conception of the park as landscape, than with the integrative experience that the art would promote among the public within the park. They wrote, “By involving the entire topography of Central Park, *The Gates* will be uniquely and equally shared by many different groups, thereby becoming a true Public Work of Art, revealing the rich variety of the people of New York City.”<sup>101</sup> And after Commissioner Davis denied the initial permit request in 1981, Christo and Jeanne-Claude hired Kenneth B. Clark—the prominent psychologist whose experiments on children’s perceptions of race served as critical evidence in *Brown v. Board*—to conduct a human impact study on the social implications of the installation. Clark’s study reported that Central Park visitors perceived differences in the availability of “cultural and artistic activities and facilities” between the southern park and the northern portions that bordered Harlem. Clark interpreted “the higher percentage of minorities and low income individuals who express favorable reaction to the proposed installation of

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<sup>99</sup> Robin Herman, “Limitations’ Set for Sheep Meadow,” *NYT*, Sep 15, 1980. On the new policies, see: “Sheep Meadow to be Restored” *Parks News* (monthly Department newsletter), Oct 1979, which argued that New Yorkers “have grown accustomed to abusing the Sheep Meadow,” and continued, “A priority will be to hold the line on scheduling new mass events in the Meadow. It will be the Parks Department’s policy to deny permits whenever possible and will suggest alternate sites for these events.” MANY Mayor Koch Departmental Correspondence (Parks) MN 41105, Roll 104 225:8.

<sup>100</sup> While Heckscher described the parks as a stage, Davis saw them as a mirror: “The parks are all trees and beaches and grass, and it’s all nice and lovely. But underneath it’s all the ugly problems of society...Nine out of 10 times, what people mean when they say the park is lousy is not only that it’s not clean, but that there are kids smoking dope and there are graffiti and there are blacks and Hispanics where there were once Italians and Jews. The Parks Department is a social institution. It’s a reflection of society.” “City Hoping for Private Operation of Parks,” *NYT*, Oct 15, 1980.

<sup>101</sup> Davis, 1981, Exhibit 7: “Christo: The Gates Project for Central Park New York City” filed with the application to Gordon Davis, Apr 9, 1980, signed by Christo. (Christo and Jeanne-Claude worked as collaborators, but “in the old days before feminism”—pre-1994—did not jointly sign their names to their work. Amei Wallach, “Imagine Central Park in Saffron,” *NYT*, Mar 17, 2002).

“The Gates” in Central Park” to “reflect[ ] the fact that they see this artistic event as a democratizing phenomenon.” The report concluded that *The Gates* “would be a unifying artistic event.”<sup>102</sup>

Davis disagreed with the assessment of a fractured public of the park, and was furthermore particularly concerned that excessive use would disrupt the work of the newly formed Central Park Conservancy (CPC). Since 1980, with the founding of the Conservancy, Central Park had been placed under the management of a private organization led by landscape experts (and fundraisers). Much as “the mission of fine arts museums is to maintain the intelligibility of artworks qua meaningful and valuable ‘objects’ over time,”<sup>103</sup> the CPC is dedicated to the ongoing faithful reproduction of Central Park in the Olmsted tradition.<sup>104</sup> Previously Central Park had been managed “as just one of the 1,543 units in the metropolitan system,” treating “the Park as just another 843 acres of the department’s holdings.” But, in the introduction to *Rebuilding Central Park: A Management and Restoration Plan* (1987), the Conservancy stated that, “the Park was never just an *ordinary* tract: Conceived as a unit and built in a single campaign, it was an unprecedented design that soon established a special identity around the world.” The “special cultural and physical characteristics” of the park required the attention of a curator, not a bureaucrat.<sup>105</sup> This conception of the park as a singular unit (of art) that could not be interfered with on a piece-by-piece basis is one of the visual lessons of the “improvement map,” and indeed a full-page reproduction of Reed & Duckworth’s map is featured in the introduction to *Rebuilding Central Park*.<sup>106</sup>

Elizabeth Barlow Rogers, the first Central Park Administrator and lead author of the park’s restoration plan, was clear in her deference to Olmsted and Vaux, while understanding the realities

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<sup>102</sup> Kenneth B. Clark, *Christo: The Gates’ Project for Central Park Human Impact Study* (New York: Clark, Phipps, Clark & Harris, 1982), 25-6.

<sup>103</sup> Fernando Domínguez Rubio, “Preserving the Unpreservable: Docile and Unruly Objects at MoMA,” *Theory & Society* 43, no. 6 (2014): 621.

<sup>104</sup> The CPC merged the policymaking of the Central Park Task Force and the fundraising efforts of the Central Park Community Fund into a single organization that could oversee the implementation of comprehensive planning. Today, the private nonprofit CPC operates through a license agreement with the public Parks Department.

<sup>105</sup> Elizabeth Barlow Rogers, *Rebuilding Central Park: A Management and Restoration Plan* (Cambridge: MIT Press, 1987), 9.

<sup>106</sup> Barlow Rogers, 1987, 6.

of the political position she occupied: “I am trying, where the landscape is degraded, to use the principles of Olmsted and Vaux, but I can’t duplicate the original design tree by tree. It would be impossible, or at least unwise for political reasons, to completely Victorianize the park.”<sup>107</sup> In Barlow Rogers’s introduction to *Rebuilding Central Park*, she wrote, “The planning team’s intentions were to remain faithful to the spirit of Frederick Law Olmsted’s original, naturalistic landscape while accommodating as varied a mix of contemporary activities as possible.”<sup>108</sup> The 1987 restoration plan included “aesthetic goals” for the park’s landscape architects, who “must anticipate a sequence of evolving scenes as the trees and plants grow to maturity over the years and the landscape undergoes shifts in scale, light, shadow, color and texture.”<sup>109</sup> The restoration plan is built on the material understanding of the park’s vulnerabilities, as well as the unique palate in which its artistry is expressed.

Significantly, the restoration plan adopted the coherent view of the park as a unified artistic object. *Rebuilding Central Park* was the result of years of work, first formalized in a planning document released in 1981, at the time of Davis’s permit rejection. The 1981 planning document that set the agenda for *Rebuilding Central Park* made clear that to “restor[e] the Park’s beauty and usefulness” required a “framework of an overall restoration plan. This plan understands that the Park is a design unity and sees each individual restoration project as part of the Park’s overall landscape architecture. The underlying philosophy of this landscape architecture...respects the

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<sup>107</sup> Canby, 1983 (from an unpaginated copy distributed by the Friends of Central Park, NYPL general collection). Barlow curated a 1972 show on “Olmsted as Artist” at the Whitney, where her sympathies to the park as a coherent art object were on view: “Above all, the Greensward designers believed in one overriding principle—the integrity of the park as a whole. Like a symphony, it would have a clearly stated and recurring theme, rural scenery, and whatever modulations occurred would be subservient to this central theme,” Elizabeth Barlow, *Frederick Law Olmsted’s New York* (New York: Praeger, 1972), 23.

<sup>108</sup> Barlow Rogers, 1987, 11.

<sup>109</sup> Barlow Rogers, 1987, 20.

ingenuity and beauty of the Park's original design.”<sup>110</sup> The final 1987 restoration document reflects the values that went into its planning:

Central Park is not a free-form mélange of landscapes and recreational facilities. It was designed to be a single, united park, and it still functions as one. The Park is an organic whole—a collection of integrated and interconnected systems of drainage, hydrology, traffic circulation, architecture and vegetation. Decay involving one area of the Park involves neighboring sections as well. In order to restore Central Park properly, it would be essential to regard it not piecemeal but whole.<sup>111</sup>

The Central Park Conservancy's management plan works to ensure that the park will be constantly reproduced as a legible and holistic Olmsted and Vaux creation.

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It was against this shift in management policy—which was working to restore both the degraded physical conditions of the park, as well as the authority of Olmsted and Vaux in directing that restoration policy—that Davis assessed the threat of *The Gates* to the park. In his permit denial, Davis questioned the influence of the installation on the landscape and on *the ideology* of the park:

How might The Gates' imposition on Central Park's paths, albeit brief, affect the public's understanding of the Park's design or of how, and even if, it should be preserved or restored. How might the contrast between what Olmsted and Vaux sought to achieve with their design and what the alteration Christo seeks with his affect the understanding by a government official or individual Park patron of how to use the park, or of its significance or which of its features are important to preserve, to leave unaltered or to change.<sup>112</sup>

Because the disruption of the park ideology might lead to “inappropriate” uses of the landscape, it could also threaten to waste the considerable capital that the Conservancy was investing in the physical restoration of the park. Restoring a space like the Great Lawn after an event is costly, and the Parks Department was broke. Davis wrote in a memo on departmental objectives for 1980 that, “the Department's long term viability will depend on its ability to generate and manage

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<sup>110</sup> New York City Department of Parks & Recreation and The Central Park Conservancy, *Rebuilding Central Park for the 1980s and Beyond: An Outline for a Restoration Plan* (New York, 1981), 4.

<sup>111</sup> Barlow Rogers, 1987, 17.

<sup>112</sup> Davis, 1981, 72.

additional revenues...”<sup>113</sup> In his list of accomplishments for 1978-79, Davis boasted that the Department was undertaking \$2,000,000 in restoration projects in Central Park, half of those funds raised from outside the city. Private and corporate donations supported \$1,000,000 in recreational programming in 1979. And, “In March 1979, the office of Central Park Administrator was established from private funds, reflecting a policy that called for one office to plan, monitor and implement comprehensive maintenance and design programs for Central Park.”<sup>114</sup>

The threat to this investment from events could be insidious. At stake, beyond the particular moment in which Davis was attempting to stabilize a new ideal of an orderly park, was the threat of precedent. Davis wrote, “One learns quickly that much of managing Central Park, and, indeed, all parks boils down to a very practical matter of precedents. Over the years, absent a determination as to some limits, one major free concert in the Park spawns ten others; one foot race leads to 100; one informal softball team that does not need a permit evolves into an entire league that refuses to even ask for one.”<sup>115</sup>

According to Davis, the “physical consequences” of the installation were of less concern than “the less tangible ‘impact’ of *The Gates*” which included the signal to the public that the project was an appropriate use of the park, “notwithstanding its obvious distance from the design and artistic vision that shaped the Park’s creation and the restoration now underway; and because of the precedent all of this creates both legally and in terms of future Parks Department policies.” The real concern was how the project would shape and alter “how Central Park is understood, appreciated and perceived...”<sup>116</sup> Davis concluded that in 1981 *The Gates* was “in the wrong place, at

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<sup>113</sup> Davis to Eloise Hirsch & Peter French, “RE: 1980 Objectives,” MANY Mayor Koch Departmental Correspondence (Parks) MN 41105, Roll 104 (225:7).

<sup>114</sup> “Department of Parks and Recreation, Gordon J. Davis Commissioner, Accomplishments 1978-79,” MANY Mayor Koch Papers Departmental Correspondence (Parks), MN 41105, Roll 104 (225:8).

<sup>115</sup> Davis, 1981, 76.

<sup>116</sup> Davis, 1981, 100.

the wrong time and in the wrong scale.”<sup>117</sup>

In the case of *The Gates* we find a clear articulation of the ideological threat that events pose—they teach the public about how to use (or abuse) the park in a world with limited funds available to maintain and restore the legibility of an Olmsted and Vaux landscape. The Central Park case also suggests how this concern for precedent can ramify throughout the entire administrative realm of the Parks Department, as “event x” in a particular park becomes the basis for assuming “event x” is a permissible use of the *parks*.

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<sup>117</sup> Davis, 1981, 101.

## Chapter Five: Constructing the Threatened Park: Precedent & Building

In Chapter Four I introduced the Central Park “improvement” map as a tool used by park preservationists to promote the idea of the park as constantly under threat, and to define the nature of the threat posed by even a single altered use of the park. The park defenders who deployed the map did not differentiate between temporary altered uses of parkland, such as festivals and concerts, and permanent altered uses, such as the construction of new buildings and facilities within parks.

In this chapter I examine the “threat” of permanent construction within parks. I discuss six proposed projects for Central, Morningside, and Riverside Parks (all Olmsted and Vaux creations located in Manhattan) over the decade of the 1960s. These projects presented trade offs between open parkland and public-serving facilities: a gym, an elementary school, horse stables, a café, a playground, and a memorial sculpture (all common features of parks at the time). The planning debates required participants to define the “usefulness” of parkland, and in doing so articulate a set of idealized park users.<sup>1</sup>

Like events, buildings can potentially alter or undermine the original ideology of an Olmsted and Vaux park. With events the damage to the physical landscape might be repaired with enough money for ongoing maintenance. However, buildings permanently alter the physical landscape and hence the capacity of an individual to be immersed within and to experience the park as a coherent scenic design. Buildings are not abstractions or pure forms. They will become emplaced in real spaces of the city, spaces that already exist as accessible, visible, tangible, and available to be experienced. In the context of interpreting art, Griswold and colleagues have written about the relationship between position, “the geometric set of physical relationships between objects and

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<sup>1</sup> I do not mean a diffuse or attenuated public benefit, such as the argument that placing a luxury condominium on parkland would yield increased property tax revenue, contributing to a robust Parks Department budget, in turn facilitating e.g. capital maintenance in parks. Rather, in these projects we can identify groups of citizens who would be served directly by the altered use of parkland, e.g. children whose recreation would be enhanced by a new play structure.

bodies in a particular place,” and location, “the cognitive process of meaning-making that depends upon this position.”<sup>2</sup> Parks are not empty space. They are places, in the sense that Munn defines as “habitable space” through which we move and proceed.<sup>3</sup> Advocates responded to the threat posed by the construction of physical structures within these Olmsted and Vaux parks with another set of visual representations of space, showing an altered representation of parkland as *experienced space*. Development projects were proposed in locations where claims to use-value enjoyment was assailable. The framing of the rocky outcroppings of Manhattan schist in Morningside Park as “useless escarpment,” or the proposed site of the Hartford Café in Central Park as a “urinal” undermined the concept of the parks as places for recreation and enjoyment. To counter this, park defenders had to establish that a park was more than the site of active recreation; it was also a place of receptive leisure. A rock could offer as much enjoyment while being gazed upon as scenery as it could from affording a place to play.

In the last chapter I described Robert Moses’s desire for a “better public,” August Heckscher’s attempt to use the parks to address the social discontents of the public, and Gordon Davis’s assessment of a dissolute public in need of education. In this chapter I describe how opposition to specific construction projects turned elite preservationists into defenders of the broadly construed public of a park, organized against building projects that necessarily converted open space into a more particularized use (hence serving a more limited set of users).

The representational and framing tactics are interesting as a vision of who constitutes the public of a public park, and how that public is accommodated in landscape design. But there is a rather simple and practical lesson in this chapter: preservation is accomplished by forestalling construction. The courts have consistently affirmed that the Commissioner of Parks has broad

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<sup>2</sup> Wendy Griswold, Gemma Mangione, and Terence E. McDonnell, “Objects, Words, and Bodies in Space: Bringing Materiality into Cultural Analysis,” *Qualitative Sociology* 36, no. 4 (2013): 346.

<sup>3</sup> Nancy D. Munn, “The ‘Becoming-Past’ of Places: Spacetime and Memory in Nineteenth-Century, pre-Civil War New York,” *Journal of Ethnographic Theory* 3, no. 2 (2013): 360.

powers to define what constitutes an appropriate use of parkland. However, the process of permitting a building is more complex than that of permitting an event, and requires a broader constellation of actors, including the Board of Estimate, which until its disbandment in 1990 approved funding for construction, and the city's Art Commission (now the Public Design Commission), which holds chartered powers to review physical alterations to city property. This is the "bandwagon" problem that Suttles identified in several thwarted big-ticket public construction projects in downtown Chicago in the 1980s.<sup>4</sup> Suttles described the difficulty of assembling the numerous actors necessary to accomplish Chicago development deals: "Partnerships tend to open up the number of chinks and cracks through which information is passed, so that deficiencies are noticed and opposition aroused."<sup>5</sup> Five of the six projects I discuss in this chapter were never built, though the Parks Commissioner had the power—on paper—to approve them.

In Figure 5.1 I present an overview of the six projects. I then discuss each project in turn, with attention to: the relationship between the framing of a "park purpose" and the idealized public of a park; the representation of experienced space as a method for conscripting the broadest, most unrestricted public into the set of park beneficiaries; and the "bandwagon" problem of aligning administrators, politicians, funders, neighborhood groups, and permitting institutions into a successful development coalition, with attention to how varying concepts of a proper park purpose informed these actors' positions.

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<sup>4</sup> Gerald D. Suttles, *The Man-Made City: The Land-Use Confidence Game in Chicago* (Chicago: University of Chicago Press, 1990).

<sup>5</sup> Suttles, 1990, 145.

Figure 5.1: Overview of Cases: Proposed Construction in Central, Riverside, and Morningside Parks

Project	Project Description	Dates Active	Status	Explanation of Construction Status
Morningside Park: Public School 36	School site selection committee chooses Morningside Park to construct new elementary school to alleviate overcrowding in nearby schools, and to support integration among Harlem and Morningside Heights students	1962-1964	Built	Governor signed alienation legislation; school site selection board approved; Board of Estimate overturned Planning Commission opposition to the park site; School opened 1966
Morningside Park: Columbia University Gymnasium	City signs 99-year lease with Columbia University for 2.2 acres of parkland to construct a gym/University facility; proposed 12% of the building dedicated to separate public access	1959-1968 (The land did not revert to the City until 1983)	Unbuilt (Site demolition begun)	Gym became a rallying point in Columbia campus protests in the spring of 1968; University cancelled plans in March 1969
Central Park: Horse Stables	Mayoral design competition for horse stables, to include facilities for police horses, polo, and private stabling; project size reduced and polo removed by Board of Estimate in 1969	1966-1974	Unbuilt	Initial designs rejected by the Board of Estimate; full funding never authorized before 1975 financial crisis
Central Park: Huntington Hartford Café	A&P heir Huntington Hartford, in consultation with Robert Moses, offered the city \$862,500 to construct a café pavilion inside Central Park near 59 <sup>th</sup> Street & Fifth Avenue	1959-1966	Unbuilt	NY Court of Appeals ruled that construction was legal. Mayor Lindsay took office before construction began; his new Park Commissioner canceled the project
Riverside Park: Adele Levy Memorial Playground	Community organizers proposed a sculptural play space designed by Isamu Noguchi and Louis Kahn, with half of the funding provided by the family of the late Adele Rosenwald Levy	1961-1966	Unbuilt	\$99,533 construction fund shortfall ruled illegal by the New York State Supreme Court after a challenge from an opposing neighborhood group; charitable funders withdrew
Riverside Park: Holocaust Memorial Sculptures	Two private committees—the Zygelboim Memorial and the Memorial to the Six Million Jewish Martyrs and Heroes of the Holocaust—proposed memorial sculptures in Riverside Park	1964-1965 (Memorial site selected in 1947)	Unbuilt	Permission denied by the Art Commission

## The Case of Successful Development: Public School 36 in Morningside Park

On May 9, 1963, New York Governor Nelson A. Rockefeller signed legislation that would enable the New York City Planning Commission to legally transfer a 1.35-acre parcel of land in the northwestern corner of Morningside Park from the Park Department to the Board of Education.<sup>6</sup> At the time 2,200 students were enrolled in P.S. 125, an elementary school on the park's northern border that was originally built for 500 students, and the Morningside Heights and Harlem neighborhoods desperately needed a new school to alleviate overcrowding.<sup>7</sup>

The School Site Selection Board considered several locations for new school construction, including Tiemann Place near the Hudson River in Morningside Heights, and "the rock site," as the northern spur of Morningside Park was called in the press and public debate. Proponents argued that the rock site would promote "true racial integration of the community" at a time when 85% of students enrolled at P.S. 125 were African American.<sup>8</sup> The New York City Commission on Human Rights agreed, and favored school construction in the park.<sup>9</sup> The Commission worried that the Tiemann Place site, located within the primarily white residential portion of the neighborhood, would create "a predominantly white school, surrounded by predominantly Negro schools."<sup>10</sup> Other neighborhood organizations argued that the Tiemann site would promote maximum integration, but the Human Rights Commission disagreed.<sup>11</sup>

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<sup>6</sup> L. 1963, Ch. 974. The legislation placed no compensatory or replacement conditions on the alienation.

<sup>7</sup> "For Morningside's Children," *Columbia Spectator*, May 1, 1963; "Parents Keep Fighting Proposed PS 36 Site," *NY Amsterdam News*, Jun 15, 1963.

<sup>8</sup> "Use of Part of Park for School Argued," *NYT*, Jan 16, 1964; also, "Community Leaders Pleased with P.S. 36 Site Selection," *Columbia Spectator*, Feb 10, 1964.

<sup>9</sup> Richard Wolfe, P.S. 36 timeline, n/d [circa 1964], CCC 2:13.

<sup>10</sup> City Commission on Human Rights of New York, "Commission Resolution on School Site for PS 36, Manhattan," May 27, 1963, CCC 2:13. The report refers to the Morningside Park parcel as "the rock site."

<sup>11</sup> "Segregation Charges Mark School Site Dispute," *NYT*, May 28, 1963. The integrative Tiemann Place scenario, supported by The Morningside Citizens Committee and the City Planning Commission, was "predicated on the supposition that parents with children in private schools would be encouraged to use the public school on Tiemann Place instead," which the Human Rights commission found unlikely. "Report to the Commission on the Site for the Proposed PS 36 Manhattan," Jul 23, 1963, CCC 2:13.

The Site Selection Board noted that the park site was ideal, as it “comprises a relatively undeveloped and little used park area which is mainly a large outcrop of rock.”<sup>12</sup> Manhattan Borough President Edward R. Dudley called the Morningside Park site “rocky, a danger to venturesome children, difficult to keep clean and a haven for unsavory characters.”<sup>13</sup> Dudley scolded park preservationists from the Citizens Union and Park Association, “Some people seem to feel a little snip of park land is more important than a child...There’s too much concern here for *a little piece of dirt, a small fragment of rock.*”<sup>14</sup> Local parent groups testified to the City Planning Commission that the proposed school site “was rocky and not suitable for continued park use.”<sup>15</sup>

But what is a “useful” or “useless” rock? The neighboring 121<sup>st</sup> Street Association disagreed that the park was a dangerous refuge for lurking vice. “The kids have a wonderful time on the rocks...and it is a preposterous notion that the rock area is a hideout for gangsters.”<sup>16</sup> On January 29, 1964, the City Planning Commission (CPC) voted against the school on the “rock site.”<sup>17</sup> CPC Chair William Ballard maintained that, “Worthy causes pose a threat as they tempt us into sacrificing parkland by way of an urgent need of the moment.”<sup>18</sup>

However, final approval resided with the Board of Estimate, which had the power to overturn CPC votes, and on February 6, 1964, the Board of Estimate voted to transfer a parcel of Morningside Park land to the Board of Education.<sup>19</sup> P.S. 36 opened on the rock site in 1966.<sup>20</sup> In the end, as one park defender recalled, “Members of the community who opposed the use of parkland

<sup>12</sup> William F. Shea to James A. Dawson Re: Public School 36, Site Selection Board, SS-83, Project No. E-424, Sep 26, 1963, CCC 2:13. The Site Selection Committee ultimately rejected the alternative Tiemann Place site because it would have required new state alienation legislation, stalling immediate relief for existing overcrowded schools. The Human Rights commission was concerned with expediting construction. The park site would also avoid residential displacement. “Report to the Commission on the Site for the Proposed PS 36 Manhattan,” Jul 23, 1963, CCC 2:13.

<sup>13</sup> “Segregation Charges Mark School Site Dispute,” NYT, May 28, 1963.

<sup>14</sup> “Park Site Voted for New School,” NYT, Feb 7, 1964 (emphasis mine).

<sup>15</sup> “Use of Part of Park for School Argued,” NYT, Jan 16, 1964.

<sup>16</sup> “City to Build P.S. 36 in Morningside Park,” Morningsider, Dec 6, 1962.

<sup>17</sup> “Park Site Barred for a New School,” NYT, Jan 30, 1964.

<sup>18</sup> “Board OK’s P.S. 36 Park Site,” Morningsider, Feb 13, 1964.

<sup>19</sup> Six spoke against the project, 19 in support.

<sup>20</sup> The school opened to community control boycotts. On initial anxieties, see “P.S. 36: Some Questions,” *The Morningside Citizen*, Oct 14, 1966; “City, Community Will Discuss Student Groupings at P.S. 36,” *Columbia Spectator*, Oct 18, 1966.

for anything except unstructured public recreation were reluctant to take a strong stand if this meant siding... against 'maximum integration.'"<sup>21</sup>

The construction of the school was justified as part of a project of racial integration. There were debates about where precisely a school would support maximum integration, but those questions could be answered by modeling school enrollment trends relative to neighborhood demographic data. This project is notably the only one of the six developments that I discuss in this chapter that was successfully built.

### The Stables Complex in Central Park

In September 1966, Mayor Lindsay announced a design competition to construct within Central Park a stables complex for a police mounted troop, private horses, and a polo facility. In February 1967, a design competition committee selected a proposal by architects Kelly & Gruzen. By February 1969 the design iteration included a facility for police horses, a police station, and private horse boarding (polo had been eliminated). Polo was easily assailable as an elite sport, but even after it had been removed, proponents and detractors of the stables complex debated two related sets of claims: how would the stables alter the experience of the park, and who would benefit? Groups such as the Save Central Park Committee and the Municipal Art Society, with concerns about the altered uses of parkland, complained about the privileged beneficiaries of new park uses.<sup>22</sup> The project would allocate "a staggering sum of money to the enjoyment of a very few people."<sup>23</sup>

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<sup>21</sup> Christiane Crasemann Collins, "A Storm Foretold: Columbia University and Morningside Heights, 1968" (self-published, 2015), 47.

<sup>22</sup> Richard Edes Harrison to City Planning Commission, Dec 19 1966, HHR 41:5; Citizens Concerned for Central Park, "Save 8 Acres of Central Park," n/d circa 1967, RCW LXXXII: 4; Save Central Park Committee Press Release, Feb 20, 1969, HHR 41:5; Municipal Art Society, n/d, n/a type-written note circa 1967, HHR 41:5.

<sup>23</sup> 4<sup>th</sup> District Manhattan Councilman Robert A. Low to City Council and Board of Estimate, circa 1967, HHR 41:5.

The citizens who formed the Save Central Park Committee (SCPC) were wary of the ability of city officials to act as trustees of the public's land.<sup>24</sup> The SCPC framed the broadest unrestricted public as the people whose interests "are best served by simply providing beautiful landscape as a retreat from the city. The more specialized sports you bring in, the less of a retreat the park becomes. By far the largest proportion of park users are those without a voice, who just want to be in it and wander around."<sup>25</sup> Richard Edes Harrison, chair of the Save Central Park Committee, wrote that the park's bridle path "cannot be used by the ordinary citizen for any other purpose." He asked, "why all this fuss about a few buildings?" and responded,

Our Park Commissioners, in spite of occasional flashes of virtue, have lacked understanding of the fundamental nature of parks and that is that parks are open to and for everybody...The trouble with polo-in-the-parks is that Joe Doakes and his fellows will be denied the use of several acres of park because of the very specialized interests of a rather small group of people.<sup>26</sup>

The work of Richard Edes Harrison nicely illustrates the representation of the experience of parkland that could be displaced by development. Harrison, a cartographer by profession, had produced a series of popular maps for *Fortune* magazine during the Second World War. His "One World, One War" map used a polar projection that showed "relational truths" about the proximity of the powers at war, while introducing its own distortions, rendering the southern hemisphere nearly illegible.<sup>27</sup> Harrison also specialized in "perspective maps...to highlight spatial relationships among cities, nations, and continents made relevant by the war."<sup>28</sup> For Harrison, the representation of global space in two dimensions was an "inherently argumentative" practice.<sup>29</sup>

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<sup>24</sup> See: Richard Edes Harrison and Robert Makla, Save Central Park Committee pamphlet, Dec 1969, GRL Clipping file: Parks—Manhattan—Central Park 1960-1979.

<sup>25</sup> Save Central Park Committee analysis of Hoving letter on the stables, n/d circa 1967, HHR 41:5.

<sup>26</sup> Richard Edes Harrison to the City Planning Commission, Dec 19, 1966, HHR 41:5.

<sup>27</sup> Susan Schulten, "Richard Edes Harrison and the Challenge to American Cartography," *Imago Mundi* 50 (1998): 176. Harrison was an avid birder, and became involved in park advocacy through his work with the Linnaean Society, which in 1955 had opposed the placement of a senior citizen center on the Ramble in Central Park, a sensitive bird habitat.

<sup>28</sup> Schulten, 1998: 177.

<sup>29</sup> Schulten, 1998: 185.

In his work for the SCPC, Harrison produced a schematic of the proposed stables complex as it would rest upon the landscape. His illustration, “Altitudes of Interest in Central Park,” countered the argument that the stables would constitute an underground facility.<sup>30</sup> Harrison depicted the view of the stables building as it rose above the horizon line. This was superimposed over the existing park topography, marking the height of well-known park landmarks and offering viewers a way to compare the proposed development with their experiential knowledge of existing features within the park. The map was circulated together with a broad landscape photograph of the stables development site within the park, with the outline of the building inked in, blotting out the existing view.

Image 5.1 shows a model of the winning Kelly & Gruzen design for the stables. The sunken depth of the interior of the complex is clearly visible; but the extent to which the design would interact with the surrounding views of the park is not discernable. In another promotional photograph for the project, the three-dimensional model is shown directly from above, producing a flattened aerial view without any indication of the depth or height of the project.<sup>31</sup>

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<sup>30</sup> Richard Edes Harrison, “Altitudes of Interest in Central Park,” Feb 27, 1967, REH Box 62.

<sup>31</sup> Central Park Stables and Police Facilities, Kelly & Gruzen Architects (circa 1967), RCW LXXXII:4.

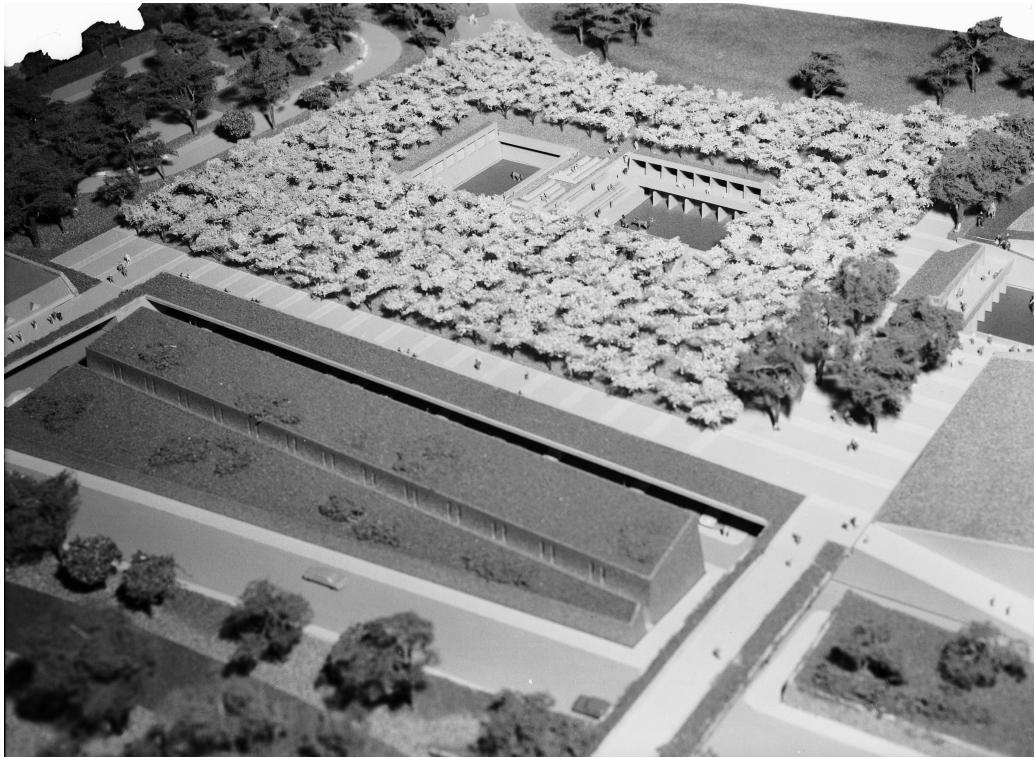


Image 5.1: Kelly & Gruzen Model for the Central Park Stables Complex, 1967  
Courtesy of the New York City Parks Photo Archive

Whether a field is “useful” or “useless” depends on the purpose that parkland is meant to serve, and park defenders could turn to the writing and ideology of Olmsted to protest against construction in Central Park. However, with Commissioners Hoving and Heckscher each asserting their own interpretation of the Olmsted legacy, we find multiple actors deploying the authority of Olmsted as a justification for park preservation *and* for park development. Hoving said that, “were Olmsted and Vaux alive today, they would be applauding the results of this architectural competition” for the stables.<sup>32</sup> Heckscher thought that the stables would facilitate horseback riding, clearly a part of Olmsted and Vaux’s intended experience of the park, which included 5<sup>1/2</sup> miles of bridle paths.<sup>33</sup> And architects Kelly & Gruzen described their design as, “the subtle blending of

<sup>32</sup> Office of Mayor Lindsay press release, Feb 17, 1967, RCW LXXXII: 4.

<sup>33</sup> City of New York Administration of Parks, Recreation, and Cultural Affairs, “A Statement by August Heckscher” (press release), Feb 17, 1969, [http://home2.nyc.gov/html/records/pdf/govpub/42681969\\_press\\_releases\\_part1.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42681969_press_releases_part1.pdf).

building elements into land forms which are suited to the tradition of Olmstead's [sic] Central Park theme.”<sup>34</sup>

Promoters of the stables could also argue that they were attempting to forestall a lost experience of the park. Ada Louise Huxtable, the influential architecture critic at the *New York Times* and frequent opponent of park “improvements,” supported the stables project which, “would make full recreational value possible and reinstate the usefulness of the park’s elaborate system of bridle paths which otherwise will lie idle after the last private stable is demolished for West Side renewal.”<sup>35</sup> Commissioner Hoving countered complaints about exclusivity: “Far from catering to a single-interest group, the new facility, by widening the range of activities, will encourage more people to use the park...”<sup>36</sup> But few people in 1967 had access to the experience of the park from the back of a horse. The experience that Harrison represented was of the pedestrian, of anyone who could stand at a point on a Central Park lawn and look out to the newly cluttered horizon. As with the Central Park “improvement” map, Harrison’s illustrations are tools for imagining the consequences of parkland development.<sup>37</sup>

### Huntington Hartford Café in Central Park

In 1959, Robert Moses, in the last of his 26 years as city Park Commissioner, wrote to Huntington Hartford, heir to the A&P fortune, soliciting the donation of a marionette theater or ball

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<sup>34</sup> Kelly & Gruzen, Description of Central Park Stables and Police Facilities, n/d circa 1967, RCW LXXXII: 4.

<sup>35</sup> Ada Louise Huxtable, “A New Leaf in the Parks,” *NYT*, Oct 9, 1966. Huxtable wrote this in anticipation of the redevelopment of the West Side of Manhattan where the horses were stabled.

<sup>36</sup> Hoving to Mrs. Seth Dennis, Mar 15, 1967, HHR 41:5. Reflecting on his time as Commissioner, Hoving wrote that, “My position was to be rigid against constructing anything useless, but to be receptive to the development of facilities that would provide a recreational balance for *all*.” Hoving Letter to Editor, *New York Magazine*, Apr 5, 1971.

<sup>37</sup> I am not arguing that the representations of space led to a particular land use resolution. Full funding for the stables was not secured before the financial crisis in 1975. As of November, 1974: “No concessionaire has been found who is willing to underwrite the estimated \$1 million cost of building the proposed stable...There then remains the question of whether the City under existing budgetary constraints should allocate funds from its capital budget for building the stable.” Manhattan Community Board 7 Parks Committee minutes, Nov 18, 1974, PAF Series IV, Subseries A, 123:21.

field. “Unfortunately,” replied Hartford, “I have never had any personal interest in baseball.”<sup>38</sup>

Moses and Hartford instead negotiated a gift of \$862,500 to construct a café pavilion in the southeastern corner of Central Park, near 59<sup>th</sup> Street and Fifth Avenue, across from the Plaza Hotel.

In 1960, as civic organizations began their campaign against the proposed Huntington Hartford Café for Central Park, they had limited access to the formal planning process. At the time, community boards were still unrecognized in the city charter. The boards worked without staff, and were thought of primarily as a communication structure between the neighborhoods and the Borough Presidents. There was no environmental review process. There was no landmarks commission. There were no scenic landmarks. The President of the Municipal Art Society (MAS), Harmon Goldstone, had to write to Mayor Wagner asking how he and other interested citizens could stay apprised of the introduction of the café plans at upcoming Board of Estimate meetings.<sup>39</sup> This was after MAS members had asked Park Commissioner Newbold Morris to hold a hearing on the café, and Morris had responded that he possessed no such power. (The *Times* countered that no one would take Commissioner Morris to court for convening a public meeting.)<sup>40</sup> The Park Association then called on Mayor Wagner to hold a public hearing given “the essential public interest” involved in the café proposal. The Fifth Avenue Association and Park Association insisted that the Board of Estimate must officially accept the gift, which would require a hearing before the Board. This demand began with independent civil society actors, and not in a formal planning process.<sup>41</sup> Finally, in July 1960, the Board of Estimate, which ruled on budget and land use matters, announced that because the café would require city funds for ongoing maintenance, the Board

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<sup>38</sup> “Moses Asked for Baseball Stadium; Hartford Gave Him a Café Instead,” *Manhattan East*, Jul 11, 1963. Hartford’s gift would bear his name while leaving the city with construction debt and ongoing maintenance costs. The jacket to a biography of Hartford reads, “Before anyone had even thought of Donald Trump, there was Huntington Hartford” Lisa Gubernick, *Squandered Fortune: The Life and Times of Huntington Hartford* (New York: G.P. Putnam’s, 1991).

<sup>39</sup> Goldstone to Wagner, Jun 18, 1960, WNS 135: MAS 1960, 1961, 1962. Goldstone would serve as President of MAS from 1960-63; as Commissioner of the New York City Department of Planning from 1961 to 1968; and as Chairman of the New York City Landmarks Preservation Commission from 1968 to 1973.

<sup>40</sup> “Hearing on Café Asked,” *NYT*, Mar 11, 1960; “Central Park Democracy,” *NYT*, May 26, 1960.

<sup>41</sup> Park Association Board of Directors meeting minutes, May 11, 1960, MLP 469: Park Assn.

would concede to a public hearing. (At the Board hearing, 22 speakers opposed the project and six, including the architect and Park Commissioner Morris, spoke in favor. The Board voted unanimously to accept the gift.)<sup>42</sup>

The project spent five years in court. In 1961, a group backed by Walter Hoving, chairman of Tiffany & Company (and father to the future park commissioner), worked to establish a valid claim to standing.<sup>43</sup> Between 1963 and 1965, a coalition of local business and civic leaders challenged the project in a taxpayer suit. The sole question under consideration was whether the Park Commissioner acted within his statutory authority in accepting the café. (The plaintiffs did not allege malfeasance.) The plaintiffs tried to establish that the Commissioner was derelict in his duties in two ways. First, because the café was oriented toward the busy street, the facility would not serve the public enjoyment *of the park* that the Commissioner was sworn to promote. Second, relying on the decision in *Williams v. Gallatin*, which stated that “non-park” uses of city parkland require state authorization, the café was a “non-park” purpose vis-à-vis Olmsted and Vaux’s Greensward plan for the park, and thus the Commissioner had no power to accept Hartford’s gift. The plaintiffs were granted standing, but lost their case; the court determined that it was within the power of the Commissioner to accept the gift and to determine the appropriate placement of the café within the park.

Commissioners Moses and Morris supported the development of a “useless” corner of Central Park, and Mayor Wagner repeated this idea in his endorsement of the café plan, which “would not take up any land useful for other park purposes.”<sup>44</sup> Morris described a visit to the

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<sup>42</sup> “Gift Café to Get Hearing July 28,” *NYT*, July 14, 1960. Anthony C. Wood writes that the hearing was an appeasement, “throwing a bone” to the opposition (*Preserving New York: Winning the Right to Protect a City’s Landmarks* (New York: Routledge, 2008), 258).

<sup>43</sup> Walter Hoving was not only acting to clarify planning jurisdiction and citizen sovereignty. He was the president of a luxury jewelry corporation whose flagship store was located at the corner of Fifth Avenue and 57<sup>th</sup> Street, two blocks south of the proposed café, which he worried “would end up as a cheap cafeteria restaurant and saloon, and would downgrade the neighborhood...” (Fred Keefe & Geoffrey Hellman, “Hoving’s Message,” *New Yorker*, Oct 22, 1960, 33).

<sup>44</sup> “Mayor Disputes Judgeship ‘Sales’,” *NYT*, May 18, 1960.

proposed café site in testimony to the Board of Estimate: “There is only one use that is made of that section and that is one of the reasons I want to have a facility like that there. The place is used as a urinal. The café is going to make activities; the more activities we have in a heavily used park, the more decency we are going to get out of it.”<sup>45</sup>

The *Times* editorial board, calling the argument that the corner of the park was unused “fallacious,” wrote, “The park does not consist only of area that is used.” Parks offer scenery, and “one doesn’t have to scramble up a bank or climb a rocky outcropping in order to enjoy those fragments of wilderness.”<sup>46</sup> Harmon Goldstone, president of the Municipal Art Society, was dismayed by the argument that the corner of the park was “‘wasted’ because it is too steep for walks or playgrounds...Are practical usability and monetary profit our only values? Sometimes it seems so.”<sup>47</sup> In a nine-page project brief, MAS argued against “practical usability” calculated through utilitarian summations of maximum enjoyment:

[A] cafe, with seating at 10 to 15 square feet per person is a more intensive use than open lawns and shaded walks. But a movie house, at 7 to 8 square feet per person, would be still more efficient. While it is important to provide for maximum numbers, it is equally important to consider what is provided.<sup>48</sup>

The renderings of the Hartford Café show different perspectives on the stakes of development. In 1962, Robert Moses, Newbold Morris, and Huntington Hartford issued an illustrated brochure heralding the café as a gift to the city in the tradition of the grand sidewalk cafés and outdoor dining establishments of the parks, plazas, and boulevards of Europe.<sup>49</sup> In the densely

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<sup>45</sup> New York City Department of Parks, “Statement by Newbold Morris” (press release), Jul 28, 1960, [http://home2.nyc.gov/html/records/pdf/govpub/42481960\\_press\\_releases.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42481960_press_releases.pdf).

<sup>46</sup> “The Park is to Look At,” *NYT*, Aug 13, 1960.

<sup>47</sup> “Beauty in Public Building,” *NYT*, Aug 27, 1960.

<sup>48</sup> “The Proposed Huntington Hartford Pavilion at the Southeast Corner of Central Park,” Jul 3, 1960, GRL Clipping File: Parks—Manhattan—Central Park 1960-1979.

<sup>49</sup> Huntington Hartford Pavilion brochure, Mar 12, 1962, NYPL Central Park Clipping Files, Folder 3 (Milstein Division of US History, Local History and Genealogy). MAS wrote to its members that the café “continues to enjoy the distinction of being that new project which makes us most apoplectic,” and published the following quatrain: “Sufficient was a wooden toy/ To breach the walls of fabled Troy/ Though times may change and tactics shift/ Beware the brochure-bearing gift” (*News of the Municipal Art Society*, Apr 1962, WNS 135: MAS 1960, 1961, 1962). The *Times* mocked

illustrated 14-page brochure there is no comprehensive view of the park space that will be given over the café. Instead, the proposed development site is marked out in a thin aerial line drawing, with seamless contours between the building and landscape. The brochure also presents an architectural model of the café, photographed from above, showing nothing of the surrounding park to evoke in the viewer a sense of the existing space that might be altered or how the café might be experienced on the ground (Image 5.2). *Architectural Forum* lauded Edward Durell Stone's design as "painstakingly elegant."<sup>50</sup> Ada Louise Huxtable derided it as a "pretentiously formal snack bar."<sup>51</sup>



Image 5.2: Huntington Hartford Pavilion Brochure, 1962<sup>52</sup>

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the brochure, "The logic is implacable: the caveman ate outdoors, therefore New Yorkers should have the pavilion in Central Park," ("The Park Café Sales Pitch," *NYT*, Mar 14, 1962).

<sup>50</sup> "Park Cafe Dispute Reaches N.Y. Court," *Architectural Forum*, Jul 1963, 7-8.

<sup>51</sup> Ada Louise Huxtable, "A New Life in the Parks," *NYT*, Oct 9, 1966. In a more practical critique, Huxtable noted that the architectural model "does not show additional areas that must be gouged out of the park for deliveries, parking, garbage disposal and assorted ugly, space-consuming services." Ada Louise Huxtable, "More on How to Kill A City," *NYT*, Mar 21, 1965. The *Times* hated the project from the start, when the editorial board called it "a wasteful, land-consuming, tree-destroying, bench-removing bauble." "Eating Mr. Hartford's Cake," *NYT*, May 21, 1960.

<sup>52</sup> Huntington Hartford Pavilion brochure, 1962, NYPL.

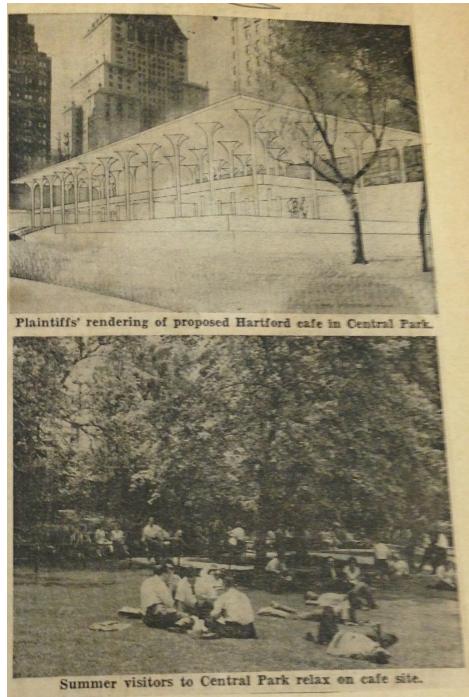


Image 5.3: The Imposition of the Huntington Hartford Pavilion on the Central Park Landscape<sup>53</sup>

The plaintiffs, who submitted the top portion of Image 5.3 into evidence in court, wrote, “To the extent that some of the persons paying to eat and drink in this sidewalk café might happen to have a view of the Park, many more persons actually using the park or passing to and from on the nearby congested streets will be deprived of such view.”<sup>54</sup> And the bottom image makes clear what would be lost by the construction: “Summer visitors to Central Park relax on café site.”

Opponents of the Huntington Hartford Café attempted to establish in court that the corner of Central Park at 59<sup>th</sup> Street and Fifth Avenue was in fact “useful” in the scheme of the park as defined by Olmsted. The former head of the Minneapolis Park system cited Olmsted when he testified that “the primary purpose of Central Park ‘is to bring into the City a part of the natural

<sup>53</sup> “Moses Asked for Baseball Stadium; Hartford Gave Him a Café Instead,” *Manhattan East*, Jul 11, 1963.

<sup>54</sup> New York Supreme Court, Appellate Division—First Department, Appellants’ Brief, 795 Fifth Ave Corporation v. City of New York (1964), 47, PCR 18:5. The Citizens Union was also concerned with the experience of the view from the street. In an amicus brief the CU wrote, “The restaurant would effectively interfere with the view of a great many more passers-by who now enjoy an unobstructed view of the park, and who would be faced with an eating place.” Memorandum of Amicus Curiae of Citizens Union of the City of New York in Support of Appellants, 795 Fifth Ave Corporation v. City of New York, New York Supreme Court, Appellate Division—First Department (Jan 23, 1964), 2, RCW LV:5.

landscape...”<sup>55</sup> William H. Whyte summarized Olmsted, testifying that “‘where the buildings begin, the park ends,’ and he referred to Olmsted’s emphasis upon having as few buildings as possible in the Park...The original Greensward plan of Olmsted upon which Central Park was constructed was introduced in evidence.”<sup>56</sup> In an amicus brief, the Municipal Art Society quoted Olmsted to argue that, “The original purpose in the planning of Central Park was to provide a ‘continuous landscape of expansive spaciousness in contrast to ordinary urban conditions.’”<sup>57</sup>

Justice Jacob Markowitz offered his own interpretation of Olmsted, saying that while the Greensward Plan set forth the rural nature of the park,

The fact is, that Olmstead [sic] himself later recognized limitations to this view when he said in a speech before the American Social Science Association in Boston, in 1870, that ‘It will be found not a very simple matter to determine...what forms of...recreation’s opportunities can be provided in a large town, consistently with good order, safety and economy of management.’

Besides, the judge pointed out, Olmsted’s design theories were not legally binding.<sup>58</sup>

The judge’s interpretation of Olmsted significantly misreads the passage quoted above from *Public Parks and the Enlargement of Towns*, in which Olmsted argued that the large park is a built form with a singular social value that cannot be achieved in other spaces. The purpose of a large pastoral park, such as Central Park, was not active recreation, but rather beauty in the service of urban civilization. But the value of Olmsted as an authority is only as powerful as the institution that interprets his meaning. After Huntington Hartford sent a letter to the Municipal Art Society insisting that his gift was a proper park purpose because Olmsted and Vaux had planned for refreshment in the park, Albert Bard (by then a 93-year-old veteran of countless preservation fights, whose memory

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<sup>55</sup> Appellants’ Brief, 1964, 17, PCR 18:5.

<sup>56</sup> Appellants’ Brief, 1964, 21-22, PCR 18:5. The actual quote from Olmsted, taken from *The Spoils of the Park* (1882), states, “Where building for other purposes begins, there the park ends,” referencing his concept of the *primary purpose* of a park, i.e. the provision of expansive scenic beauty as a site for receptive recreation.

<sup>57</sup> Municipal Art Society Brief of Amicus Curiae, Supreme Court of the State of New York, Appellate Division—First Department, 795 Fifth Ave Corporation v. City of New York (Apr 7, 1961), 4, PCR 18:5.

<sup>58</sup> 795 Fifth Avenue Corporation v. City of New York, 242 N.Y.S.2d 961, 971 (1963).

extended back to the end of the “Greensward era”) reminded the MAS Board of Directors of the history of those plans:

1) The plans were afterwards changed to eliminate these buildings; 2) The original concession to buildings in the park by Olmsted & Vaux was at a time when the area around the park was not the highly developed urban territory that it has since become. We need only surmise what Olmsted & Vaux would say today ... Obviously they would advise against any more buildings in Central Park.<sup>59</sup>

But just as Huntington Hartford could not use Olmsted to sway MAS and its keen historical interpreters, MAS could not sway the court to apply a particular interpretation of the designer’s writing to guide contemporary park use.

The Huntington Harford Café was never built, but from a park preservationist view the victory was pyrrhic. In 1965, the New York State Court of Appeals issued a final ruling in favor of the city. The justices stated that the disagreement about the site was a “mere difference of opinion” and “not a demonstration of illegality” on the part of the Commissioner.<sup>60</sup> Although Harmon Goldstone recalled the preservationist effort as a victory against Hartford’s plan—“[W]e fought him and fought him, and we won”<sup>61</sup>—the State Supreme Court, the Appellate Division of the State Supreme Court, and the New York State Court of Appeals all found that the construction of the café was lawful.<sup>62</sup> There is now precedent in case law reaffirming the restaurant as a park purpose.<sup>63</sup>

The lawsuit functioned as so many do—death by delay. Mayor Lindsay, who had campaigned in his *White Paper* against the café, assumed office on January 1, 1966, before construction contracts could be drawn up. With the change of mayoral regime, Hartford and

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<sup>59</sup> Bard to MAS, May 2, 1960, ASB 79:3.

<sup>60</sup> 795 Fifth Avenue Corporation v. City of New York, 15 N.Y.2d 221, 226 (1965).

<sup>61</sup> Anthony C. Wood, “An Interview with Harmon Goldstone,” *Village Views* 4, no. 3 (1987): 24.

<sup>62</sup> New York State Supreme Court, Aug 26, 1963 (795 Fifth Avenue Corporation v. City of New York, 242 N.Y.S.2d 961), Appellate Division of the State Supreme Court, Mar 26, 1964 (unanimous finding in favor of defendants issued without comment), and New York State Court of Appeals, Mar 11, 1965 (795 Fifth Avenue Corporation v. City of New York, 15 N.Y.2d 221).

<sup>63</sup> The New York State Office of Parks, Recreation and Historic Preservation cites the case as an example of “non-alienation” that affirmed, “legislative approval was not required for construction of a café and restaurant in Central Park.” *Handbook on the Alienation and Conversion of Municipal Parkland in New York* (Mar 2012), <https://parks.ny.gov/publications/documents/AlienationHandbook.pdf>, 12.

architect Edward Durell Stone made their case to Commissioner Hoving. But Hoving, with the guidance of Henry Hope Reed, stated that, “In the judgment of my park administration [the café] is not going to benefit the city and that’s it...We just have to be resolute about some things. One, two, three—bang!”<sup>64</sup> Hoving decided that the restaurant was on “the periphery of the park where it is least needed,”<sup>65</sup> and he asserted his decision as rooted in the legal capacities of the commissioner. Mayor Lindsay’s final say was simply that the café “would not be in the best interests of the City as far as the use of Central Park land is concerned.”<sup>66</sup>

The Municipal Art Society had submitted an amicus brief to the court in the café case, explaining its interest as, “more than a question of whether the café is a good thing. It concerns the whole question of who should decide such matters...the question of whether our parks can undergo major changes at the whim, however well-intentioned, of any man who happens at the moment to be Park Commissioner.”<sup>67</sup> The years of legal wrangling plainly reasserted that there was indeed one person with the (legal) prerogative to speak for the best interests of citizens in the park, but the window for that person to speak is constrained by the temporal interference of other actors.

#### Adele Levy Memorial Playground in Riverside Park

“They don’t throw beer cans and debris into the playground at 103<sup>rd</sup> Street in Riverside Park any more,” began the dispatch from a *New York Times* reporter in the summer of 1960, observing the work of the Riverside Play Group in action.<sup>68</sup> The playgroup was founded that summer with the support of the Bloomingdale Conservation Project (BCP) (a city-supported housing and

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<sup>64</sup> The *Times* reported that Henry Hope Reed accompanied Hoving and counseled him with “an unequivocal ‘no.’ ‘You let them in, you’ll have to let everyone in.’” “Park Café Plan Appears Doomed,” NYT, Feb 16, 1966.

<sup>65</sup> Hoving to Lindsay, Jan 7, 1966, MANY, John V. Lindsay Department Files (Parks) 1966-1973 Roll 92, Box 64: 806.

<sup>66</sup> Lindsay to Hoving, June 20, 1966, MANY, John V. Lindsay Department Files (Parks) 1966-1973 Roll 92, Box 64: 806.

<sup>67</sup> *News of the Municipal Art Society*, Mar 1961, GRL Folder: Newsletter 1961-1968.

<sup>68</sup> “Shouts of Children Echo Again in Revived Uptown Playground,” NYT, Aug 8, 1960.

neighborhood stabilization initiative),<sup>69</sup> working in collaboration with city agencies and charitable foundations.<sup>70</sup> But the park's few indoor facilities were unheated, forcing the group into a winter hiatus.<sup>71</sup>

The next spring, the Riverside Play Group sponsors began discussions to secure permanent facilities that would support year-round, supervised recreation.<sup>72</sup> In June 1961, Bloomingdale staff and representatives from the city Health Department, City Planning Commission, United Neighborhood Houses and local parent and youth organizations met to discuss how a new park facility could transform Riverside Park at 103<sup>rd</sup> Street into "an integral part of the lives of the members of the community."<sup>73</sup> The group contacted Audrey Hess, who had previously worked to bring a creative play structure, designed by sculptor Isamu Noguchi, to the United Nations.<sup>74</sup> At the behest of the BCP, Hess engaged Noguchi and architect Louis Kahn to undertake the design of "an all-weather multi-functional structure, offering attractive design to satisfy diverse neighborhood needs."<sup>75</sup>

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<sup>69</sup> The BCP, working from 100<sup>th</sup> to 104<sup>th</sup> Street, and Amsterdam Avenue to the Hudson River, was part of Mayor Wagner's Neighborhood Conservation Program, which targeted specific neighborhoods "before they become so bad that slum clearance becomes the only answer" ("What is the Neighborhood Conservation Program?" Park-Hudson Urban Renewal Citizens' Com., n/d, LNH 2:16). In addition to housing preservation, building code enforcement and tenant organizing, "The major role of the conservation project...is to give leadership, to help strengthen healthy family life, to establish good children's programs..." (Bloomingdale Family Program Riverside Play Group, Advisory Com. meeting minutes, Feb 21, 1961, UNH 96:13).

<sup>70</sup> Bloomingdale Family Program, Mar 10, 1961, UNH 96:9. The Riverside Play Group was sponsored by the BCP, United Neighborhood Houses, Grosvenor Neighborhood House, and Master's Institute. Among its responsibilities, the BCP secured Park Department play leaders and restroom attendants, police enforcement, a parent facilitator from the city Health Department, equipment donations, and the support of local volunteers.

<sup>71</sup> The Park Department would not allocate staff outside of the summer months because of the lack of heated facilities. BCP meeting with Park Department, Mar 17, 1960, LNH 2:7.

<sup>72</sup> Conference on Park Opening, Mar 22, 1961, UNH 96:9.

<sup>73</sup> Audrey Hess to Raymond Rubinow, Jun 17, 1961, UNH 38:5.

<sup>74</sup> On Robert Moses's successful effort to halt the Noguchi UN playground, see Shaina D. Larrivee, "Playscapes: Isamu Noguchi's Designs for Play," *Public Art Dialogue* 1, no. 1 (2011).

<sup>75</sup> BCP press release, Aug 21, 1961, UNH 38:5. Brudney wrote to Harris that Frank Caplan (of Creative Playthings Foundation) "persuaded" Kahn to work with Noguchi. Brudney to Harris, Jul 12, 1961, UHN 38:5.

Park Commissioner Newbold Morris initially balked at the scope and cost of the project,<sup>76</sup> but Audrey Hess and family agreed to contribute \$500,000 in honor of her aunt, the late Adele Rosenwald Levy, a patron of the arts and children's causes.<sup>77</sup> With the support of the Mayor (contacted personally by Helen Harris, Director of the United Neighborhood Houses, which served as the fiscal agent for the playground and a sponsor of the BCP),<sup>78</sup> Park Commissioner Morris guided the Levy Memorial Playground gift through the city acquisition process. In October 1962, the Board of Estimate approved the contract for Kahn and Noguchi's services.<sup>79</sup>

Playground advocates made two consistent arguments for the Levy Memorial Playground: 1) it would open up Riverside Park to expanded use, and 2) it would serve *all* neighborhood residents, offering an integrated space and a vision of urban life worth supporting at a time when middle-class families were fleeing the city.<sup>80</sup> The promotion of "expanded use" began with the assertion that the park was unused or underused. An early project press release stated that "miles of unused park area beset" Kahn and Noguchi as they surveyed the future playground site. Helen Harris believed that the new play area "would greatly broaden the park's *usefulness to the entire community*. As the park now stands, its steep slopes are only occasionally the scene of summer picnicking and winter sleighriding."<sup>81</sup> Supporters argued that those steep slopes made it difficult for mothers with children, particularly those who had already walked the half mile from the Frederick Douglass Houses on Amsterdam Avenue, to navigate the park; working parents, who could not accompany their children

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<sup>76</sup> Helen Harris, director of United Neighborhood Houses, was also an old friend of Newbold Morris through his work on the board of directors of the Henry Street Settlement. Morris's assessment was that the project (and its budget) had "grown greatly in scope from the original plan" that he had previously discussed with Harris. Morris to Harris, Dec 14, 1961, UNH 38:5; Morris to Harris, Feb 20, 1962, UNH 38:5.

<sup>77</sup> Hess to Morris, May 23, 1962, UNH 38:5. Adele Levy (daughter of Julius Rosenwald) served for 20 years on the board of trustees of MoMA, and was a founder of the Citizens Committee for Children. Levy died in 1960.

<sup>78</sup> Mayor Wagner wrote to Helen Harris that after meeting with her he had "instructed Commissioner Newbold Morris to take the necessary first steps in the formal consideration of this proposal," Mar 13, 1962, UNH 38:5.

<sup>79</sup> Morris walked Harris through the process of ensuring that the Levy gift would be accepted by the Board of Estimate and the CPC. Morris to Harris, Apr 30, 1962, UNH 38:5; Morris to Harris, May 21, 1962, UNH 38:5.

<sup>80</sup> Neighborhood Council for the Redevelopment of Riverside Park memo, Dec 11, 1963, UNH 254:5.

<sup>81</sup> Harris to Richard D. Peters (editor, *World-Telegram & Sun*), Oct 10, 1963, UNH 38:6 (emphasis mine).

to the park, did not want them playing out of view of the street on the unsupervised terrace, making the existing Riverside Park play area “among the most under-utilized in the City.”<sup>82</sup>

While playground proponents argued that the play sculpture would correct for underuse, the opposing (and oppositional) Riverside Parks and Playgrounds Committee (RPPC) saw a park that offered irreplaceable recreation for thousands: “The slopes of Riverside Park, with their grass and trees, are precious to all members of our district...They are used summer and winter by men, women, and children of all ages for playing, strolling and relaxing.”<sup>83</sup> The RPPC extolled the hillside diversions on land that would be destroyed by the playground.<sup>84</sup> The editorial board of the local *Morningsider* consistently opposed the Levy Playground. The RPPC reprinted one such editorial in a pamphlet, and asked, “Why Are We Fighting to Save Riverside Park? ...We prefer grass and trees to concrete...For the families who have used this as a picnic area in summer, for the sled riders and the walkers, for the strollers of all ages, for toddlers to whom this is the only grassy crawl-and-walkway for miles, tar and concrete will offer a poor substitute.”<sup>85</sup>

While the Adele R. Levy Memorial Committee promotional material shows the abstract and decontextualized forms of the proposed playground (Image 5.4), the Riverside Parks and Playgrounds Committee circulated pamphlets showing the uses and views of the park that would be lost to the play sculpture (Image 5.5).

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<sup>82</sup> Charlotte Frankenthaler statement for CBS radio, Nov 1963, UNH 38:6.

<sup>83</sup> Report to the Citizens of New York on the Proposed Riverside Park Recreational Complex, Riverside Parks & Playgrounds Committee, Feb 25, 1963, UNH 38:11.

<sup>84</sup> Riverside Parks and Playgrounds Committee, “The Destruction of a Neighborhood Park—And What You Can Do to Stop It,” Mar 1966, UNH 38:11.

<sup>85</sup> Riverside Parks and Playgrounds Committee, “Why Are We Fighting to Save Riverside Park?,” 1963, UNH 38:11.

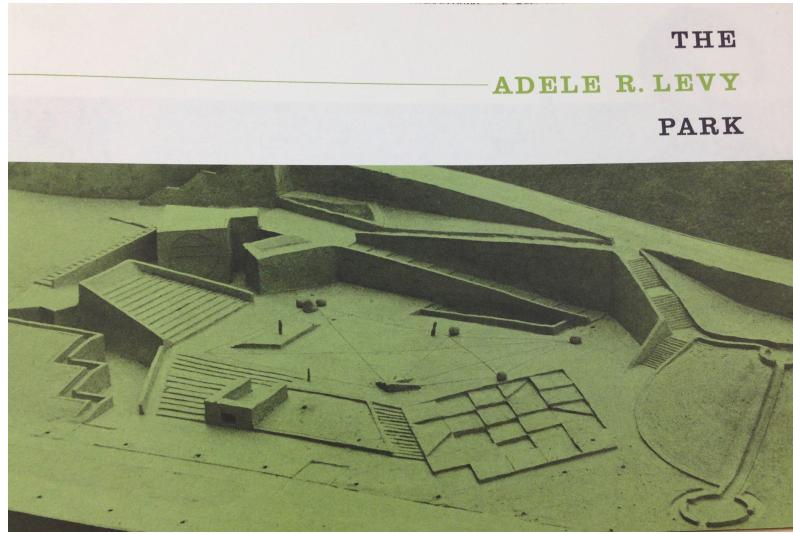


Image 5.4: The Adele R. Levy Memorial Committee Promotional Material, circa 1963  
 Image source: Social Welfare History Archives, University of Minnesota Libraries; used courtesy of the United Neighborhood Houses of New York<sup>86</sup>



Image 5.5: Riverside Parks and Playgrounds Committee Flier, 1963<sup>87</sup>  
 Image source: Social Welfare History Archives, University of Minnesota Libraries; used courtesy of the United Neighborhood Houses of New York

Commissioner Hoving introduced the defense of Olmsted and Vaux's design into the fight against the Levy Playground in Riverside Park, a debate that had previously been staked almost

<sup>86</sup> The Adele R. Levy Park Committee, *The Adele R. Levy Park* (brochure), circa 1963, UNH 38:10.

<sup>87</sup> Riverside Parks and Playgrounds Committee flier, circa 1963, UNH 38:11. To accompany the picture in Image 5.5 (above), the editors of the *Morningsider* wrote, "We were in the park last Sunday, dreaming away our few free hours as we do almost every week from early Spring to late Fall. We tried to visualize concrete additions in assorted locations in the park and the pictures left us cold." *Morningsider* editorial, Oct 10, 1963, reprinted by the Riverside Parks and Playgrounds Committee, UNH 38:11.

exclusively on competing claims of “community” benefit. In the *White Paper* Hoving wrote that Riverside Park, “designed by Frederick Law Olmsted,” was being “threatened by encroachment” by the Levy Playground.<sup>88</sup> Hoving recalled a visit to 103<sup>rd</sup> Street in Riverside Park that would inform his opposition to the Levy Memorial in the *White Paper*: “On a wintry afternoon after a six-inch snowstorm I visited the hilly site and saw dozens of sledders, some continuing to sled after dark holding flashlights in their teeth.”<sup>89</sup>

After Hoving introduced the legacy of Olmsted into the Levy Memorial Playground debate, the Park Association, previously silent on the playground, spoke up. In February 1966, Executive Director Sheldon Oliensis wrote to Commissioner Hoving that Riverside Park “provides a vista to the west across the naturally sloping lands to which the masterful talents of Frederick Law Olmsted have been applied...In our opinion, any such facility would be inconsistent with the architecture of the Park and needlessly destructive of its scenic values....”<sup>90</sup>

Before this moment, Juliet Brudney, director of the BCP, had been the only person to take up the design legacy of the park as an argument for its contemporary use. Completely overlooking Olmsted, she attributed the poor condition of the park to Robert Moses—to argue *for* redevelopment:

The present sleigh riding, sunning slope was built, like the rest of our Park, by Robert Moses. Everyone favors a grassy area for sleigh riding and sunning. There is no reason to believe that the present slope is the only and best possible slope....As a sledding and sunning enthusiast, I know that this slope could be replaced one block north or one block south because I know that Robert Moses isn’t one of the best Park designers in this world.<sup>91</sup>

The designation of Riverside Park as a scenic landmark in 1980 established the park as an Olmsted and Vaux creation, and has guided questions of subsequent park development through

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<sup>88</sup> John V. Lindsay, “Parks and Recreation White Paper” (1965).

<sup>89</sup> Thomas Hoving, “Chapter 25: The White Paper,” *Artful Tom, a Memoir* (2009), <http://www.artnet.com/magazineus/features/hoving/artful-tom-chapter-twenty-five6-3-09.asp>. Once in office, the Lindsay administration would vacillate in its support for the project.

<sup>90</sup> Oliensis to Hoving, Feb 9, 1966, PCR 5:1.

<sup>91</sup> Brudney to Hon. William Fitts Ryan, House of Representatives, May 21, 1963, LNH 2:21.

reference to their original design. But architectural historian Elizabeth Cromley argues that the Olmsted and Vaux designation effaces the history of the park as an ongoing project of many designers interacting with many (diversely organized) interests. Olmsted and Vaux indeed designed the layout of the parkway system that curves through the upper heights of the park. Olmsted wrote that the design of the system of roads was based “on the presumption that it will be used for the same purpose as the Park—that is to say, as a pleasure resort. The advantage of the Riverside territory for this purpose lies in its command of views over the Hudson, which at several points are of great interest, and in its airiness.”<sup>92</sup>

But the park was variously designed by Robert Moses, the railroads, and topography, as well as by Olmsted and Vaux.<sup>93</sup> The park contains City Beautiful features, such as Grant’s Tomb and the Soldiers’ and Sailors’ Monument; and recreation space that was created when Robert Moses “marshaled the resources to complete landfill, railroad roof, highway, playgrounds, and replanting, all in a mere three years from the time he took office.”<sup>94</sup> Cromley argues that in turning away from the complex history of the park we lose the possibility of alternately grounded historical guidance for contemporary debates about park management, use, and funding.<sup>95</sup> In the context of the fight over the (thwarted) construction of the Westway Highway, Cromley suggested that instead of attending exclusively to the preservation of an Olmsted landscape, people might look at the history of the park as it was constructed through opportunistic builders who used the development of transportation infrastructure to extend the park, and use that as inspiration to e.g. leverage a park expansion deal as a compromise for highway construction.

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<sup>92</sup> Frederick Law Olmsted, “Report of the Landscape Architect upon the Construction of Riverside Park and Avenue” in *Landscape into Cityscape: Frederick Law Olmsted’s Plans for a Greater New York City*, ed. Albert Fein (Ithaca, NY: Cornell University Press, 1967), 344-45.

<sup>93</sup> Elizabeth Cromley, “Riverside Park and Issues of Historic Preservation,” *Journal of the Society of Architectural Historians* 43, no. 3 (1984).

<sup>94</sup> Cromley, 1984: 246. Moses added 132 acres of landfill to the park (<https://riversideparknyc.org/history-of-park>).

<sup>95</sup> Cromley, 1984: 247.

The Levy Memorial Playground was thwarted by sand in the planning gears.<sup>96</sup> On December 29, 1965, two days before leaving office, Mayor Wagner signed the construction contracts for the playground. He stated that it was among his proudest accomplishments.<sup>97</sup> Lawyers for the Riverside Parks and Playgrounds Committee promptly filed a motion to enjoin construction. In late April 1966, the New York State Supreme Court ordered a temporary injunction based on a funding technicality.<sup>98</sup> The judge allowed the city to re-advertise bids, and he explicitly refused to consider the plaintiff's allegations concerning inappropriate park uses, finding that playground construction was clearly within the purview of the Commissioner.<sup>99</sup> However, the rebidding process also came in over-budget, and the RPPC threatened again to sue. After six years of dealing with wavering city support, picketing, and court cases, the anchor donors disbanded the organizing committee.<sup>100</sup> When Newbold Morris was Commissioner he had offered his support for the project in similar terms to the playground advocates, “[T]he new facility will make the recreation area more accessible to the mothers of small children in the neighborhood as well as teenage and golden age groups and thus help the utilization of the park area.”<sup>101</sup> Morris had been adamant that an all-season recreation building “is a perfectly acceptable use of park land and has been for years,”<sup>102</sup> and as Commissioner he could determine such matters. The court agreed, but the commissioner changed.

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<sup>96</sup> Noguchi recalled that Hoving explained that he cancelled the contract, “because that was one of Lindsay’s campaign promises.” Oral history interview with Isamu Noguchi, Nov 7 – Dec 26 1973, Archives of American Art, Smithsonian Institution, <http://www.aaa.si.edu/collections/interviews/oral-history-interview-isamu-noguchi-11906>.

<sup>97</sup> Robert F. Wagner, Draft Statement, Adele Levy Memorial Park, Feb 16, 1966, LNH 2:22. Mayor Wagner was an honorary chairman of The Adele R. Levy Park Committee, the project fundraising committee.

<sup>98</sup> Construction contracts came in \$99,533 over the combined contributions of the Levy Memorial Fund and city appropriations. A local law prohibited the construction of capital projects that had not secured full funding. “Funds Low, Costs High, Judge Bars Playground,” *New York Post*, Apr 27, 1966.

<sup>99</sup> The judge wrote that the “plaintiff’s attack on the feasibility and desirability of the proposed recreational area need not detain us. It is well settled that such matters of judgment are confided to the determination of the duly elected or appointed city officials.” *Davis v. City of New York*, 50 Misc.2d 275, 278 (N.Y. Misc. 1966).

<sup>100</sup> Memo to the Adele R. Levy Park donors from Mrs. Max Ascoli, Nov 1, 1966, UNH 38:10.

<sup>101</sup> Newbold Morris, quoted in *Davis v. City of New York*, 50 Misc.2d 275, 278 (N.Y. Misc. 1966).

<sup>102</sup> Newbold Morris to CBS (draft, n/d), UNH 38:6.

## Columbia University Gymnasium in Morningside Park

In 1959, Columbia University approached the City of New York with a proposal to build a new gym for the school on 2.2 acres of land within Morningside Park. The building would cut into the park's rock face, with access for Columbia University from the western heights of Morningside Drive. In exchange for the 99-year lease of city parkland, Columbia offered to dedicate 12% of the building to a facility that would be accessible to Harlem neighbors from the lower reaches of the park.<sup>103</sup> The plan, according to Harmon Goldstone, was “financially astute, legally impeccable, administratively stupid, architecturally monstrous and morally indefensible.”<sup>104</sup> It was symbolically ripe for opposition from Harlem neighbors, Columbia land-grab detractors, and civil rights leaders; there are extensive reflections on the demise of the gym in the context of Columbia/Harlem relations, Morningside Heights Urban Renewal, personal histories, and student activism.<sup>105</sup> It was student activists in 1968 whose actions led to the suspension of construction work.

Gym promoters claimed that they would replace “useless” land with a community resource. Columbia University Professor of Architecture George Collins, an opponent of the gym proposal, reported that, “I am told by our administration that the ‘uselessness’ of the 113<sup>th</sup> Street site is their major arguing point.”<sup>106</sup> This was indeed a prominent talking point. The Columbia University administration argued that the gym would offer recreational opportunities, supplanting “useless rock escarpment”—“an otherwise completely wasted cliff in Morningside Park”—with a new recreational

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<sup>103</sup> The proportion increased to 15% when Columbia offered a community pool in 1967 to appease protesters. “Columbia Offers Harlem a Pool, But Gym Proposal Is Assailed,” *NYT*, Jul 30, 1967.

<sup>104</sup> Harmon Goldstone letter to editor, *NYT*, May 31, 1968.

<sup>105</sup> E.g. Jerry L. Avorn, *Up Against the Ivy Wall* (New York: Scribner, 1968); Stefan M. Bradley, *Harlem vs. Columbia University: Black Student Power in the Late 1960s* (Urbana: University of Illinois Press, 2009); Fact-Finding Commission on Columbia Disturbances, *Crisis at Columbia* (New York: Vintage Books, 1968); Joanne Grant, *Confrontation on Campus* (New York: Signet, 1969); Roger Kahn, *The Battle for Morningside Heights* (New York: William Morrow, 1970).

<sup>106</sup> George Collins to Thomas Hoving, Feb 14, 1966, CCC 8:3.

facility.<sup>107</sup> In a press release just weeks before the campus disruptions, the University touted the community recreation benefits of placing a gym on “a large rock outcropping, on unused land...”<sup>108</sup> Columbia President Grayson Kirk described the gym as a “project in which we who are at Columbia see so clearly an undertaking of truly useful service to the neighboring community...I would stress again that the athletic values so important in an urban environment are much in our minds.”<sup>109</sup> One promotional brochure told the story of “Bobby Smith,” a “real boy of West Harlem,” who had gained self-confidence and a better attitude through Columbia-sponsored sports programs in Morningside Park.<sup>110</sup> The Park Association refused to take a public stand on the gym at the height of the 1968 disruptions, but had earlier endorsed the project as an important recreational amenity: “As noted in Governor Rockefeller’s recent message, the need for parks as places of recreation is indeed pressing. The proposed gymnasium building, with its community recreation center, to be built upon *otherwise recreationally unusable park land*, will help satisfy that need, and will be of great benefit to the neighboring community, and therefore, indirectly, to the entire City and State.”<sup>111</sup> After the protests, Columbia Provost David B. Truman saw the loss of gym as loss for Harlem youth.<sup>112</sup>

Preservation organizations such as MAS opposed the gym “in principle to any diversion of park land from park purposes,” and to preserve the scenic views of the Cathedral of St. John the Divine, which the gym would impair.<sup>113</sup> In 1961, Citizens Union Executive Secretary George Hallett testified to the Board of Estimate, urging its members to deny the parkland lease, “It is said that

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<sup>107</sup> Wesley First to University Community, Feb 9, 1966, CCC 8:3.

<sup>108</sup> Columbia University Office of Public Information, “The Columbia and Community Gymnasium: A Background,” Mar 8, 1968, CCC 8:10.

<sup>109</sup> Kirk to Goldstone, Jul 25, 1961, PCR 4:47.

<sup>110</sup> “Partners in the Park,” Mar 1968, CCC 3:6.

<sup>111</sup> Park Association memo, n/a, Mar 21, 1960, PCR 4:47 (emphasis mine). With a new president in 1961, the Park Association position seems to have shifted to oppose the gym (“Lawyer Named Head of Park Association,” NYT, May 11, 1961). On the Park Association’s 1968 gym stance, see Auchincloss to Vogt, May 29, 1968, PCR 4:57.

<sup>112</sup> Grant, 1969, 31.

<sup>113</sup> *News of The Municipal Art Society*, Oct 1961, GRL Folder: Newsletter 1961-1968.

[Morningside's] cliffs serve no 'practical use'; but they do delight the eye from near and far."<sup>114</sup> The Citizens Union requested that Columbia provide a scale model of the gym, meant to show the effect of the building on the ability of park-goers to experience scenic views of the Cathedral.<sup>115</sup> (Whitney North Seymour, in his capacity as President of the Fine Arts Federation, also asked Columbia to release a scale model of the proposed gym.)<sup>116</sup> In one particularly effective image, the Citizens Union produced a map of Morningside Park that contained five photographs, shot from various positions within the park landscape. The outline of the proposed gymnasium building is superimposed in red line drawing over each photograph, showing not only the resulting obstruction of views within the park, but also the existing scenery that would be lost to development.<sup>117</sup>

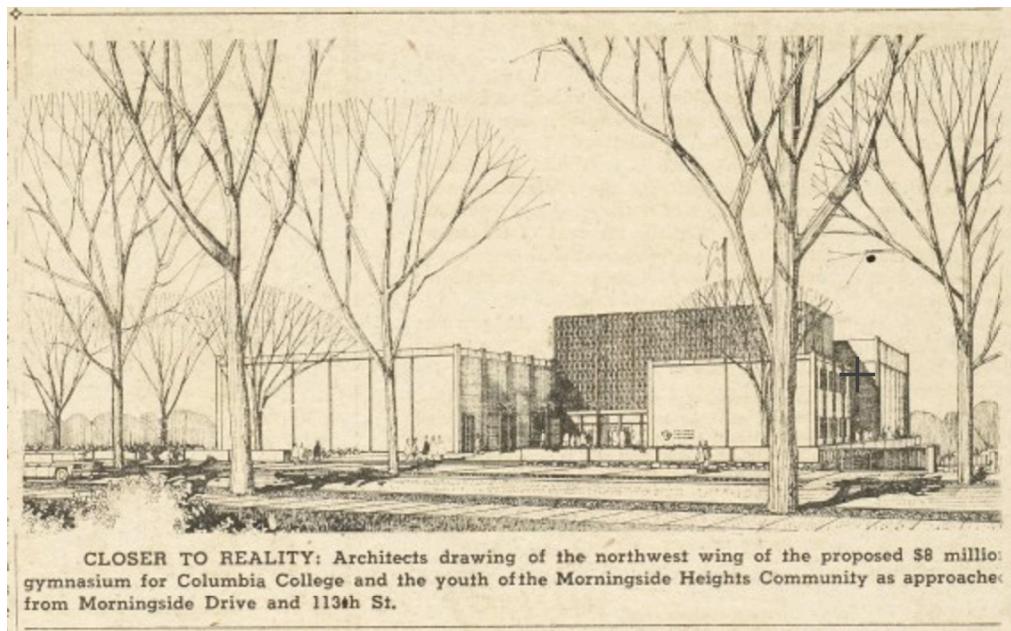


Image 5.6: Proposed Gymnasium in Morningside Park  
From the *Columbia Daily Spectator*, March 31, 1961<sup>118</sup>

<sup>114</sup> Hallett to Board of Estimate, Jul 26, 1961, RCW LII:7.

<sup>115</sup> Ibid.

<sup>116</sup> "Some public spirited people have been concerned about the impact of the new building on the views of the Cathedral," Seymour to Kirk, Oct 13, 1961, WNS 109: Fine Arts Federation May 1961. Albert Bard initiated the FAF request (Meeting minutes of FAF Officers and Directors, Sep 26, 1961, WNS 109: Fine Arts Federation May 1961). Bard criticized the Art Commission for approving the design without a model, Bard to *NYT*, Sep 20, 1961.

<sup>117</sup> Proposed Columbia Gym, Morningside Park (revised May 22, 1961, unsigned). The map resides in a file of Citizens Union papers in Robert Weinberg's archives, RCW LII:7.

<sup>118</sup> "Park Department Approves New Gymnasium," *Columbia Daily Spectator*, Mar 31, 1961. Image used with permission of the Spectator Publishing Company.

In comparison, the architectural sketch published in the *Columbia Daily Spectator* in 1961 (Image 5.6), shows the gym from street level along Morningside Drive. This perspective, from the road that runs the ridge above the park, completely conceals the parkland below. As with the competing models of the Hartford Café, the Levy Memorial Playground, and the Central Park stables, the developers presented their project in abstract space, while opponents contextualized the lost potential to *experience* parkland. Commissioner Hoving also offered people the chance to experience this loss, while demonstrating his knack for publicity, when he hosted a funeral for the park. He outlined the gym footprint in crepe paper, providing a press-worthy visual of the disruption that the building would rend in the park, and he capped off the ceremony by “affix[ing] a funeral wreath on one of the trees to be axed by the park encroachment.”<sup>119</sup> However, Hoving did not have the power to revoke the gym contract.

In 1960, when the Columbia gym was first proposed in public hearings, some local leaders supported the project.<sup>120</sup> By 1968, Harlem had new political leaders, and the gym took on a new meaning in the context of national civic rights struggles. By 1968, the unequal division of space between the university and its neighbors, and the physical placement of a separate entrance for the residents of Harlem below the egress for the Ivy League university would be decried as “the Gym Crow Gym.”<sup>121</sup> Harlem community organizations and political leaders demanded: “Keep Morningside Park for the Community!! Protest Against the GYM Columbia University Will Build On Space NEEDED For Recreation For OUR Children.”<sup>122</sup>

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<sup>119</sup> New York City Department of Parks, Press Release, Apr 21, 1966, [http://home2.nyc.gov/html/records/pdf/govpub/42551966\\_press\\_releases\\_part1.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42551966_press_releases_part1.pdf). See also: “Citizens Protest,” *The Morningside Citizen*, May 6, 1966, CCC 6:9.

<sup>120</sup> See Robert C. Weinberg, “The Columbia Gymnasium Again,” WNYC Comment #143, Oct 15, 1968, CCC 19:5, which claims strong support from Borough President’s Planning Board 10 chair. In a review of articles in *New York Amsterdam News* beginning in 1960, the first coverage that I can find of Harlem community organizations speaking against the gym is in a letter published on Mar 12, 1966 from the West Harlem Community Organization.

<sup>121</sup> Fliers: March 20, 1968 “Torch Light Parade of Protest;” Feb 27, 1968 “Stop Columbia’s Gym Crow,” CCC 8:10.

<sup>122</sup> Public rally flier, n/a, n/d [circa April, 1966], CCC 8:8.

When the gym became a central issue in campus protests during the spring of 1968, students framed their opposition to the broader politics of development and domination, and not the desecration of parkland. Mark Rudd, a leader of Columbia's Students for a Democratic Society, called the gym "one of the most important issues of the student strike, not only because we and the people of Harlem felt the gym itself was segregated and was an insult to the people of Harlem, but because the gym was also symbolic of the whole way in which the university faces the community..."<sup>123</sup> Ada Louise Huxtable entitled an article on Columbia's handling of the situation, "How Not to Build a Symbol."<sup>124</sup>

In the eight years of the gym debate there were two mayors and four parks commissioners. The Park Association had at least three presidents. Albert Bard, a clear source of both moral and aesthetic opposition to the project on the part of MAS, Citizens Union, and the Fine Arts Federation, died in 1963 at the age of 96. Basil Patterson was elected to the New York State Senate in 1966. Percy Sutton served Harlem in the New York State Assembly in 1965 and 1966, and then as Manhattan Borough President (until 1977). Charlie Rangel took over Harlem's State Assembly seat in 1967. Harlem now had political representatives who would call the 85/15 facility split "share cropping."<sup>125</sup> Watts had burned and Malcolm X had been assassinated by the spring of 1967, when State Senator Basil Patterson asked: "Can you imagine what would happen on a hot August night when the community gym is overcrowded and the community people know there is a swimming pool upstairs but that their kids can't use it, only the Columbia students can? Can you imagine the resentment that would cause?"<sup>126</sup> Martin Luther King, Jr., had been assassinated, and there had been

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<sup>123</sup> Mark Rudd, "Events and Issues of the Columbia Revolt," in *The University and Revolution*, Gary R. Weaver and James H. Weaver, eds. (Englewood Cliffs, NJ: Prentice-Hall, 1969), 133. An editor's footnote (pg. 133) clarifies this position, "The gym, which was to be constructed in Morningside Park, would have taken over park facilities used by the black people of Harlem."

<sup>124</sup> Ada Louise Huxtable, "How Not to Build a Symbol," *NYT*, Mar 24, 1968.

<sup>125</sup> Patterson and Rangel letter to Mayor Lindsay, quoted in "Town Vs. Gown' Demo at Columbia," *New York Amsterdam News*, Mar 2, 1968.

<sup>126</sup> "Columbia May Alter Plans for Gym," *NYT*, May 14, 1967.

uprisings in Detroit and Newark when Percy Sutton wrote to President Kirk of Columbia demanding that he call off construction in the park, countering the University's insistence that it could not break construction contracts: "I said, 'Are you telling me your investment of money is more important than possible lives if a conflagration began?'"<sup>127</sup> In light of the protests, and the changed political situation, the University cancelled its plans in March 1969.<sup>128</sup>

### Special Interests and Public Interests in Riverside Park Holocaust Memorials

The Museum of Jewish Heritage, New York City's first large-scale public memorial to the Holocaust, was dedicated in 1997, nearly 50 years after the first organized attempt at public commemoration. Rochelle Saidel recounts the false starts and failed proposals in her history, *Never Too Late to Remember: The Politics Behind New York City's Holocaust Museum* (1996). I focus here on two failed attempts to locate a memorial within Riverside Park: 1) A. R. Lerner's American Memorial to Six Million Jews of Europe, proposed in 1947 and abandoned in 1953; and 2) two independent efforts to promote memorial sculptures by Nathan Rapoport, both proposed in 1964, and both rejected in 1965 by the Art Commission on arguments that revealed the Commission's conceptions of proper park uses and users. (I address the earlier episode because it led to the selection of the memorial site at the heart of the 1965 debate.)

Rochelle Saidel describes the first attempt at public Holocaust commemoration in New York as the "single-handed effort" of A. R. Lerner, a journalist involved in refugee resettlement work through his position as vice president of the National Organization of Polish Jews in New York.<sup>129</sup>

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<sup>127</sup> "Parks Chief Has Plans for Gym Site," *NYT*, May 2, 1968. (This should not have been a shocking argument. The 1968 Kerner Commission Report included "poor recreation facilities" among its causes of civil disorder. New York City Mayor John V. Lindsay served as Vice Chairman of the Commission).

<sup>128</sup> Planning discussions about the future of the site continued into the 1980s. See: Bond Ryder Wilson and Quennell Rothschild Associates, "Morningside Park Conceptual Master Plan" (July 1985), <http://morningsidepark.org/park/MorningsideParkConceptualPlan1985.pdf>.

<sup>129</sup> Rochelle G. Saidel, "The Politics of Memorialization: Creating a Holocaust Memorial Museum in New York City," PhD diss., City University of New York Dept. of Political Science (1992), 94.

Lerner approached New York City Mayor William O'Dwyer, "asking him to find an appropriate site for an 'eternal light' memorial dedicated to the fallen heroes of the Warsaw Ghetto."<sup>130</sup> The request ended up with Park Commissioner Robert Moses, who was unenthusiastic about the light, but supportive of a design by sculptor Jo Davidson and architect Ely Jacques Kahn. Davidson and Moses's deputy, Stuart Constable, selected a site within Riverside Park between 83rd and 84th Streets.<sup>131</sup> However, the Art Commission rejected the design submitted by Davidson and Kahn.<sup>132</sup>

The memorial committee then held a design competition. Robert Moses rejected the "favored" Percival Goodman design, "a 60-foot stone pylon topped by a bronze menorah," because it "did not fit into the character of Riverside Park."<sup>133</sup> According to Arthur Hodgkiss of the Park Department, "We rejected the design because it would remove too much space from the public's daily use of the park. We felt it would take over, rather than fit into, that part of the park."<sup>134</sup> But the Park Department did not reject out of hand the placement of a memorial on the park site; simply the design dimensions. The final design, Ivan Mestrovic and Erich Mendelsohn's Memorial to Six Million Jews of Europe, was similarly outsized, depicting "two eighty-foot high tablets with the Ten Commandments, bordered on the long side by a hundred-foot bas-relief of figures, representing 'the struggle of humankind to fulfill the Commandments.'" The design was approved by the Art Commission in 1951, but never built for lack of funds and political "bickering."<sup>135</sup>

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<sup>130</sup> Saidel, 1992, 95.

<sup>131</sup> Jo Davidson recalled driving with Chief Park Designer Stuart Constable, searching for a suitable memorial site along Riverside Drive, "As we were passing Eighty-Fourth Street I noticed a bearded rabbi leaning over the wall feeding pigeons... The rabbi's presence seemed to point prophetically to the spot for the memorial to the six million slaughtered Jews," *Between Sittings: An Informal Autobiography of Jo Davidson* (New York: The Dial Press, 1951), 352.

<sup>132</sup> Rochelle G. Saidel, *Never Too Late to Remember: The Politics Behind New York City's Holocaust Museum* (New York: Holmes & Meier, 1996), 49. Saidel notes that the sponsoring American Memorial to Six Million Jews of Europe Committee and the Park Department were both displeased with the design of, "a heroic resistance figure, a religious Jew in supplication, and a man helping an injured comrade, along with a slumping dead figure."

<sup>133</sup> Saidel, 1996, 50.

<sup>134</sup> "Memorial Model Shown at Museum," *NYT*, Jan 18, 1950.

<sup>135</sup> Michele Bogart, *The Politics of Urban Beauty: New York and its Art Commission* (Chicago: University of Chicago Press, 2006), 201. A version submitted to the Art Commission on June 7, 1951 was rejected because "the proportions of the piece were not found suitable to the site." On July 16, 1951 a design with modified proportions was approved. This is the version against which Joseph Lewis and the Freethinkers filed a taxpayer's suit for a permanent injunction due to the

In 1964, two independent memorial organizations offered to the city works by the sculptor Nathan Rapoport, proposed to occupy the still-vacant Riverside Park site: 1) a giant (“excessively and unnecessary large” per the Art Commission) Torah scroll inscribed “with bas reliefs of Holocaust episodes”<sup>136</sup>; and 2) a memorial to Artur Zygelboim (who in London in 1943 died by self-immolation, a protest against apathy to the Nazi extermination of Polish Jews), presented to the Art Commission as, “A bronze figure engulfed in thorns and flames, sharply leaning to the front as if about to fall; emerging from the inferno are heads and hands calling to humanity for rescue.”<sup>137</sup>

The Art Commission (vested with chartered powers to review design alterations on public parkland) rejected both proposals. Commission member Eleanor Platt defended the rejection of the Zygelboim memorial, a sculpture “depicted in so tragic a posture that it does not seem to be appropriate for location on park land intended for recreation and relaxation.” When the *Times* pointed out that there were many statues in parks “dealing with violent themes,” Platt contrasted Holocaust commemoration with existing statues: “They’re generally patriotic and have to do with this country holding its own. It’s American history.”<sup>138</sup> Park Commissioner Morris opposed Rapoport’s scrolls (eventually built outside of Jerusalem), stating, “A public park is a place for

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representation of the Ten Commandments on government land (Randolph to Robinson, Re: Memorial to 6 Million Jews, Feb 26, 1973 (PAF Series IV, Subseries A: Box 123: 22)). The Freethinkers suit appears never to have been resolved, as it was thrown out of lower court, and the project was scuttled by the Park Department before the Appellate Court could consider an appeal (“Bid to Halt Memorial to Nazi Victims Denied” *The National Jewish Post*, Feb 8, 1952). Stuart Constable claimed the Memorial committee had “no authority” to build in Morningside Park. Lerner stated that, “as he understood, the validity of the permit depended entirely on his organization’s demonstrating financial capacity to erect the monument.” Constable claimed the permit had been invalid for a year, and that it was revoked because of “bickering and the apparent incapacity to raise the necessary money” (“Permit for Memorial to 6 Million Revoked,” *The National Jewish Post*, May 29, 1953). As Saidel (1992) recounts, Lerner was unable to garner financial support from Jewish organizations, for a number of reasons. An editorial published in *The National Jewish Post* on the same day the permit was revoked hailed the outcome. The *Post* editorial board had previously written in opposition to the Riverside Park memorial “on the grounds that the money could be much more wisely spent than merely in setting up a stone memorial.” They urged readers not to donate to the \$500,000 memorial committee fundraising appeal, arguing that the attention and funds of Jews should support immediate post-war recovery, and not a sculptural project (“Against the Memorial and the Injunction” (editorial), *The National Jewish Post*, Feb 8, 1952).

<sup>136</sup> Saidel, 1992, 114.

<sup>137</sup> “City Rejects Park Memorial to Slain Jews,” *NYT*, Feb 11, 1965.

<sup>138</sup> Ibid. At the time the park contained a of number monuments including a memorial to Joan of Arc (1915; also not American, and met a tragic end), Grant’s Tomb (1897), the Soldiers’ and Sailors’ Monument (1899), and a firemen’s memorial (1913) (<https://www.nycgovparks.org/parks/riverside-park/monuments>).

enjoyment and recreation and not for exposing users of a park to the tragedy and horrors of one of the most dreadful chapters of human history.”<sup>139</sup>

Platt argued that the Rapoport sculptures “would set a highly regrettable precedent” for “other special groups” to propose memorials in parks. Jewish leaders responded with indignation. Rabbi Max Schenk wrote to Mayor Wagner, “I don’t know who the special groups are that [Eleanor Platt] is talking about. We Jews who live in New York do not consider ourselves ‘a special group.’ We happen to be almost three million inhabitants of this city of eight million, an integral part of the warp and woof of America’s greatest community.”<sup>140</sup> But the park preservationists stuck to their classic defenses. Art Commission President Arnold Whitridge stated, “We’ve made our decision. We feel parks are for relaxation and not for the commemoration of massacres.”<sup>141</sup>

Today, the only public sign of these attempts at commemoration is a small plaque, placed in 1947 on the intended memorial site in Riverside Park at 83rd Street, that reads, “This is the site for the American memorial to the heroes of the Warsaw Ghetto Battle April-May 1943 and to the Six Million Jews of Europe martyred in the cause of human liberty.”<sup>142</sup> If you subscribe to the romantic landscape ideology of the preservationists, the park itself is an encounter with nature’s God, a place, according to Robert Makla, that “preserve[s] for all time...a pastoral beauty for leisure, for recreation and for spiritual renewal.”<sup>143</sup> The *Times* editorial board argued that the question was not one of compassion, worth or aesthetics, but simply of sound policy: “The point is the degree to which monuments and memorials should be put in New York parks, and, more basically, if they belong there at all....Within the city’s stone and cornet vise, the natural beauty of the parks is a spiritual gift to all, more than any monument devised by man.”<sup>144</sup>

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<sup>139</sup> Saidel, 1992, 117.

<sup>140</sup> “2 Jewish Leaders Protest Art Ban,” NYT, Feb 12, 1965.

<sup>141</sup> Ibid.

<sup>142</sup> James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993), 288.

<sup>143</sup> Robert Makla letter to editor, NYT, Feb 23, 1965.

<sup>144</sup> “Memorials in Parks,” NYT, Feb 13, 1965.

The memorial sponsors, for their part, bluntly expressed no particular attachment to the idea of constructing the memorial in a park, stating, “We don’t care whether it’s in a park or not in a park.”<sup>145</sup> Some were even concerned that a park, a popular meeting place for common recreation, would normalize and debase the memory of the dead. Rabbi Maurice Davis worried that the memorial “could very well become an empty shell… People might say, ‘I’ll meet you by the statue,’ with as much feeling as they now say, ‘I’ll meet you at Jones Beach.’”<sup>146</sup>

### *The Role of the Art Commission*

The Art Commission (since 2008 the Public Design Commission) is the “custodian of the city’s aesthetic realm.”<sup>147</sup> It is an institution that determines questions of how and what kind of meaning should be conveyed through municipal architecture and design, and how a democratic city should set and adjudicate aesthetic standards for the public realm. Michele Bogart, an art historian and former Art Commission member, describes the Commission as “a republican mediation of unrestrained expression of democratic will and action.”<sup>148</sup> Commissioners must consider the use of public land for particularistic projects such as literal representations of fallen soldiers or other identity- and memory-based shrines. The Commission ultimately resolves such problems on a case-by-case basis, and “was more willing to accept in Staten Island or in Tremont [Bronx] what would not be acceptable in Manhattan.”<sup>149</sup> This means that in practice the city contains a mosaic of public spaces subject to different design standards (and not e.g. a formal operating theory of permissible sidewalk decoration or appropriate sculptural dimensions for parkland memorials).

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<sup>145</sup> “Mayor Promises a Monument Site,” *NYT*, Mar 7, 1965.

<sup>146</sup> Maurice Davis, *The National Jewish Post and Opinion*, Feb 19, 1965. Davis noted that Newbold Morris unintentionally demonstrated this point by referring to a statue of 15<sup>th</sup> century Polish King Wladyslaw Jagiello thus, “There is also a statue of some Polish general—I forget his name, the fellow with the crossed swords over his head—in Central Park.”

<sup>147</sup> Bogart, 2006, 1.

<sup>148</sup> Bogart, 2006, 240.

<sup>149</sup> Bogart, 2006, 222.

The Art Commission was established in the 1898 New York City charter. It is housed under the Office of the Mayor, and I address here the power of the Commission as a mayoral agency. Though the Mayor cannot overrule the Commission, the Mayor appoints seven members, including designated positions for a painter, a sculptor, an architect, and a landscape architect. (The Fine Arts Federation has charter power to submit to the Mayor the list from which these individuals will be selected.) Four ex-officio members also serve on the Commission—the Mayor, and the presidents of the Metropolitan Museum of Art, the New York Public Library, and the Brooklyn Museum.<sup>150</sup>

The Art Commission played an inconsistent role in adjudicating the development proposals for Manhattan's Olmsted and Vaux parks presented in this chapter. When the Commission granted unanimous approval to the Huntington Hartford Café, it "considered merely the question of the design for such a building on that particular site, and gave practically no consideration to the question of the site itself, i.e. another building in Central Park."<sup>151</sup> August Heckscher, who had served on the Art Commission at the time of the Hartford Café vote, remembered that:

It was clearly set forth, and accepted by all of us, that we had no jurisdiction to consider whether such a pavilion was appropriate to the park but only whether the building itself was aesthetically pleasing. We said then: 'If the Park Department decides to put an eating place here, we judge this building to meet adequate architectural standards.'<sup>152</sup>

In his memoir, Heckscher wrote, "We commissioners were instructed by the chairman to judge the proposed Huntington Hartford Café in terms of its design, and not to weigh its appropriateness to a Central Park location."<sup>153</sup> Against this history, Heckscher noted that the deliberation for the Riverside Park memorials was a clear departure from how the Commission had debated the merits of the café. MAS also recognized the new deliberative approach, and offered their congratulations to

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<sup>150</sup> New York City Charter 37 § 851. Mayors have also chosen to fund Commission support staff positions with varying degrees of generosity.

<sup>151</sup> Bard to Seymour, Jun 2, 1960, WNS 135: MAS 1960, 1961, 1962.

<sup>152</sup> Heckscher to Whitridge, Feb 26, 1965, AHP 25:8.

<sup>153</sup> August Heckscher, *Alive in the City: Memoir of an Ex-Commissioner* (New York: Scribner's, 1974), 275.

the Art Commission for exercising independent “aesthetic judgment” in the rejection of the Riverside Park memorials. MAS urged this approach as ongoing policy:

Such move is a reversal of the Art Commission’s stand on what we think is the unfortunate case of the Huntington Hartford Café proposed for Central Park. We hope that the original designs of Olmstead [sic] will be maintained for Riverside Park, as well as his other ones (Central, Morningside and Prospect Parks), and whenever possible, restored.<sup>154</sup>

However, the Art Commission returned to form in 1967 and approved the Central Park stables design on the exclusive basis of architectural sketches of the proposed buildings. Why did the Art Commission vary in its evaluation of the effect of the proposed buildings on the surrounding park environments? I can only speculate. Perhaps they evaluated projects relative to the political stakes of the engaged actors—they didn’t consider the park context in three projects supported by the mayor (the Hartford Café, the Columbia gym, and the Central Park Stables), but did consider the park when evaluating the independently proposed plans of Jewish civic organizations. Saidel argues that the memorials failed because “the idea of memorialization was not then of interest to the organized Jewish community and did not yet have any political value for American government officials.”<sup>155</sup>

The power of the Art Commission was also ambiguous and tenuous, vacillating with the resources and support that the Commission received from each mayor. The political stakes of opening up a “clarifying” debate could potentially undermine the power of the entire Commission. In the Hartford case, Albert Bard argued that the Commission had failed in its chartered duty to evaluate the project “in relation to existing developments in the vicinity.” Central Park, according to Bard, was certainly an “existing development.”<sup>156</sup> Bard wanted to extend the Commission’s jurisdiction to site-specific considerations. However, Whitney North Seymour, Sr. (who along with

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<sup>154</sup> Cavagliari to Whitridge, Mar 8, 1965, WNS 135: MAS 1963-65. MAS delivered a similar message to Commissioner Morris, who responded by “kidding the MAS for being old fashioned in trying to preserve Olmsted’s original design[s]” MAS Board of Directors minutes, Mar 29, 1965, AHP 38:4.

<sup>155</sup> Saidel, 1996, 43.

<sup>156</sup> Bard to Seymour, Jun 2, 1960, WNS 135: MAS 1960, 1961, 1962.

Bard was a member of the Fine Arts Federation) feared that proposing a change “would at once encounter opposition from the Park Department, and might actually result in a weakening of the Art Commission’s position.”<sup>157</sup> Five years later, August Heckscher feared the same; the Commission might “take the position that the park, or specific areas of the parks, are to be treated (as indeed Olmsted intended they should) as works of art,” placing the determination about the appropriate uses of parks under the jurisdiction of the Art Commission. But he worried that this would ensnare the Commission in controversies and threaten its “prestige.”<sup>158</sup>

Bogart describes an episode during the Giuliani administration (1994-2001) in which the Art Commission attempted to reign in Parks Commissioner Henry Stern, who in an odd nod to “broken windows” planning was placing 800 yardarm flagpoles in parks across the city—without the permission of the Commission. (The Art Commission “has no jurisdiction until...plans are submitted” and no formal authority to demand agency compliance.)<sup>159</sup> When the Commission tried to remove a flagpole from a park in Staten Island, the local councilmember “initiated a bill to abolish the ACNY.”<sup>160</sup> (The “art artists” had struck again, confiscating the American flag.) Mayor Giuliani had served as Assistant U.S. Attorney for the Southern District of New York under the leadership of Whitney North Seymour, Jr., former president of the Park Association and former member of the ACNY. Bogart recounts the preservationists calling in all of their connections to save the institution. This reaffirmed the status of the Commission as beholden to mayoral prerogative.<sup>161</sup>

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<sup>157</sup> Meeting of Officers and Directors, Fine Arts Federation, May 4, 1961, WNS 109: Fine Arts Federation May 1961.

<sup>158</sup> Heckscher to Whirridge, Feb 26, 1965, AHP 25:8.

<sup>159</sup> I. N. Phelps Stokes (President, Art Commission) to FLO Jr., Mar 11, 1930, OAR 503:4. Phelps complained that the Art Commission received a phone call, with no prior notice, “that all of the trees were being cut down” in Union Square Park. At that point, the Commission had no capacity to intervene.

<sup>160</sup> Bogart, 2006, 237.

<sup>161</sup> For a full discussion of the Art Commission as a mayoral agency see Bogart, 2006, 215-239.

## Chapter Six: A Playground Is a Park

In 2003 New Yorkers for Parks (NY4P) testified before the New York City Council in opposition to the alienation of 40 acres of land in Van Cortlandt Park (Bronx) for the construction of a water filtration plant.<sup>1</sup> NY4P is the contemporary incorporation of the organizations that merged from the Parks and Playgrounds Association, to the Park Association, and then to the Parks Council; in its testimony NY4P carried on the park preservationist tradition, arguing that the construction of the filtration plant would constitute an act of parkland alienation. This would not only inhibit the enjoyment of the specific parcel of land under question, but would also set an “unacceptable and irresponsible” precedent that could threaten the preservation of all city parkland. According to NY4P, if land in Van Cortlandt Park—a 1,146 acre expanse that contains forests, fields, and wetlands—could be used for a water filtration plant, “then what’s to stop illegal parkland confiscation at other locations, such as Robert Moses Playground?”<sup>2</sup> Robert Moses Playground—1.09 acres between 41<sup>st</sup> and 42<sup>nd</sup> Streets along First Avenue across from the headquarters of the United Nations—comprises an asphalt blacktop and a small play area bisected by the ventilation system for the Queens-Midtown Tunnel. This physically unremarkable landscape has been the subject of negotiations for a complicated land swap with the United Nations,<sup>3</sup> and NY4P has tracked the fate of the playground for a dozen years, featuring it in testimony on the “distressing

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<sup>1</sup> I do not address the history of the filtration plant here. For legal ramifications of the VCP case, see: Christopher Rizzo, “Environmental Law and Justice in New York City, Where a Park is Not Just a Park,” *Pace Environmental Law Review* 18, no. 1 (2000). For a history of VCP environmental activism see: Mirele B. Goldsmith, “The Technical Fix or the Systemic Solution for Urban Water Quality? A Case Study of Grassroots Activism on Behalf of New York City’s Drinking Water” (PhD diss., City University of New York Dept. of Psychology, 2006). On filtration implementation see: Adam Wisnieski, “Croton Plant Still Stirs Anger, Questions about Water Projects,” *City Limits*, Jun 17, 2015.

<sup>2</sup> New Yorkers for Parks, Testimony before the State and Federal Legislation Committee of the NYC Council, “In Opposition to the Alienation of Parkland—Home Rule Message 50” May 30, 2003. I was an employee of NY4P from September 2011 to December 2013. The testimony cited in this chapter is exclusively from the publicly accessible NY4P website (<http://www.ny4p.org/advocacy/alienation>, last accessed Oct 9, 2017); it does not reflect work that I conducted as an employee and I do not speak on behalf of the organization.

<sup>3</sup> Robert Moses Playground serves a neighborhood with limited recreational amenities, and is a resource for several dedicated groups of constituents. I use this case simply to illustrate the full incorporation of playgrounds into the category of parkland. For the very complex issues involved in the UN land deal, see e.g.: <http://www1.nyc.gov/office-of-the-mayor/news/349-11/mayor-bloomberg-historic-agreement-close-last-major-gap-the-manhattan-greenway-and>.

trend” of “parkland being used for non-park purposes.”<sup>4</sup> Elsewhere NY4P has testified that, “the potential alienation of Robert Moses Playground should only occur if proper parkland alienation process is followed and adequate replacement parkland is guaranteed.”<sup>5</sup> These are the same demands—for process and remediation—that preservationists make in the face of alienation threats to parks such as Van Cortlandt.

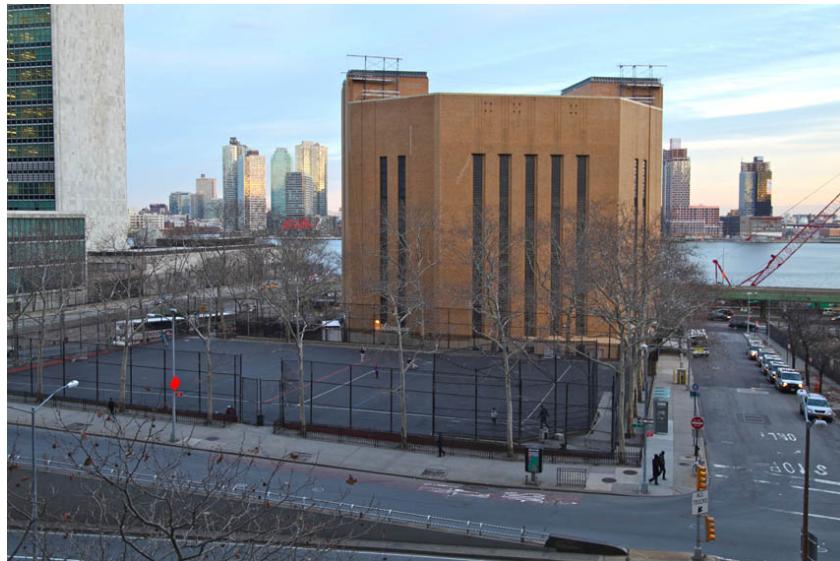


Image 6.1: Western Portion of Robert Moses Playground, Manhattan  
Image courtesy of Manhattan Sideways (<http://sideways.nyc>)<sup>6</sup>



Image 6.2: Van Cortlandt Park, Bronx<sup>7</sup>

<sup>4</sup> New Yorkers for Parks, Testimony before the State of New York Department of Environmental Conservation, “In Opposition to the Alienation of Parkland in Old Mill Creek Park,” Mar 30, 2004 (<http://www.ny4p.org/advocacy/alienation>).

<sup>5</sup> New Yorkers for Parks, Testimony before the Community Forum on Parks & Waterfront Access on the East Side, Sept 8, 2011 (<http://www.ny4p.org/advocacy/alienation>).

<sup>6</sup> Photo source: <http://sideways.nyc/2014/03/robert-moses-playground-2>, accessed Aug 23, 2017, used with permission of Manhattan Sideways (<http://sideways.nyc>). The large structure in the middle of the playground is part of the Queens-Midtown Tunnel ventilation system.

In this chapter I ask how spaces such as Robert Moses Playground and Van Cortlandt Park became incorporated into the same category of land, subject to the same legal protections and preservation ideology. Through a contentious process that lasted from the 1890s to the late-1920s, patches of asphalt can now be protected through the same techniques that arose to conserve landscaped parks.

I first establish the spread of playgrounds and discuss existing accounts for the rise of this spatial form. I then focus on the moment when the promotion of play and recreation occurred across a number of city spaces, and I argue that the promotion of the “play spirit” did not necessitate the use of parks; there was nothing inevitable about the merger of parks and playgrounds. There are two parts to the question of how parks ultimately came to accommodate playgrounds. First, how were existing parks vulnerable to change? Second, why were recreation spaces on property owned by e.g. the Department of Docks or the Department of Streets more resistant to incorporation into the park-playground equivalence?

### The Spread of Playgrounds

In the mid-1890s, at a time when there were no municipal playgrounds in New York, the city rebuffed a request to open a playground in Tompkins Square Park by saying, “It was not the function of the Park Board to cater to any special section of the community.”<sup>7</sup> In 1900 the Manhattan land holdings of the Department of Parks included 38 “improved” park properties—

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<sup>7</sup> Photo source: Doodle77, own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=56699189>, accessed Aug 23, 2017.

<sup>8</sup> Parks and Playgrounds Association, *Statement Relating to Recreation in Greater New York* (New York: PPANY, 1910), 24. The PPA and Charles Stover each reported a version of this story. Charles Stover quoted the Park Board as not catering to “any particular class in the community.” Charles Stover, “Seward Park Playground At Last a Reality,” *Charities* 10, no. 6 (1903): 127 (emphasis mine).

formal squares, small parks, and pastoral landscapes—and another five properties awaiting improvement, but no playgrounds.<sup>9</sup> This would not be the case for long.

The first playground under the authority of the New York City Department of Parks opened in 1903, and within a year the department was operating eight playgrounds across Manhattan.<sup>10</sup> By 1913 the department operated 34 playgrounds in Manhattan; 28 had been placed within existing parks (including recently acquired “small park” properties, which I discuss below).<sup>11</sup> Eight months into Robert Moses’s tenure as Park Commissioner (1934), the department oversaw 157 playgrounds, with 34 additional facilities planned for construction that year.<sup>12</sup>

In 1935 Iphigene Ochs Sulzberger, president of the Park Association of New York City, had to remind her board of directors that the organization had once been called the Parks *and Playgrounds* Association—a name that had changed only seven years prior when it was “deemed unnecessary to continue playground supervision as heretofore maintained by the Parks and Playgrounds Association, since the City has greatly enlarged its own playground supervision and is doing the work as fully as present appropriations permit.”<sup>13</sup>

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<sup>9</sup> New York City Department of Parks, *Report for the Year Ending December 31, 1900* ([http://home2.nyc.gov/html/records/pdf/govpub/4028annual\\_report\\_nyc\\_dept\\_parks\\_engineering\\_bureau\\_1900.pdf](http://home2.nyc.gov/html/records/pdf/govpub/4028annual_report_nyc_dept_parks_engineering_bureau_1900.pdf)), 99-100.

<sup>10</sup> New York City Department of Parks, *Report for the Year 1904* ([http://home2.nyc.gov/html/records/pdf/govpub/4012annual\\_report\\_nyc\\_dept\\_parks\\_1904.pdf](http://home2.nyc.gov/html/records/pdf/govpub/4012annual_report_nyc_dept_parks_1904.pdf)), 15.

<sup>11</sup> New York City Department of Parks, *Annual Report for the Year 1913* ([http://home2.nyc.gov/html/records/pdf/govpub/4306annual\\_report\\_nyc\\_dept\\_parks\\_1913\\_part2.pdf](http://home2.nyc.gov/html/records/pdf/govpub/4306annual_report_nyc_dept_parks_1913_part2.pdf)), 105. The report also listed five meadows and greens within Central Park as play spaces.

<sup>12</sup> New York City Department of Parks, *Report of the Department of Parks to August 1934* ([http://home2.nyc.gov/html/records/pdf/govpub/4289annual\\_report\\_nyc\\_dept\\_parks\\_1934.pdf](http://home2.nyc.gov/html/records/pdf/govpub/4289annual_report_nyc_dept_parks_1934.pdf)), 70. A 1928 survey reported a similar nationwide trend in the physical accommodation of playground facilities into parks, as well as the incorporation of active recreation into the concept of proper park use, with “90 per cent of the park executives favor[ing] the use of parks for active recreation as well as for rest and reflection.” Lebert Howard Weir, *Park Recreation Areas in the United States* (Bulletin of the US Bureau of Labor Statistics. Washington D.C.: Government Printing Office, 1928), 10.

<sup>13</sup> The Park Association was formed from the merger of the Parks and Playgrounds Association, the Central Park Association, and the Battery Park Association (early 1928). With the abdication of playground work, the newly merged Park Association would focus on preserving parks from “attacks” and lobbying for park funding and maintenance—together a program of “park protection.” Central Park Association, Report of Special Committee on Future Plans of the Association, circa late 1927, PCR 5:25.

Playgrounds were normalized as “primary features” of parks within a few decades. By 1960, when a coalition of business and civic interests (which included the Park Association) sued the city to halt the construction of a café in Central Park, they argued that the facility did not constitute a “park purpose” (see Chapter Five). In one brief to the court, the plaintiffs submitted expert testimony claiming that the café “would be distinguishable from other structures now in the Park such as boat houses or *playgrounds* which are *primary park functions...*”<sup>14</sup> Constituents of the plaintiffs’ organizations only three decades earlier had still been insisting that playgrounds must remain subservient to the true primary function of a park—passive leisure.<sup>15</sup>

An overview of recreation administration, published in 1927, summarized the status of playgrounds in law, “It is clear from decisions that where a portion of land is dedicated for park purposes it would not be inconsistent with the terms of the deed to devote the park to playground purposes. In other words, *a playground is a park.*”<sup>16</sup> The categorical merging of parks and playgrounds differentiates this case from debates about the inclusion of specific features, such as zoos or museums, within parks. The decision to site e.g. a library within a park does not create the equivalence that a library *is a park*.

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A playground had not always been a park. However, most accounts of the spread of playgrounds do not consider how parks and playgrounds merged (both spatially and categorically). There are a number of functionalist explanations that take the spread of playgrounds as evidence for

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<sup>14</sup> Supreme Court of the State of New York, Appellate Division—First Department, Appellants’ Brief, *795 Fifth Ave Corporation v. New York* (1963), 17 (emphasis mine) (PCR 18:5), citing testimony of Charles Edward Doell, Park Superintendent of Minneapolis (1945 to 1959).

<sup>15</sup> To be sure, some purists never relented. Henry Hope Reed was still fuming—in 1966—about the playgrounds in Central Park: “Outside of the intrusions of buildings in the park the biggest scars, the most conspicuous example of bruising to the Olmsted-and-Vaux plan, have been the playgrounds” Reed to Hoving, Aug 7, 1966, HHR 4:2.

<sup>16</sup> Jay B. Nash, *The Organization and Administration of Playgrounds and Recreation* (New York: A.S. Barnes, 1927), 93 (emphasis mine).

the historical necessity of the “playground movement.”<sup>17</sup> Henry Curtis of the Playground Association of America described the play movement as the result of and a response to the conditions of the modern city; idle children, newly protected by labor laws and newly cleaved from family industry, lived in an environment in which street play, where children whiled away their new leisure time, was physically and morally dangerous. The play movement, according to Curtis, was “a vital expression of the spirit of a civilization.”<sup>18</sup>

In a dissertation supervised by Robert Park and Ernest Burgess, Clarence Rainwater focused on the play *movement* as “a series of events involving adjustments to a social situation; connected by a cause and effect relation; possessing an extension in time and space; and disclosing stages, transitions, tendencies, that are correlative with a changing concept of its function and indicative of its evolution.”<sup>19</sup> This Chicago School model of adjustment and accommodation suggests that playgrounds spread when the urban environment, during rapid industrialization, changed faster than social institutions could adapt.<sup>20</sup> The play movement, driven to the attainment of goals and progressing through stages to its desired ends, would ultimately serve to readjust urban social disorganization.<sup>21</sup>

Galen Cranz offers the most comprehensive model of the incorporation of playgrounds into parks. Cranz periodizes park development into four eras—the Pleasure Garden (1850-1900), the Reform Park (1900-1930), the Recreational Facility (1930-1965), and the Open Space System (1965

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<sup>17</sup> Richard Kraus, “Providing for Recreation and Aesthetic Enjoyment,” *Proceedings of the Academy of Political Science* 29, no. 4 (1969): 93.

<sup>18</sup> Henry S. Curtis, *The Play Movement and Its Significance* (New York: Macmillan, 1917), 11.

<sup>19</sup> Clarence Elmer Rainwater, *The Play Movement in the United States: A Study of Community Recreation* (Chicago: University of Chicago Press, 1921), 3.

<sup>20</sup> See also: Joseph Richard Fulk, *The Municipalization of Play and Recreation: The Beginnings of a New Institution* (Nebraska: Claflin, 1922), 7.

<sup>21</sup> Lee Hanmer, PAA Field Secretary (1907-1911) and Director of the Department of Recreation for the Russell Sage Foundation (1912 to 1937) also suggested that playgrounds served as a mechanism of social adjustment. Lee F. Hanmer, “Growth of the Playground Idea,” *Park and Cemetery and Landscape Gardening* 19, no. 7 (1909): 112.

to the time of her writing, in 1982)—each with specific actors, institutions, and design ideals.<sup>22</sup> In Cranz’s account, era succeeds era by the process of “dialectical adjustment,” in which elites, professionals, and bureaucrats fight for the ascendancy of their views about the proper function of parks to “the dominant ideology.” She writes that, “The historical pattern of park development can be understood as the result of shifts in ideological beliefs on the part of dominant social groups about the perceived functions parks might render society.”<sup>23</sup> The evidence of this process of dialectical adjustment is “simply that the reform park was aimed primarily at working-class and immigrant children and was sited in their immediate neighborhoods; the excluded class of one era became the focus of park programming in the next.”<sup>24</sup>

But the process of “dialectical adjustment” does not answer why the reform agenda for play and recreation came to be accommodated in parks, and why, given the variety of city spaces in which the reformers began their agitation for state-sponsored play, the parks retained playgrounds but other spaces (e.g. streets, docks, rooftops) did so on only an ad hoc or programmatic basis. A “small park movement” would have brought open space to the people as much as playgrounds; the shift in elite attention to the needs of the tenements did not require an equal shift in the concept of the purpose of a park. Because Cranz relies on the accounts of park administrators she overlooks the position of parks in a larger field of recreation and reform. As I noted in Chapter Two, park and

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<sup>22</sup> Galen Cranz, *The Politics of Park Design: A History of Urban Parks in America* (Cambridge, MA: MIT Press, 1982). Peterson argues that the “static and unitary assumptions” of neat eras leads Cranz to “overstate the dialectical relationships between periods.” Jon Peterson, “The Evolution of Public Open Space in American Cities,” *Journal of Urban History* 12, no. 1 (1985): 78. Daniel Bluestone also sees a bias toward identifying too clear of an ideological shift in Cranz’s reliance on Park Department annual reports, which overemphasize novelty and administrative accomplishments. Daniel M. Bluestone, “Olmsted’s Boston and Other Park Places,” *Reviews in American History* 11, no. 4 (1983).

<sup>23</sup> Galen Cranz, “Models for Park Usage: Ideology and the Development of Chicago’s Public Parks” (PhD diss., University of Chicago Dept. of Sociology, 1971), 3.

<sup>24</sup> Cranz, 1982, 230-1.

playground advocates during the “Reform Park era” (roughly 1900-1930) were often members of the same civic networks and organizations.<sup>25</sup>

Rachel Iannacone’s history of the incorporation of playgrounds into New York City’s small parks attributes changes in park policy to a clash of personalities. Iannacone introduces Commissioner of Parks Charles Stover and Department of Parks Landscape Architect Samuel Parsons as avatars of landscape “function” and “form,” respectively, and argues that the shift from landscaped parks to playgrounds was “embodied” in their fights.<sup>26</sup> Stover was erratic and Parsons was adept at media relations, so their personal clashes make for engaging reading, but are ultimately beside the point.<sup>27</sup> The men, like most others, were not pure ideologues. Stover sided with the “preservationists” in his opposition to a fire alarm station in Central Park,<sup>28</sup> and Stover, along with Parsons, supported the formation of a citizen’s Central Park protection committee.<sup>29</sup> But more to the point, the men did not *embody* landscape ideology. Stover and Parsons occupied official positions, impressed by law with responsibilities that were enforceable by organized interests.

I do not want to present an inevitable clash between “park” and “playground” interests, or suggest that playgrounds proliferated as the result of an ascendant personality. Still, I will identify generalized park and playground advocacy positions before describing how the promotion of the “spirit of play” ranged across this simplified division. While Richard Welling could write that, “Parks and playgrounds are eternal enemies,” park and playground *advocates* formed many supportive

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<sup>25</sup> I use the term “Reform Park era” not to denote ideological consistency, but as a way to mark the approximate years in which many processes of consolidation moved playgrounds from charitable/moral work on vacant land into the administrative purview of the state and into the physical property holding of the Department of Parks.

<sup>26</sup> Rachel E. Iannacone, “Open Spaces for the Underclass: New York’s Small Parks (1880-1915)” (University of Pennsylvania Dept. of History of Art, 2005), 124.

<sup>27</sup> On Stover, see Roy Rosenzweig and Elizabeth Blackmar, *The Park and the People* (Ithaca: Cornell University Press, 1992), 412-14. On Parsons and the media, see Samuel Parsons, *Memories of Samuel Parsons: Landscape Architect of the Department of Public Parks, New York*, Edited by Mabel Parsons (New York: G.P. Putnam’s Sons, 1926).

<sup>28</sup> PPA Board meeting minutes, Oct 24, 1911, GBP 79: Parks and Playgrounds, July-December 1911.

<sup>29</sup> Letter on William J. Gibson letterhead, Jul 6, 1910, GBP 78: Parks and Playgrounds Jan-Aug 1910.

connections.<sup>30</sup> First, I introduce the major organizational actors working in New York in the reform park era.

## **Part 1: The World of the Reform Park**

### Actors

There was a complex network of park and playground interests working in New York City at the turn of the 20<sup>th</sup> century that included recreationists, charity workers, tenement reformers, settlement house workers, civic arts boosters, good government groups, and park advocates. I focus here on the work of four organizations that were particularly active in the promotion of play—and sometimes playgrounds—in New York in the early 20<sup>th</sup> century: the Parks and Playgrounds Association of New York, the Playground Association of America, the Outdoor Recreation League, and the People's Institute.

The Parks and Playgrounds Association of New York (PPA), founded in 1908, was an interest group organization with an eclectic board of artists, philanthropists, lawyers, and reformers.<sup>31</sup> Together, they pursued a simultaneous and complementary agenda of play promotion and park preservation. (See Chapter Two for a full discussion of the PPA's history, and its defense of Central Park in the case of *Williams v. Gallatin*.)

The Playground Association of America (PAA) was founded in 1906 as a national organization dedicated to the “promotion...of wholesome play.”<sup>32</sup> The PAA lobbied to convince state and local governments that the provision of recreation was the responsibility of the state, while building national institutes to train recreation workers and standardize play leadership. PAA field

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<sup>30</sup> Welling to Moses, Dec 20, 1933, RWP 12:7.

<sup>31</sup> The PPA continued the work of its predecessor organization, the Metropolitan Parks Association (1905-1908).

<sup>32</sup> PAA Report of the Committee on Incorporation for 1908-09, NRA 1: PAA 1906-1909. The PAA incorporated as the Playground and Recreation Association of America in 1911, and the National Recreation Association (NRA) in 1930. In 1965 the National Recreation and Park Association formed through a merger of the NRA with the American Institute of Park Executives, American Recreation Society, the National Conference on State Parks, and the American Association of Zoological Parks and Aquariums (<http://www.nrpa.org/About-National-Recreation-and-Park-Association>).

secretaries worked as organizers on the ground across the country, assessing local needs to help establish site-specific models for state-sponsored municipal recreation.<sup>33</sup> But the “de facto policy-making body of the PAA...was the New York City branch of the board’s executive committee,” which included Luther Gulick, Joseph Lee, Lillian Wald, Henry S. Curtis, and Mary Simkhovitch.<sup>34</sup> Luther Gulick (1865-1918), a physician by training, was the first president of the PAA (1906-1910); the Director of the Russell Sage Foundation Department of Child Hygiene (1908-1913); the founder of the Public School Athletic League in 1903; and a member of the Metropolitan Parks Association and, briefly, the PPA.<sup>35</sup> Gulick also worked in collaboration with the Outdoor Recreation League (ORL), helping to recruit members to the playground organization.<sup>36</sup> He was a key point of communication between: 1) psychological and physiological scholars of play (such as G. Stanley Hall), 2) the national lobbyists for play within the PAA, and 3) the local New York City recreation advocates (ORL, PPA). Lillian Wald of the Henry Street Settlement, and Mary Simkhovitch of Greenwich House, also served on the boards of the MPA/PPA, the PAA, and the ORL.<sup>37</sup>

In a 1910 report on “playground tendencies,” the PAA wrote that, “parts of parks in many cities are being fitted up for playgrounds.” The author, PAA secretary Howard Braucher, a man who treated the promotion of play as “a spiritual movement,”<sup>38</sup> urged his readers to favorably consider the trade off between landscape beauty and the pleasure of playground recreation.<sup>39</sup> But in practice

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<sup>33</sup> H. S. Braucher, “The Playground and Recreation Association of America and Community Service (Incorporated),” Mar 12, 1920, NRA 1: Mission and Service of PRAA, 1920-.

<sup>34</sup> Dominick Cavallo, *Muscles and Morals: Organized Playgrounds and Urban Reform, 1880-1920* (Philadelphia: University of Pennsylvania Press, 1981), 37-38.

<sup>35</sup> Lawrence Veiller helped to secure the funding for Gulick’s position at Russell Sage, connecting the play and housing reform worlds. Veiller was also an officer of the MPA. Richard F. Knapp and Charles E. Hartsoe, *Play for America: The National Recreation Association 1906-1965* (Arlington, VA: The National Recreation and Park Association, 1979), 32.

<sup>36</sup> Minutes of the Nineteenth Regular Meeting of the ORL, Jan 13, 1899, USS Reel 17, Series 8 Box 1.

<sup>37</sup> Wald and Simkhovitch bridged the park and play worlds. They were sympathetic to Central Park preservation, and elite reformers held their opinions in high esteem. Welling to Simkhovitch, May 29, 1928, RWP 12:6; Borglum to Wald, Feb 24, 1911, LDW 2: Borglum Correspondence.

<sup>38</sup> Knapp and Hartsoe, 1979, 36.

<sup>39</sup> H. S. Braucher, “Developments and Opportunities in the field of Public Recreation,” PPA pamphlet No. 83. Nov 1, 1910, NRA 2: Board of Directors, 1-23-1911.

the PAA's work depended on the success of dispersed field secretaries, whose strategies for playground promotion would be dictated by various local needs and not a centralized ideology.

Charles B. Stover (1861-1929), a settlement house leader and a founder of the short-lived New York Society for Parks and Playgrounds for Children (1891-93), organized the Outdoor Recreation League (ORL) in 1898 to "mobiliz[e] the city's moral and financial resources in support of playgrounds."<sup>40</sup> More than any other actor or organization, the ORL explicitly promoted the placement of playgrounds in parks, calling for "the grafting of outdoor playgrounds and gymnasiums upon the park system of our city."<sup>41</sup> In 1898 the ORL opened Hudsonbank Gymnasium and Playground on a plot of vacant land (today's De Witt Clinton Park), the "first public outdoor gymnasium in our city."<sup>42</sup> The ORL would go on to operate four outdoor gymnasia/playgrounds with the same intent, "to demonstrate to the public, and to public officials, by means of a practical example, the demand for and beneficent effects of open-air gymnasiums, to the end that they may become generally established in New York under the sanction and care of the City Departments."<sup>43</sup> When the organization disbanded in 1910, the year Stover became Commissioner of Parks for Manhattan and Richmond, the ORL had accomplished its mission.

The People's Institute was founded in 1897 by Charles Sprague Smith as a cooperative educational institution, a "forum for the untrammeled discussion of all subjects affecting the people's interests."<sup>44</sup> The Institute believed in a responsive city government; in the field of recreation it focused on the use of idle municipal properties and the prevention of vice via intervention in the

<sup>40</sup> Cavallo, 1981, 28. Also: Constitution of the Outdoor Recreation League 1898, USS Reel 17, Series 8 Box 1. Stover referred to Seward Park (in which the ORL operated active recreation programs) as a "moral asset" for the "ghetto" (Charles B. Stover, pamphlet, Oct 8, 1900, JGPS 15:5). The moral basis for playgrounds was explicit in Stover's work at the SPPC as well, which declared that the organization was, "a moral movement, not a charity." New York Society for Parks and Playgrounds for Children, *First Annual Report* (New York: De Leeuw, Oppenheimer & Co., 1893), 9.

<sup>41</sup> ORL solicitation letter, Aug 30, 1901, JGPS 16:5.

<sup>42</sup> ORL invitation to the opening of Hudsonbank Gymnasium and Playground, Aug 22, 1898, JGPS 14:1.

<sup>43</sup> ORL solicitation letter, Sep 15, 1898, JGPS 14:1. In 1900 the ORL supervised four outdoor play sites: "1. Hudsonbank—53rd St. and 11th Ave. 2. Seward Park—Norfolk and Hester Streets. 3. West 68th St.—bet. Boulevard and Amsterdam Ave. 4. East 35th St—bet 1st and 2nd Aves," Stokes to Fleischman, Mar 1900, JGPS 15:4.

<sup>44</sup> Charles Sprague Smith, *Working With the People* (New York: A. Wessels, 1904), 2.

child's play environment. Paul Boyer has called this reformer type "positive environmentalists,"<sup>45</sup> who believed that one could not rail against vice in the street without providing alternative facilities for "wholesome enjoyment."<sup>46</sup> In 1914 the People's Institute published *The City Where Crime is Play*, in which John Collier and Edward M. Barrows wrote, "Child crime in New York is built on play—wholesome, educational play, which the law treats as crime and which street conditions gradually pervert until innocent play becomes moral crime."<sup>47</sup> In response to this report, the Institute sponsored play streets (temporarily closing specific portions of roadways, giving over the space to children's games supervised by a play leader).<sup>48</sup>

Parks were a small part of the Institute's work to promote community recreation. In an effort to reduce municipal waste, to offer a place for children to escape the degeneracy of the street, and to facilitate the community control of education and recreation, the People's Institute suggested a number of ways in which New Yorkers might obtain facilities for recreation without the onerous process of acquiring new property. Existing park properties were on a list that also included, "School property...undeveloped space and other public buildings...streets and publicly owned land...[and] unused vacant lots voluntarily placed by land owners under control of city for public recreation purposes."<sup>49</sup>

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<sup>45</sup> Paul S. Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge, MA: Harvard University Press, 1978), 221. The People's Institute also pursued "vice reduction" by establishing the National Board of Censorship of Motion Pictures. This work did not diffuse throughout the play reform field. PI members were unable to mobilize the Recreation Alliance to support censorship (Recreation Alliance meeting minutes, Apr 24, 1912 and Jun 28, 1912, C14 13: Recreation Alliance).

<sup>46</sup> Citizens' Recreation Committee, "Opportunities for Recreation afforded by the Municipality of the City of New York and Maintained by Appropriation of Public Funds," (New York: 1909).

<sup>47</sup> John Collier and Edward M. Barrows, *The City Where Crime is Play* (New York: The People's Institute, 1914), 11.

<sup>48</sup> In the summer of 1915 there were five play streets operating in Greenwich Village area; three under the supervision of the PPA and two under the People's Institute (Peterson to Simkhovitch, Dec 13, 1915, GHR 31:40). On People's Institute play streets see: Jennifer Fronc, *New York Undercover: Private Surveillance in the Progressive Era* (Chicago: University of Chicago Press, 2009). Fronc credits the play street as a PI innovation, but the PPA and the settlement houses operated play streets for at least three summers before the PI became involved in street recreation work.

<sup>49</sup> "Points to Be Covered in Promoting Public Recreation Developments in Small Cities," n/a, n/d, PIR 11:14 (People's Institute Committee on Leisure Reports Folder).

Park and play advocates also overlapped in their service on the Recreation Alliance. In 1911 PPA President Eugene Philbin helped to assemble a federation of 25 organizations “to form a center of intercommunication for organizations interested in recreation; to foster harmonious relations between them and prevent overlapping of work; to secure adoption of and co-operation in working out a comprehensive plan for recreation in New York City.”<sup>50</sup> Howard Braucher, secretary of the PAA, also served as secretary of the Recreation Alliance. Member organizations included the Children’s Aid Society, the PPA, the YMCA of New York, The National Board of Censorship of Motion Pictures, and the Committee on Amusements and Vacation Resources of Working Girls. The Alliance was active until 1919.

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### Park Preservation

The most salient complaint of park preservationists was that playgrounds converted flexible open space into to a singular (boisterous) use that appealed to a limited set of users. You cannot picnic, sunbathe, or organize an informal game on top of a swing set or seesaw. It is difficult to argue against the provision of amenities for children,<sup>51</sup> so park preservationists stressed the needs of the masses that would benefit from open parkland. Samuels Parsons wrote, “[I]mportant as it is that children should have all reasonable opportunity to amuse themselves in the park, yet as there are adults as well as young people who have the right to enjoy the scenery, their ‘due and privilege’

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<sup>50</sup> Lina D. Miller, *The New York Charities Directory*, 26<sup>th</sup> ed. (New York: Charity Organization Society in the City of New York, 1917), 251. Also: Constitution of the Recreation Alliance of New York City, C14 13: Recreation Alliance. The Public Recreation Commission of the City of New York was created through the work of the Recreation Alliance, which drafted and lobbied for authorizing legislation (L. 1911, Ch. 466) (Bradstreet to Prendergast, Sep 20, 1915, GHR 31:40). In 1915 the Public Recreation Commission was dissolved into the new Committee on Recreation of the Board of Estimate and Apportionment.

<sup>51</sup> Zelizer wrote that, “The preferential preservation of child life was accomplished by a dramatic reorganization of child space and child time.” She dated the “playground movement” to the 1920s, two decades after the major agitation for the acceptance of “the child’s right to play,” but her observation about the movement’s accommodation of the “priceless child” is consistent with my point—the promoters of the play spirit sought to monopolize the child’s leisure time; the major reorganization of children’s space happened with their removal from city streets (or the temporary transformation of the streets into protected play spaces). “Play” and “park” interests could both advocate for the protection of the child through the creation of play streets, or through the removal of the child from the street—it was simply a question of where then to put the children. Viviana Zelizer, *Pricing the Priceless Child* (New York: Basic Books, 1985), 50-52.

should not be neglected.”<sup>52</sup> Gutzon Borglum urged that “tired citizens”—adult laborers, the elderly, harried mothers—were every bit as much in need of open space as children. The “sweetness and peace” of green grass was a salve for the minds of the majority of the population who were not children.<sup>53</sup> The editorial pages of *Landscape Architecture*, the journal of the American Society of Landscape Architects, took an “egalitarian” stand against playgrounds: “A park is for the whole community, not for any one class; and to thus divert any part of it to the exclusive use of one class is wrong and wasteful.”<sup>54</sup> Parsons, Borglum, and the ASLA believed in a romantic landscape ideology in which, “Pure air, rest, and quiet, combined with country sights and sounds, are the choicest possessions that a park can have.”<sup>55</sup> They also subscribed to an aesthetic theory, attributable to John Ruskin (and practiced by Olmsted and Vaux) that in a landscape composition “there shall be nothing that does not contribute to the effect of the whole.”<sup>56</sup> This would preclude the placement of play equipment within pastoral scenery.

Park preservationists were adamant that parks and playgrounds were separate entities, that “it is absurd to call a playground a park.”<sup>57</sup> And yet, they recognized the vital need for playgrounds—in their proper place.<sup>58</sup> PPA members, for example, worked to distinguish *types* of park spaces, not for one to supplant the other, but for both to coexist under proper management.<sup>59</sup> The PPA believed that refusing to allow the city to take Central Park land for the construction of the Lenox Library might pressure the city to acquire additional parkland in the neighborhoods around

<sup>52</sup> Samuel Parsons, *The Art of Landscape Architecture* (New York: G. P. Putnam's, 1915), 294.

<sup>53</sup> Borglum to Philbin, Mar 14, 1911, GBP 79: Parks & Playgrounds Jan-Mar 1911.

<sup>54</sup> “Parks and Playgrounds,” *Landscape Architecture* 1, no. 2 (1911): 97-99.

<sup>55</sup> Samuel Parsons, “The Parks and the People,” *Outlook* 59, no. 1 (1898): 27.

<sup>56</sup> Citing Ruskin: Samuel Parsons & W. R. O'Donovan, “The Art of Landscape Gardening,” *Outlook* 84 (1906): 231.

<sup>57</sup> Parsons to Borglum, Feb 17, 1910, GBP 78: Parks & Playgrounds Jan-Aug, 1910. Borglum told Parsons that he should explain to the playground boosters, “if we want to play, or have playgrounds, why an empty lot and a load of sand might do the trick” (Borglum to Parsons, Feb 16, 1910, GBP 78: Parks & Playgrounds Jan-Aug, 1910). See also Morton to Borglum, Apr 13, 1911, GBP 79: Parks & Playgrounds April-June 1911.

<sup>58</sup> Borglum to John Purroy Mitchel, Nov 2, 1910, GBP 79: Parks & Playgrounds Sept -Dec 1910.

<sup>59</sup> Philbin said, “We draw a distinction in our Association between what we call ‘holiday parks’ and ‘everyday parks’...” (Philbin to MAS, Dec 18, 1906, GBP 78: Parks and Playgrounds 1902-1906). The PPA distinguished between the need for “excursion parks,” “district parks,” playgrounds, and “small breathing spot or lung space,” the last of which should be taken up as a policy of the Congestion Commission (PPA memo, n/a, Jun10, 1910, LDW 29: PPANY Reports).

the park.<sup>60</sup> With properly dedicated places for child's play, the lawns and open spaces of Central Park could be spared from wear and tear.<sup>61</sup> The construction of independent playgrounds outside of pastoral parks would conserve park landscapes and ease maintenance demands, free from trampling feet and destructive children: "Settle the playground question first and the park question will take care of itself."<sup>62</sup>

### Play Promotion

The 1887 Small Parks Act authorized a \$1,000,000 annual expenditure for the acquisition of small park properties within New York City. A decade later, in 1897, when Mayor Strong appointed an Advisory Committee on Small Parks, not a cent of the acquisition fund had been spent. The Advisory Committee, which was created to rectify that inaction, offered the Mayor a clear recommendation: Bring the parks to the people, and in particular to the children.<sup>63</sup> The Committee, which included Jacob Riis and former Mayor Abram S. Hewitt (who had drafted the Small Parks Act), wrote that, "In the original plan of the City of New York the children seem to have been forgotten."<sup>64</sup> The Advisory Committee indicted the "original plan"—the 1811 city plan that established Manhattan's iconic grid—as both a moral and economic failure: "The failure to provide for the reasonable recreation of the people, and especially for playgrounds for the rising generation, has been the most efficient cause of the growth of crime and pauperism in our midst."<sup>65</sup> The remedy was the abundant provision of playgrounds on whatever land was available, which meant that

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<sup>60</sup> Parks and Playgrounds Association of New York, *Annual Report 1912* (New York: PPANY, 1912), 9.

<sup>61</sup> The Metropolitan Parks Association espoused this view (Bradstreet to Borglum, Apr 20, 1908, GBP 78: Parks and Playground 1908). In 1926 the Central Park Association complemented their professed mission—to preserve Central Park as a great work of art—through their work to secure new play spaces and parks throughout the city (CPA pamphlet, Mar 1, 1926, ASB 9:7).

<sup>62</sup> "Conclusions and Recommendations in the matter of the Improvement of our Parks," n/a Mar 1, 1912, HSS 116:10.

<sup>63</sup> Jacob Riis, *A Ten Year's War: An Account of the Battle with the Slum in New York* (New York: Houghton Mifflin, 1900), 185.

<sup>64</sup> *Report of the Committee on Small Parks, City of New York* (New York: Martin B. Brown, 1897), 1.

<sup>65</sup> *Report of the Committee on Small Parks*, 1897, 2.

playgrounds must be placed in “every park which now has none.”<sup>66</sup> Riis wrote that false economy, cupidity, and “stupidity” would no longer be able “to cheat the child out of his rights.”<sup>67</sup>

Joseph Lee, president of the Playground and Recreation Association of America from 1910 to 1937, was referring to the Small Parks Committee’s condemnation of the grid plan when he wrote, “It has been well said that children were left out in the planning of our cities. It does not seem to me that they ought also to be left out in the planning of our parks.”<sup>68</sup> For Lee, the beauty and attraction of a park must come from the social scene and not the pristine lawn. Anti-child landscape aesthetes reminded Lee of “the worthy official of the War Department who said to Mr. Roosevelt at the beginning of the Spanish War: ‘This department was running all right until you brought your damned war along.’”<sup>69</sup> Parks were intended for recreation, and if they could not accommodate children’s play then, “They are in that case something like a ball room in which it is not safe to dance.”<sup>70</sup> Henry S. Curtis, a founder of the PAA, countered the aesthetes with the “landscape value” of children at play: “Park lawns have no other considerable use, except for play. There is no great landscape effect from a broad and empty meadow...there is nothing else that has quite the *landscape value* on an open lawn that children have.”<sup>71</sup>

This was not simply an aesthetic, but also a moral stance. “The new spirit demands the preservation of the bits of human nature, the teeming millions of them whose only idea of outdoors is a narrow strip of cobbles underfoot and a thin streak of sky overhead—even at a sacrifice of trees and shrubs and grass.”<sup>72</sup> The preservation of people over plants was a common refrain. Parks should

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<sup>66</sup> *Report of the Committee on Small Parks*, 1897, 4.

<sup>67</sup> Riis, 1900, 192.

<sup>68</sup> Joseph Lee, “Play as Landscape,” *Charities* 16, no. 4 (1906): 432. In 1906 Lee was serving as vice-president of the Massachusetts Civic League.

<sup>69</sup> Lee, 1906: 432.

<sup>70</sup> Lee, 1906: 432.

<sup>71</sup> Curtis, 1917, 101 (emphasis mine).

<sup>72</sup> Bertha H. Smith, “City Playgrounds,” *Munsey’s Magazine* 31, no. 2 (1904): 288.

accommodate “not plant culture but human culture.”<sup>73</sup> When Walter Vrooman, a founder of the New York Society for Parks and Playgrounds for Children (1891-93), wrote that park officials would prefer “for the grass to grow green over the children’s graves than yellow under their feet,” his conclusion was that, “A portion of every existing park must be devoted exclusively to the little ones.”<sup>74</sup>

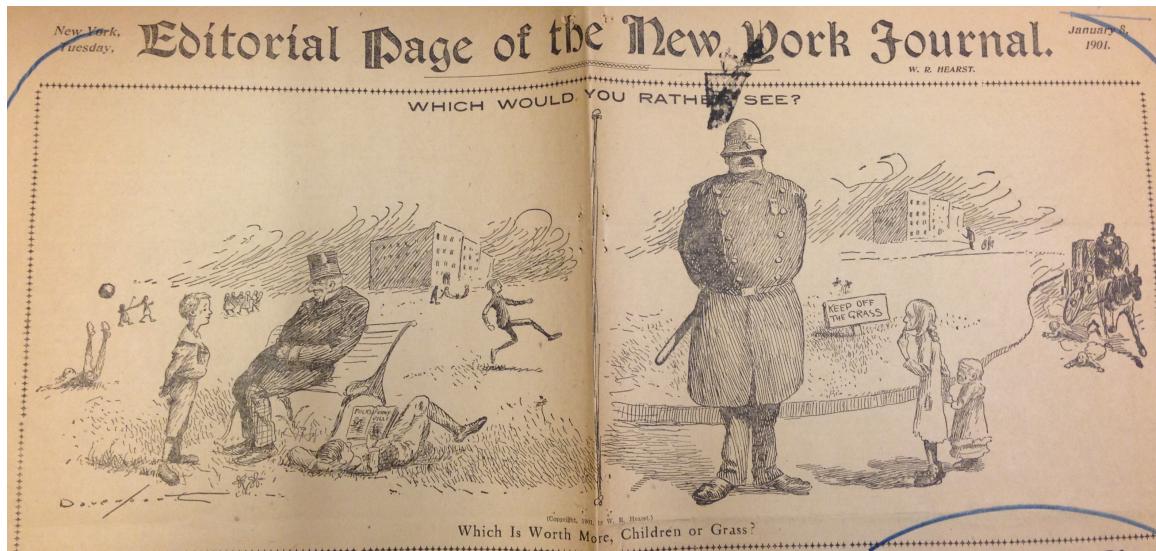


Image 6.3: “Which is Worth More, Children or Grass?”<sup>75</sup>

The descriptions of “park” and “play” advocates and the cartoon above (Image 6.3) seem to set up a clash between park and child interests. But we reach a rhetorical impasse. The mission of “child saving” was not particular to playground promoters, but rather a matter of assessing how a healthy child develops in interaction with the city environment. Such assessments rested on biological and psychological theories of the proper conditions to foster human development; and on a view of human nature as it matured in the urban environment. For example, an author concerned that raising “healthy children” was “more desirable than to have luxuriant grass, or flowers, or

<sup>73</sup> Archibald A. Hill, “Parks and the Public,” *The Survey* 16, no. 14 (1906): 405.

<sup>74</sup> Walter Vrooman, “Playgrounds for Children,” *The Arena* 10 (July 1894): 286. Vrooman, “a contentious Christian socialist,” was a founder, along with Charles Stover, of New York Society for Parks and Playgrounds for Children. Harlan B. Phillips, “A War on Philadelphia’s Slums: Walter Vrooman and the Conference of Moral Workers, 1893,” *The Pennsylvania Magazine of History and Biography* 76, no. 1 (1952): 47.

<sup>75</sup> *New York Journal*, Jan 8, 1901.

shrubs, or trees,” believed that children were not “naturally” criminals. But natural play was criminalized when it spilled over into the street, corrupting the child’s sense of right and wrong while teaching antagonism toward authority and contempt of the rule of law.<sup>76</sup> Mabel Macomber, president of the City Playground League, also thought that parks and playgrounds could save children by teaching lawful citizenship. But she came to a different conclusion on park policy:

Shall we save the grass and the children, by properly controlling them, or shall we ruin both through mistaken zeal in cultivating the play instinct?... If the children in Central Park are strictly kept to the places which will not be injured...and taught to respect the law, they are far more likely to develop into useful citizens than if given liberty to romp and demolish.<sup>77</sup>

Richard Welling also suggested that properly managed parks would best serve children. For authority, he relied on the writing of “Dr. Watson on Behaviorism” and the Child Welfare Committee to support his claim that the earliest years were critical for child development and the youngest children demanded the greatest care. These children did not need swing sets and slides; they needed the company of their mothers and caregivers, who would best be served in tranquil parks.<sup>78</sup> The moral suasion of the child savers did not require that children be placed in playgrounds to save them from the perils of the street, nor did it necessitate the use of parkland.

## **Part 2: Promoting the Play Spirit**

The promotion of the “play spirit” transcended spatial boundaries. In place of landscape theory, boosters of the “play spirit” focused on the conditions that would allow for the development of *organized play*. In G. Stanley Hall’s ontogenetic theory of human development, stages of child development recapitulate the progression of the human race.<sup>79</sup> Therefore the “play impulse” in

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<sup>76</sup> H. K. Rush-Brown, “Parks,” *The Craftsman* 6, no. 2 (1904): 118.

<sup>77</sup> Mabel Macomber, “Regulated Play: City Can Save Both the Children and the Parks,” *NYT*, Feb 21, 1914. Macomber was president of City Playground League, an organization for which I have been unable to find additional information.

<sup>78</sup> Welling to Straus, Dec 8, 1927, RWP 12:8.

<sup>79</sup> Hall, an educational psychologist, was the first president of Clark University. See: Dorothy Ross, *G. Stanley Hall: The Psychologist as Prophet* (Chicago: University of Chicago Press, 1972). See Cavallo, 1981, 34-35 on Gulick’s application of Hall’s teachings to the work of the PAA.

children must be supported to allow their progression to civilized self-development. Lee Hanmer, PAA field secretary, was agnostic about the bureaucratic management of play—it could take many forms including an independent recreation commission, a mayoral agency, an office within a Park Department, etc.—but he insisted that play must be *organized* to benefit both the child and society: “Play in itself is socially neither good nor bad, but the mutual relationships involved have an ethical effect that may be toward good or toward evil; therefore, we must have play under right conditions.”<sup>80</sup>

The “child savers”—park and play promoters alike—were also interested in the salvation of an interconnected industrial social order. The object of improvement was the child, and via the child society. Perhaps the most famous articulation of the ramifying concern for children’s play was Joseph Lee’s aphorism, “The boy without a playground is father to the man without a job.”<sup>81</sup>

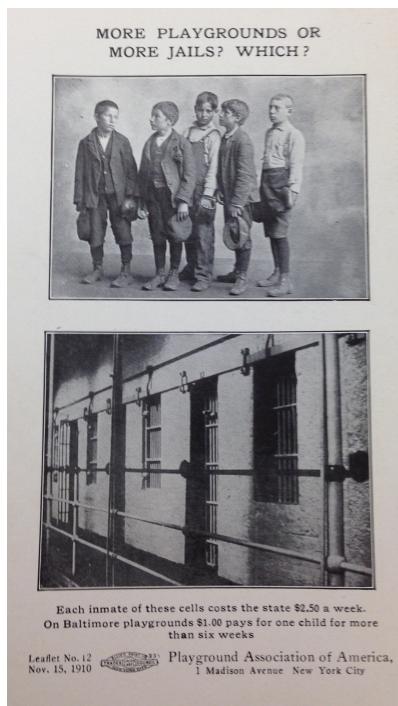


Image 6.4: Playground Association of America Leaflet, 1910  
Social Welfare History Archives, University of Minnesota Libraries<sup>82</sup>

<sup>80</sup> Lee F. Hanmer, *First Steps in Organizing Playgrounds* (New York: Russell Sage Foundation, 1908), 24.

<sup>81</sup> Joseph Lee, *Constructive and Preventive Philanthropy* (New York: Macmillan, 1902), 123.

<sup>82</sup> PAA leaflet, Nov 15, 1910, NRA 2: Board of Directors, 1-23-1911.

Children were malleable, educable, and salvageable. For the immigrant child, organized play was a form of didactic citizenship training; children were raw material and would manifest the effects of industrialization and urbanization as the next cohort of American adults.<sup>83</sup> Luther Gulick, a “disciple” of G. Stanley Hall,<sup>84</sup> argued that “in a well-managed playground” children learned “fundamental lessons in mutual rights”: sharing equipment, taking turns, playing by rules, accepting defeat, and forming teams. Through organized play children learned that “the social unit is larger than the individual unit” and that self-control could promote the “welfare of the larger unit—the team” (and, notably, not the gang).<sup>85</sup> A child playing in a group game “is deeply participating in a common purpose...so that the sheer experience of citizenship in its simplest and essential form—of the sharing in a public consciousness, of having the social organization present as a controlling ideal in your heart—is very intense,” wrote Joseph Lee in his article, “Play as a School of the Citizen.”<sup>86</sup>

### Organized Play Across City Space

At the turn of the 20th century, promoters of organized play offered outdoor recreation in numerous city spaces including: piers, roofs, interior city blocks, play streets, children’s farms, and vacant lots, as well as within existing city parks. The work of the Parks and Playgrounds Association of New York (PPA)—which ranged from opposing the construction of the Lenox Library in Central Park to staffing games of ring-around-the-rosy on a vacant lot under the Brooklyn Bridge—illustrates this well. The PPA affirmed that, “It is the purpose of the Association not so much to

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<sup>83</sup> Andrew G. Truxal, *Outdoor Recreation Legislation and its Effectiveness: A Summary of American Legislation for Public Outdoor Recreation, 1915-1927* (New York: Columbia University Press, 1929), 8. Ross attributes this idea to G. Stanley Hall, who combined “moralism and romanticism” in his view that the child was a source of “value regeneration,” transmitting lessons from organized education back to the home (1972, 289).

<sup>84</sup> Ross, 1972, 300.

<sup>85</sup> Luther Halsey Gulick, “Play and Democracy,” *Charities and the Commons* 18 (Aug 3, 1907): 481; Cavallo, 1981, 34. According to the PPA, “Play, when organized gives the team—when unorganized the ‘gang.’ The difference between a ‘team’ and a ‘gang’ is in the right leadership. It is cheaper to provide a leader for a team than a policeman for a ‘gang.’” Parks and Playgrounds Association of New York, *Report of Parks and Playgrounds Association, Inc. of New York City, 1908* (New York: PPANY, 1908), 12. This statement shows the clear influence of Luther Gulick’s philosophy on the PPA’s organized play supervision.

<sup>86</sup> Joseph Lee, “Play as a School of the Citizen,” *Charities and the Commons* 18 (Aug 3, 1907): 489.

equip and maintain playgrounds as to keep alive and direct the spirit of play.”<sup>87</sup> The scope of the PPA’s recreation work, and its tangential connection to parks, is seen in an early list of internal committees:

Legislation, Finance, Sites, Use of Museums and other buildings, Use of Parks, Use of Vacant Lots, Equipment of Playgrounds, Athletic Fields, Outdoor Gymnasia, Work in Institutions, Roof Gardens, Social Evening Centers, Industrial Evening Centers, Recreation Piers, Free Swimming Baths, Kindergarten and other Encampments, Vacation Schools....<sup>88</sup>

The PPA’s commitment to the “spirit of play” is evident in its summer work, in which it pursued eclectic land uses in the service of child development. The PPA wanted efficient recreation administration to promote organized play, but this did not demand the integration of playgrounds into parks. In 1907 the MPA (PPA predecessor organization) scouted playground locations on unused city-owned land, but the development of permanent playgrounds was secondary to the immediate provision of space for organized play:

There are at present vacant lots belonging to the Board of Education, Fire Department, Aqueduct Department, Water Works Department, Bridge Department, Bureau of Street Encumbrances, admirably located for playgrounds in the midst of congested regions, quite unused and standing idle for many years. These could be made immediately available for playground use temporarily until needed for the purposes originally intended.<sup>89</sup>

The following summer, the organization (incorporated in 1908 as the PPA) again surveyed vacant lots for playground use: “There is need that much more liberal playground facilities should be made for the children than can be offered by park or school. There are still many vacant lots even in Manhattan. These can be equipped and maintained for the summer months for \$500 each.”<sup>90</sup> \$500 could not adequately develop a landscape, and could certainly not acquire title to a city lot, but it could purchase portable equipment and fund a playground supervisor for the summer months. An appeal for charitable donations to support the PPA’s summer 1909 recreation work made the case

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<sup>87</sup> Committee on Plan of Summer Work, 1909, Report to the PPA Secretary, GBP 78: Parks & Playgrounds 1909.

<sup>88</sup> Draft Papers of Incorporation, Jan 1908, LWP 29: PPANY Reports. The MPA incorporated as the PPA.

<sup>89</sup> N/a, n/d [1907] report on the need for an effective playground system, GBP 78: Parks & Playgrounds 1907.

<sup>90</sup> Bradstreet to Borglum, Apr 20, 1908, GBP 78: Parks & Playgrounds 1908.

for funds well-spent: “This program is practical and effective. The vacant lot is used wherever possible. It is the best resource for the children.”<sup>91</sup> If vacant lots weren’t available, the PPA suggested the streets, “The Guild of Play, the Base-Ball and Street Blocks deal with children on the streets in neighborhoods where there are no vacant lots. The street is the city’s largest playground. It should not be its most dangerous one. This work will make it safer.”<sup>92</sup>

In 1910 the PPA published a booklet on available opportunities for the development of play space, and identified:

1) Unused properties belonging to the city. 2) Streets which might be set aside—at certain hours freed from traffic. 3) The enlarged use of parks and playgrounds. 4) Vacant lots belonging to private parties, which would be cheerfully loaned freely or for small rental or remission of taxes...The problem, therefore, at the present moment, is one of utilizing resources at hand.<sup>93</sup>

While the brochure listed one among many options the “enlarged use of parks and playgrounds,” the PPA urged the policy of identifying underdeveloped or unutilized city-owned land that should be immediately put to use for play. The top picture in Image 6.5 (below) shows a lot at West, Spring, Canal and Washington Streets in lower Manhattan, “Owned by the city. No playground or park in the neighborhood, but many children.” The bottom picture shows the location of present day Carmansville Playground, on 151<sup>st</sup> Street and Amsterdam Avenue in Manhattan. Although the city had acquired the lot in 1906, it was sitting without improvements when this brochure was released in 1910. The PPA demonstrated that the city could immediately take advantage of land in its possession. Nowhere in the brochure’s 17 images of unique sites does the PPA suggest re-developing an existing landscaped park for active play.

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<sup>91</sup> Plan of the PPA attached to appeal from Bradstreet to Borglum, Jun 26, 1909, GBP 78: Parks & Playgrounds 1909.

<sup>92</sup> Ibid.

<sup>93</sup> Parks and Playgrounds Association, “Statement Relating to Recreation in Greater New York” (New York: PPANY, 1910), 16-17.

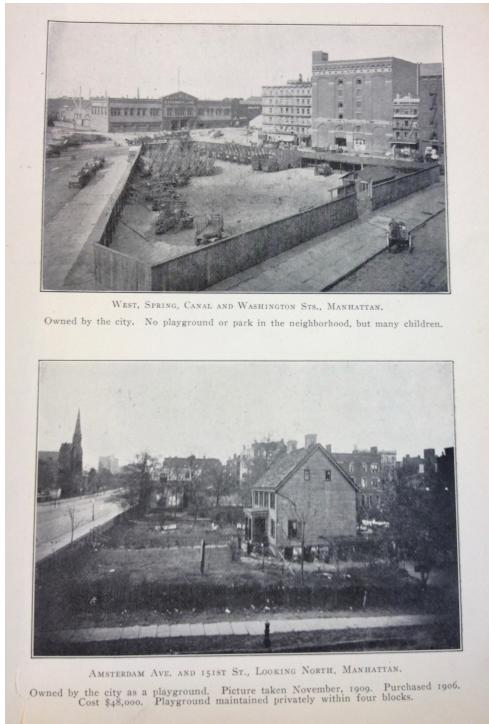


Image 6.5: PPA Brochure of City-Owned Land Available for Playground Development, 1910<sup>94</sup>

When the PPA began its fifth summer season overseeing playground work, on July 1, 1912, it was operating 54 play centers across the city (44 in Manhattan), “including vacant lots, roofs, recreation piers, street centers, and guilds of play....”<sup>95</sup> Figure 6.1 shows the range of spaces across which the PPA carried out its work from 1910 to 1915 (with only limited work in parks), and Image 6.6 illustrates the diversity of PPA-sponsored “street play.”

<sup>94</sup> Ibid.

<sup>95</sup> PPA Report, Oct 29, 1912, GBP 80: Parks & Playgrounds 1912. The following is a description of a Guild of Play: “The leader gathers a group of from twenty to fifty children, gives badges of membership and meets them once or twice a week for dances, games or industrial work. The advantage is threefold: It substitutes something for nothing in the life of the child. It gives an opportunity for belonging to something, a desire whose strength is shown in prevalence of the ‘gang’. It teaches cooperative action with minimum expense and maximum enjoyment.” Report of the Secretary of the PPA, 1909, GBP 78: Parks & Playgrounds 1909.

Figure 6.1: Parks and Playgrounds Association Supervision of Play, 1910-1915

	Vacant lot play grounds	Recreation piers	Play Streets	Roof Play-grounds	“Guild of Play” centers	Play groups in parks	Day nurseries
Summer 1910		3		4	24	5	
Summer 1911	15	5	7	4	24		
Summer 1913	5	8	4	7	10	1	
Winter/ Spring 1914 <sup>96</sup>			10		1		
Summer 1915	10	1	13				7

Source: Gutzon Borglum Papers<sup>97</sup>

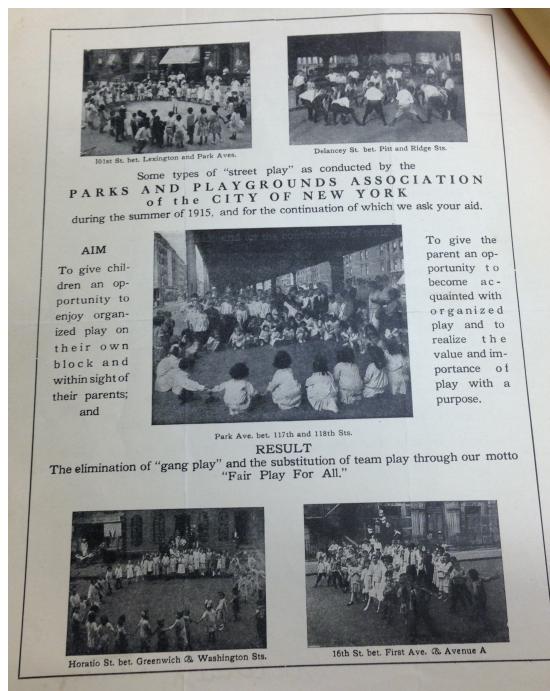


Image 6.6: Parks and Playgrounds Association “Street Play,” Summer 1915<sup>98</sup>

<sup>96</sup> Madeline Stevens, PPA Report of Play Activities, Mar 10, 1914, GBP 80: Parks & Playgrounds 1914 (I could not locate a summer 1914 report).

<sup>97</sup> “Report of the Summer Work of the Parks and Playgrounds Association of the City of New York, Summer of 1910,” GBP 78: Parks and Playgrounds Jan-Aug, 1910; PPA “Report on Play Activities, Summer Season 1911,” GBP 79: Parks & Playgrounds, July-December 1911; Lulu Morton, Report on PPA Summer 1912 work, Oct 29, 1912, GBP 80: Parks & Playgrounds 1912; Madeline Stevens, Report on PPA Summer 1913 work, Oct 10, 1913, GBP 80: Parks & Playgrounds 1913; Madeline Stevens, Oct 12, 1915, PPA Report of the Play Supervisor Summer Season 1915, GBP 80: Parks & Playgrounds 1915.

<sup>98</sup> Parks and Playgrounds Association of New York flier, circa 1915, GBP 80: Parks & Playgrounds 1915.

In 1914, Park Commissioner Cabot Ward reflected on the use of parks for playgrounds, “[T]he solution of the playground question was not to be found in the suggestion of so many associations that more of the existing park space should be withdrawn from general park uses and devoted to playgrounds. The fact is that New York today is sadly deficient in both park and playground acreage.” Instead, he suggested the use of rooftops, armories, vacant land, and unused land under the jurisdiction of other city agencies; and he asked property owners to submit maps to him of their vacant land holdings for possible loan to the city.<sup>99</sup>

### Play Administration

The PPA saw their summer work as a way to arouse interest in the permanent city oversight of playgrounds. Mary Simkhovitch supported the summer work because, “While it was hoped some years ago that playground work need not again be done by private organizations, yet the unreadiness of the city to take up the work properly had been proven...”<sup>100</sup> According to Rainwater’s 1921 survey of the American playgrounds, “in every instance” in cities across the eastern United States, “philanthropic maintenance preceded public support and control.”<sup>101</sup> But this was a temporary state of affairs. Play did not have to occur in parks, but across the reform spectrum there was a clear argument for state provision of play.

There were three complementary arguments about the charitable, commercial, and public provision of recreation. First, the limited capacity of charities to provide comprehensive citywide play facilities would undermine the socially necessary integrative aspects of play. If left to charitable provision, facilities such as pools and baseball fields would not be built, or would be so limited as to privilege a few neighboring children to the exclusion of all other city children. Entrance or

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<sup>99</sup> “Opens Playgrounds on Vacant Lots,” *NYT*, Jun 17, 1914.

<sup>100</sup> PPA executive committee minutes, Apr 16, 1908, GBP 78: Parks and Playgrounds 1908.

<sup>101</sup> Rainwater, 1921, 43-4.

subscription fees would exclude poorer children. According to Henry Curtis of the PAA, “Play does not seem to be a fit object for charitable support, because it is not for any special class of children, but for all children.”<sup>102</sup> Charitable work could simply not scale to meet citywide needs.

Second, commercial provision would corrupt the potential social benefits of recreation. Commercial recreation was driven by a profit motive that encouraged dissipation and excess consumption, and tempted people away from “the civic project that could be achieved by offering music, dance and refreshment in parks.”<sup>103</sup> Commercial recreation would offer whatever tawdry or sensational entertainment generated a profit, but “it does not pay commerce to develop recreation in connection with useful instruction.”<sup>104</sup>

Third, state provision of play demonstrated to citizens that “their government is an institution which cares for its people.”<sup>105</sup> City-dwellers would “come to associate their leisure hours and recreation with the thought of the city itself.”<sup>106</sup> This was part of a larger intervention in cycles of criminality for which the state already provided tax-supported institutions (“jails, asylums, police, courts”—why pay for the cure but not the prevention?<sup>107</sup>

The arguments for state-sponsored recreation were also paternalistic. Children must be taught to play, and disorganized communities could not adequately provide instruction, making it the proper function of government. Jacob Riis wrote that, “The problem of the children is the problem of the State. As we mould [sic] the children of the toiling masses in our cities, so we shape

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<sup>102</sup> Curtis, 1910: 124.

<sup>103</sup> Jane Addams, “Public Recreation and Social Morality,” *Charities and the Commons* 18 (Aug 3, 1907): 494. See also Jane Addams, *The Spirit of Youth and the City Streets* (New York: Macmillan, 1909), 98.

<sup>104</sup> John Collier, “Leisure Time, The Last Problem of Conservation,” *The Playground* 6, no. 3 (1912): 101. (*The Playground* was a monthly journal published by the PAA).

<sup>105</sup> Howard S. Braucher, “Why I Believe that Community and Neighborhood Centers, Schools, and Parks Should be Under Government Direction and Support,” *The Playground* 10, no. 1 (1916): 92.

<sup>106</sup> Newton D. Baker, “Why Recreation Centers Should be Supported by Public Taxation,” *The Playground* 6, no. 6 (1912): 185.

<sup>107</sup> Baker, 1912: 185.

the destiny of the State...”<sup>108</sup> Ultimately, we see the self-interest of reformers in the promotion of happy civility via recreation, which “will make it possible for progress to come through evolution instead of revolution.”<sup>109</sup> The Outdoor Recreation League solicited donations by arguing that, “the city should possess (as a means of self-defense if for no higher reason,) sufficient places for the harmless recreation and for the physical development of the people.”<sup>110</sup> Roy Rosenzweig, in his history of working-class leisure pursuits in Worcester, Massachusetts, disagrees that parks and playgrounds were a strategy of class domination, though neither were they a mechanism of social reform. Workers had agency to shape their own recreation, but within the constraints of the workday. According to Rosenzweig, the development of new parks and playgrounds “did not ‘remake’ the Worcester working class in the image desired by industrialists and reformers. Neither did it precipitate a new class solidarity or consciousness...basically, parks provided a leisure space in which workers expressed and preserved their distinct ethnic cultures.”<sup>111</sup> Peiss documents the “indifference and hostility” with which working women in early 20th-century New York responded to attempts to regulate their commercial and popular amusements; in turn, reformers’ “attitudes about leisure and womanhood were reformulated to accommodate—albeit grudgingly—a heterosocial and expressive commercial culture.”<sup>112</sup> While these women/workers had the agency to accept or reject the reformers’ leisure time agenda, it is less clear that they had a say in the planning and physical organization of leisure space.

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<sup>108</sup> Jacob Riis, *The Children of the Poor* (New York: Scribner’s, 1892), 1.

<sup>109</sup> Braucher, 1916: 94.

<sup>110</sup> ORL solicitation letter, Jul 1, 1899, JGPS 14:2.

<sup>111</sup> Roy Rosenzweig, *Eight Hours for What We Will: Workers and Leisure in an Industrial City, 1870-1920* (New York: Cambridge University Press, 1983), 139.

<sup>112</sup> Kathy Lee Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986), 164.

### Part 3: The Incorporation of Playgrounds into Parks

In 1903 the Commissioner of Parks for Manhattan and Richmond, William R. Willcox, announced that it was the policy of his administration, “to maintain playgrounds as one of the permanent features of *small parks*.<sup>113</sup> I argue that small parks were particularly vulnerable to playground incursions through three processes: the propensity of “landscape failure” in existing small parks made them susceptible to redesign; playgrounds that were created on formerly vacant land were imprinted with active recreation uses that made subsequent “mini-pastoral” design politically unpopular; and, after small “park-playgrounds” were established via the first two processes, they began to serve as precedent for broader *park* policy.

Large parks were also susceptible to the incorporation of playgrounds, which could gain entry to smaller parcels of a park that did not express a holistic design, or that were already used for unstructured recreation—large parks were decomposable. I discuss how play spaces consolidated into parks through specific attributes of small and large parks, and then consider the attrition of play spaces on docks to their primary infrastructure mandates.

#### Vulnerable Small Parks

##### *Design “Failure” in Small Parks*

Mulberry Bend Park opened on a cleared slum block on the Lower East Side in 1896.<sup>114</sup> The park was designed by Calvert Vaux, who together with Frederick Law Olmsted had previously designed Central and Prospect Parks and other significant creations of large-scale landscape art. In 1850, before he formed his famous partnership with Olmsted, Vaux had moved from his native

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<sup>113</sup> *The Evening World*, Apr 23, 1903, pg. 8, emphasis mine. Iannacone, 2005, discusses the design history of the small parks and the first “park-playgrounds.” She documents the design shift from formal parks to recreation grounds. Her work provides a helpful history of design ideology, and I discuss some of the same events, such as the founding of Seward Park, in this chapter.

<sup>114</sup> Iannacone documents the political struggle to establish the site, now home to Columbus Park (2005: 69-72).

London to Newburgh, New York to work with author, horticulturist, and domestic tastemaker Andrew Jackson Downing. Downing died at the age of 36 in a steamboat fire in 1852, but Vaux remained committed throughout his career to the lessons of his early mentor.<sup>115</sup> Iannacone writes that, “With Downing’s encouragement, Vaux became a fervent advocate of ‘the power of art to refine and elevate the human spirit,’” and this commitment to the elevating influence of architecture and landscape design was apparent in Vaux’s design for Mulberry Bend Park.<sup>116</sup> The landscape in Mulberry Bend Park (Image 6.7) was a miniaturized application of the theories that informed the winding paths and vistas of Olmsted and Vaux’s large pastoral parks.<sup>117</sup>



Image 6.7: Mulberry Bend Park, circa 1905<sup>118</sup>

However, on such a reduced scale, barren lawns or trampled plantings were not only highly visible, but also constitutive of the full (ruined) effect of the landscape in a small park. Vaux’s “shrunk[en]… picturesque designs”<sup>119</sup> could be condensed to fit a tenement block, but the primary purpose of the park as a place of beauty with attendant mental and physical effects was difficult to

<sup>115</sup> For a discussion of the influence of Downing on Vaux, see: William Alex, “Calvert Vaux: Architect and Planner,” *The Hudson Valley Regional Review* 7, no. 2 (1990): 55-60.

<sup>116</sup> Iannacone, 2005: 41, citing Francis R. Kowsky, *Country, Park & City: The Architecture and Life of Calvert Vaux* (New York: Oxford University Press, 1998), 3.

<sup>117</sup> On the “republicanism” of Vaux’s design philosophy, see Iannacone, 2005: 46-50.

<sup>118</sup> Detroit Publishing Co., Copyright Claimant, and Publisher Detroit Publishing Co. Mulberry Bend, New York. Mulberry Street New York, ca. 1905. Photograph. Retrieved from the Library of Congress, <https://www.loc.gov/item/det1994000894/PP/>.

<sup>119</sup> Iannacone, 2005: 78.

transport, and even more difficult to defend. Evidence of these failures gave way to arguments for the redesign and dedication of small parks for active play. Given the city's pressing need for recreation space, the Committee on Recreation of the City of New York concluded that the city must turn to property that it already owned. By removing "space-wasting" scenic features—such as the winding pathways that Vaux had translated from the picturesque design of Central Park into small parks such as Mulberry Bend—the city could "get the greatest use out of" existing small parks.<sup>120</sup>

Even in Seward Park, which was designed for active play with the input of the Outdoor Recreation League (ORL) (seen in the crowded lawn in Image 6.8), the initial distribution of landscape and active features created "an example of the small park with playground features, which has been destroyed as a park and is inefficient as a playground."<sup>121</sup> Grass was difficult to maintain where children played, and it was a losing battle to keep them off the lawns. A prominent landscape architect yielded to the children, "When one sees their numbers and the inadequacy of the provision for their play, one has not the heart to wish to save the park at their expense."<sup>122</sup>



Image 6.8: Seward Park, circa 1905<sup>123</sup>

<sup>120</sup> *Report by the Committee on Recreation of the City of New York*, 1916, 20, GHR 31:41.

<sup>121</sup> Charles Downing Lay, "Playground Design," *Landscape Architecture* 2, no. 2 (1912): 67.

<sup>122</sup> *Ibid.*

<sup>123</sup> Detroit Publishing Co., Publisher. [Seward Park, New York, N.Y.]. [Between 1900 and 1910] Photograph. Retrieved from the Library of Congress, <https://www.loc.gov/item/det1994018901/PP/>.

### *The Creation of New Playgrounds*

A July 1903 visit to Seward Park by a writer for the *Jewish World* found the following scene:

There were children suspended by their heels, children suspended by their toes, children standing on their feet, children standing on their heads, children walking on their hands, children whirling through the air, children yelping like dogs, children screaming like owls, children, children—I have almost forgotten the meaning of the word...<sup>124</sup>

Five years prior, the lot had been strewn with demolition debris, and a year before that covered in dwellings. After the city acquired the land for Seward Park in June 1897, it razed the tenement block but had no immediate plans for park (or playground) construction. In 1899 George C. Clausen, Commissioner of Parks for Manhattan and Richmond, granted the ORL permission to operate “the first outdoor gymnasium in a public park of our city” which would be maintained by the ORL until the city was ready to assume responsibility to develop the park.<sup>125</sup> When the ORL stepped in, the lot was in shambles: “Unsightly holes, once cellars, remained to fill with stagnant water, amputated sewer- and gas-pipes were exposed, and among these the children played mimic battles of the Spanish-American War, then in progress.”<sup>126</sup>

With this move, the Department of Parks ceded the formation of a recreation agenda to the ORL. Any subsequent change to the space would have to contend with the ORL’s established active recreation program. When the Department of Parks commenced its park design process, its plans indeed met with opposition. One ORL solicitation letter read:

The plans of the Park Commission, as now drafted, banish the Playground and Outdoor Gymnasium utterly from Seward Park... We must not cease to show by example what Seward Park ought to be—an example to which the people can point and say to the

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<sup>124</sup> Minnie Shomer, “In Seward Park,” *New York Jewish World*, Jul 24, 1903, JGPS 16:6.

<sup>125</sup> ORL invitation to the opening of Seward Park Outdoor Gymnasium and Playground, May 30, 1899, JGPS 14:2. Seward Park was not officially unveiled as a city park until October 1903.

<sup>126</sup> Lillian D. Wald, *The House on Henry Street* (New York: Henry Holt, 1915), 86. Wald recalled that “some very undesirable tenement houses” had been torn down to build the park (1915, 85). Joel Schwartz assesses the displacement of tenement dwellers caused by the creation of small parks: “[P]rojects authorized by the Small Parks Act created William H. Seward Park, Hamilton Fish Park, and Columbus Park, and removed approximately 190 tenements and 13,300 residents...” Joel Schwartz, *The New York Approach: Robert Moses, Urban Liberals, and Redevelopment of the Inner City* (Columbus: Ohio State University Press, 1993), 13.

Park Department and the Board of Estimate and Apportionment—That's what we want; a Playground within a Park; not a Park and no Playground.<sup>127</sup>

The first set of Department of Parks plans, released in October 1900, contained only landscape features with no design for active play. Commissioner Clausen submitted the plans to the Board of Estimate and Apportionment with the following petition, “These plans contemplate a small park in the natural style, with lawns and shrubberies covering as large an area as possible.”<sup>128</sup> The plans, according to Charles Stover, deprived children “of their inalienable right to the pursuit of play,” and he mocked the design, “In the natural style, forsooth!”<sup>129</sup> In October 1900 the ORL circulated a petition, written in both English and Yiddish, with a direct request from the residents of the Lower East Side to the Commissioner of Parks “to include in your plans for the improvement of Seward Park an **Outdoor Gymnasium** and **Playground**, such as the Outdoor Recreation League has maintained there.”<sup>130</sup> The ORL had established an original and primary use of the space against which the Department of Parks would have to frame its subsequent designs.

The Department of Parks released revised plans in December 1900, but the ORL found they still included only a paltry provision for play.<sup>131</sup> On a third design iteration the ORL acted “in consultation with the Park Department,” working to transform the lot into a playground.<sup>132</sup> The final plan, presented by Commissioner Clausen to the Board of Estimate and Apportionment in November 1901, “set[ ] aside a substantial portion of the park for a playground.” Clausen wrote, “The [Park] Department has also profited by the advice of the Outdoor Recreation League, whose president was consulted as to the size, etc., of the playground, and who expressed his satisfaction

<sup>127</sup> ORL form letter, dated 190x, JGPS 15:5 (emphasis in original).

<sup>128</sup> Meeting minutes for Oct 12, 1900, *Minutes of the Board of Estimate and Apportionment of the City of New York* (New York: M. B. Brown, 1900), 817.

<sup>129</sup> Charles B. Stover, “Playground Progress in Seward Park” *Charities* 6 (May 4, 1901): 386.

<sup>130</sup> ORL petition, Oct 8, 1900, JGPS 15:5 (emphasis in original).

<sup>131</sup> The *New York Journal* editorial board hoped that “the children will have friends enough to kill” the Park Department’s second design for what was still “a small conventional park.” “The Children’s Park,” *New York Journal*, Jan 7, 1901.

<sup>132</sup> J.G. Phelps Stokes and Charles Stover, ORL solicitation letter, Aug 30, 1901, JGPS 16:5. Also: J.G. Phelps Stokes to William Willcox (Commissioner of Parks) with suggestions for building placement, capacity, design, and amenities, Jul 7, 1902, LWP 29: Seward Park.

with the plans in general.”<sup>133</sup>

I can only speculate as to why the Board of Estimate rejected the first two plans, and why the Department of Parks finally chose to work with the ORL. A plan, even one accepted by the Commissioner of Parks with the approval of the Mayor, is still just an idea scrawled on paper until there is money to build; projects large and small could stall or die if the Board of Estimate failed to allocate sufficient construction funds. The Board of Estimate (which was officially abolished in 1990) was a particular New York City institution, “really the board of directors of the city. It determines policy with reference to all financial matters, franchises, zoning, city planning, public improvements and real estate belonging to the city.”<sup>134</sup> The Board was not a representative institution. It comprised the five borough presidents, who possessed one vote each. The Board’s other members, with two votes each, were the Mayor, City Comptroller, and President of the City Council.<sup>135</sup> The ORL was a coalition organization that could mobilize thousands of constituents of the mayor and the Manhattan Borough President (for local matters before the Board of Estimate, members typically deferred to the opinion of the president of the borough in which a proposal originated). ORL member organizations included two dozen settlement houses, unions, religious associations, and charity organizations (including the Children’s Aid Society, the Charity Organization Society, and the Association for Improving the Condition of the Poor). The ORL raised the funds to support its work in Seward Park through penny and nickel donations gathered through these affiliated organizations. The ORL published the names of every one of hundreds of contributors in the *Outdoor Recreation League Advocate* (four editions were issued between 1898 and

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<sup>133</sup> Clausen to Board of Estimate and Apportionment, Nov 11, 1901, *Minutes of the Board of Estimate and Apportionment of the City of New York* (New York: M. B. Brown, 1901), 1403-04.

<sup>134</sup> Thelma Smith, *Guide to the Municipal Government of the City of New York*, 10<sup>th</sup> ed. (New York: Meilen Press, 1973), 31.

<sup>135</sup> In 1989 the U.S. Supreme Court declared the Board unconstitutional, in violation of the 14<sup>th</sup> Amendment (“one person, one vote”), *Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989). The Supreme Court did not require the city to abolish the Board of Estimate, only to restructure it to reflect equal representation. The City Charter Commission, tasked with reform, proposed the dissolution of the board and the redistribution of its powers, which was implemented in 1990.

1900). The July 1, 1899 *Advocate* acknowledged a \$200 donation from J. D. Rockefeller and a 1 cent donation from Meyer Meletzky.<sup>136</sup> The people of the Lower East Side had invested in the space that the Department of Parks intended to redesign.

#### *A New Precedent*

Once the Department of Parks began operating small “park-playgrounds,” their physical presence served as precedent for the design and management of park-playgrounds *and* traditional parks. In 1909 a member of the Realty League defended his proposal to construct an athletic field in Morningside Park by citing existing equipment in Seward Park as proof that a track was a valid “park purpose.”<sup>137</sup> In a fight to prevent the construction of a war memorial in Central Park, William Roulstone cited the Advisory Committee on Small Parks to argue that, “juvenile crime decreased wherever playgrounds were installed in congested areas,”<sup>138</sup> marshaling evidence of *playground* efficacy to support *park* preservation.

The corollary to the sway of precedent as park policy is to act now and apologize later. After Commissioner Stover installed tennis courts in Central Park (illegally, without the consent of the park’s landscape architect, Charles Downing Lay), Samuel Parsons lobbied the PPA to demand the removal of the courts.<sup>139</sup> But it was difficult for the PPA to act after the courts were already in place, and the organization decided, “that the extensive use by the public of the tennis courts in Central Park should warrant their presence.”<sup>140</sup>

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<sup>136</sup> *Outdoor Recreation League Advocate* no. 3, Jul 1, 1899, JGPS 14:2.

<sup>137</sup> Alfred R. Conkling, Letter to the Editor, *NYT*, Apr 19, 1909.

<sup>138</sup> “Central Park Body Opposes Memorial,” *NYT*, Mar 4, 1926.

<sup>139</sup> PPA Report of the Secretary, Oct 31, 1912, GBP 80: Parks & Playgrounds 1912.

<sup>140</sup> PPA meeting minutes, Oct 31, 1912, GBP 80: Parks & Playgrounds 1912.

## “Decomposable” Large Parks

Frederick Law Olmsted, Jr., like his father before him, argued that some forms of recreation “cannot possibly be provided for effectively except in parks of very large extent.”<sup>141</sup> Facilities and activities that could be located elsewhere should be placed in large landscaped parks, “only so far as this is possible without sacrifice of the main objective.”<sup>142</sup> The “main objective” of these large parks was beauty:

Some things...are of value wholly or primarily for their beauty, and if they have any direct utilitarian value it is secondary and incidental...The extraordinary difficulty of balancing artistic gain and loss against utilitarian gain and loss in detail, and the manifest weighting of the scales in favor of the utilitarian side whenever this process is followed, make it important to segregate sharply from the vast majority of things those which belong to this latter class...When dealing with any piece of park land the prime purpose of which is to give enjoyment by its beauty, do not on any account thrust into it a playground or any other so-called ‘improvement’ which will impair its beauty.<sup>143</sup>

What if a park was not fulfilling its aesthetic purpose? The People’s Institute “recognized that parks are not designed to be simply playgrounds—that there are aesthetic park uses which should be held primary, etc.; but New York has a huge park system, much of which is serving neither play use nor an aesthetic use.”<sup>144</sup> And those park spaces that were unlovely and unused could be appropriated for active play.<sup>145</sup> Furthermore, the unity and integrity of landscape design that Central Park protectors defended so vigorously was not present for every park; and coherent design intent could be easily lost to poor maintenance.

Large parks, in particular, were decomposable into constituent elements. George Burnap, landscape architect for Washington, D.C.’s public grounds, suggested a form of ritual sacrifice to ravenous playgrounds: “When playgrounds first appeared in our midst they entered like a lamb, and were turned to graze in some park corner. Now, behold! they have become as a raging lion, and are

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<sup>141</sup> FLO, Jr. to Straus, Sep 17, 1930, OAR Reel 26 (503:4).

<sup>142</sup> Ibid.

<sup>143</sup> Frederick Law Olmsted, Jr., “Playgrounds in Parks from the Designer’s Standpoint,” *Landscape Architecture* 7, no. 3 (1917): 125-27.

<sup>144</sup> “The Object of Recreation Investigation Campaign” People’s Institute Committee on Leisure draft, n/d, PIR 11:14.

<sup>145</sup> To this day poor maintenance is offered as an excuse for the redesign of large landscaped parks.

about to devour the entire park areas.”<sup>146</sup> Burnap differentiated “legitimate park ideals” which promoted “restful rather than stimulating” recreation, from playground ideals, which were “foreign elements” in parks.<sup>147</sup> But he believed that playgrounds would inevitably be built within parks, so he urged the physical segregation of the two forms. In a concession to save the whole, he wrote that “the poorest rib” of a large landscaped park might be sacrificed for a playground, which had no need for beauty, while a playground in a smaller park was a “devastation and sacrilege.”<sup>148</sup>

Ritual sacrifice of the poorest rib was one way that a piece of a larger park might be dedicated to a playground. Smaller pieces of large parks also accommodated playgrounds through the reinterpretation of the concept of recreation to which portions of large parks were already dedicated. Often large landscaped parks were designed with areas designated as “recreation grounds” or “play grounds.” These spaces, in particular, were susceptible to redesign, as they were already set aside for (unprogrammed) play.<sup>149</sup> Heckscher Playground in Central Park was built on a portion of parkland that had been designated as “The Ball Ground” in the original Greensward Plan, a “play ground” in the more archaic sense of an unstructured space for pleasurable recreation.<sup>150</sup>

The defunct Rice Memorial Stadium in Pelham Bay Park (Bronx) offers another example.<sup>151</sup> The architect for the Rice Memorial argued that, “There are about 1700 acres of land and 1000 acres

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<sup>146</sup> George Burnap, *Parks: Their Design, Equipment and Use* (Philadelphia: J.B. Lippincott, 1916), 150.

<sup>147</sup> Burnap, 1916, 144; 168.

<sup>148</sup> Burnap, 1916, 153-8.

<sup>149</sup> In *Rivet v. Burdick*, 255 App.Div. 131 (1938), the Appellate Division of the New York Supreme Court determined that the construction of a ski trail in a park did not constitute parkland alienation. The court wrote that, “Skiing has become a recognized sport, like baseball, tennis, horseback riding, bobsledding, tobogganing, skating and other forms of amusement now to be seen in many public parks.”<sup>149</sup> Of note here is the phrasing, “skiing has become” a form of amusement “now recognized.” Recreation was not definitional but descriptive, and the courts acknowledged that recreation was an evolving concept.

<sup>150</sup> E.g. In 1916 the Municipal Art Society still referred to Central Park as “the public’s playground.” “Vigilance the Price of Parks,” *Bulletin of the Municipal Art Society of New York* no. 5 (First Quarter 1916).

<sup>151</sup> Today in Pelham Bay Park a small sculpture is all that remains of a \$1,000,000 gift made to the City in 1920 by Julia Rice, in honor of her late husband Isaac Rice. Mr. Rice had established a trust to create a hospital (L. 1916, Ch. 339), but after the war Mrs. Rice turned her attention to the physical improvement of young Americans (“a great playground in a city is a preventorium,” Herts & Robertson to Wald, Jan 2, 1920, LWP 29: PPANY Correspondence). In 1920 the Rice trust was altered to permit the funding of a playground (L. 1920, Ch. 280). The PPA negotiated extensively with the Rice family to keep the playground out of Central Park, and later (unsuccessfully) Pelham Bay Park (Battle to Dunnigan, Mar 27, 1920, GBP 80: Parks & Playgrounds 1920).

of water contained in Pelham Bay Park and we ask for 50 acres, *a large part of which was laid out especially for amusement and sports of all kinds.*”<sup>152</sup> He stated that the site in Pelham Bay Park had been used for 20 years as an athletic field and thus the proposed recreation stadium would not constitute a change in use: “We do not propose to add or detract from one inch of the property. We suggest a logical, progressive, scientific development in a piece of city property *already designated officially for this particular type of endeavor.*”<sup>153</sup> These considerations prevailed before the Board of Estimate.<sup>154</sup>

#### **Part 4: The Incomplete Consolidation of Recreation Spaces into Parks**

Janet Bednarek documents the early use of airfields as sites for municipal recreation.<sup>155</sup> She writes that most people experienced early aviation as a special event or a form of spectacle, going to the field to watch barnstormers or arriving celebrities. In this context, park departments operated 10 of 47 airports surveyed in a 1930 national study.<sup>156</sup> But air travel, air commerce, and air defense altered the infrastructure and oversight mandates of the national aviation system. Minneapolis was the last city to operate an airfield within its park system, and the Minneapolis Park Board handed over control in August 1944 to the new Metropolitan Airports Commission. The Park Board could not afford to meet the infrastructure standards demanded by new regulations from the Department of Commerce, and the increased military use of the airport was unequaled by increased revenue support.<sup>157</sup> Federal regulation, wartime use, and the institutionalization of a national system of utilitarian air services foreclosed on the capacity of park departments to manage airports. The case

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<sup>152</sup> Herts to Battle, Mar 16, 1920, GBP 80: Parks & Playgrounds 1920 (emphasis mine).

<sup>153</sup> Herts to Battle, Mar 16, 1920 [second letter in file], GBP 80: Parks & Playgrounds 1920 (emphasis mine).

<sup>154</sup> “Department of Parks, Borough of the Bronx—Erection of Public Playground and Athletic Field as Memorial to Late Isaac L. Rice” (Cal. No. 170, Mar 19, 1920), *Minutes of the Board of Estimate and Apportionment of The City of New York Jan 1, 1920 to Mar 31, 1920* (New York: M. B. Brown, 1920), 1169. From the start there were physical problems with the site, unscrupulous contractors, and insufficient funds (Lawrence Craner, Report on the Rice Memorial Playfield, Jan 14, 1929, PCR 4.2). The site fell prey to vandalism and was ultimately demolished by the City, never having opened as a functional recreation facility.

<sup>155</sup> Janet R. Daly Bednarek, “The Flying Machine in the Garden: Parks and Airports, 1918-1938,” *Technology and Culture* 46, no. 2 (2005).

<sup>156</sup> Bednarek, 2005: 356.

<sup>157</sup> Bednarek, 2005: 370-72.

of airports in parks illustrates that the evolution of acceptable recreation within parks was not simply a question of the internal struggles of park and play advocates. Recreationists and park administrators did not settle the debate about the incorporation of airfields into park management, because airfields became articulated to other fields of management.

The concept of a park purpose was clearly susceptible to redefinition, but not all city recreation spaces became park spaces. What developed as a proper use of city parkland was not only the result of physical particularities of park properties or the “discursive practices” that playground advocates used to erode the authority of landscape aesthetes.<sup>158</sup> These debates took place in a broader spatial and political ecology.<sup>159</sup> In this section I discuss the use of New York City Department of Docks property as recreation piers from 1897 to 1917, and the return of the piers to their infrastructure functions.

### Recreation Piers

The East Third Street pier, along the East River in Manhattan, opened on June 26, 1897 to a crowd of thousands cheering over the sound of a live band. Mayor William L. Strong spoke of his joy at the dedication, “This pier makes another lung for the great east side, and when hot summer nights you come down here with your wives and children and breathe the fresh, cool air of the river breezes you will appreciate what has been done.”<sup>160</sup> The pier measured 60 feet across, with a promenade floor 350 feet in length, and a 36-foot high pavilion. The Dock Commissioner, who presided over the East Third Street opening, declared that the piers were more valuable than small parks for their approximation to a “seaside resort” for the people.<sup>161</sup>

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<sup>158</sup> Michèle Lamont and Virag Molnar, “The Study of Boundaries in the Social Sciences,” *Annual Review of Sociology* 28 (2002): 178.

<sup>159</sup> Andrew Abbott, “Things of Boundaries,” *Social Research* 62, no. 4 (1995).

<sup>160</sup> “A Roof Garden on a Pier,” *New York Sun*, Jun 27, 1897. The newspaper coverage of recreation piers in 1897 is found in a clipping file in the Community Service Society archives (CSS 150: NYC Dept Rec-Dept Docks 1897).

<sup>161</sup> “New York’s Recreation Piers,” *Review of Reviews*, Nov 1897.

The East Third Street pier, and eight other recreation piers that would open by 1910,<sup>162</sup> were experiments in relieving the “alarming” conditions of the tenements.<sup>163</sup> In a pamphlet, *Small Parks and Recreation Piers for the People*, the Citizens Union argued that parks were not “civic luxuries” but crucial public health infrastructure—“the city’s lungs.” “Park” in this sense was synonymous with “breathing spot,” a break from the tenement, an escape from dank, windowless, crowded abodes, and a recreation pier as much as Mulberry Bend Park would suffice.<sup>164</sup> Recreation piers were praised for providing the same benefits as tenement parks: relief from commotion and crowding, salubrious light and air, and the lessons of virtuous citizenship (as the *Commercial Advertiser* wrote of the Third Street pier, “If ‘cleanliness is next to godliness,’ then fresh air must have a great deal to do with ethics”<sup>165</sup>). At the dedication of the East 24<sup>th</sup> Street pier in September 1897, a state judge spoke directly to the hundreds of children gathered, “This isn’t a charity, boys and girls.... It is yours and mine—every inch of it.” He told the children that, “It is better and cheaper to make good men than to take care of bad men. I hope you will come here every fine day, and learn to love the government of the city...”<sup>166</sup>

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<sup>162</sup> The 1910 Annual Report of the Department of Docks and Ferries listed the following recreation piers: East 3rd Street, East 112th Street, East 24th Street, West 129th Street, West 50th Street, Pier 43 at Barrow Street, Pier New 30 at the foot of Market Street, Pier 10 at Cedar Street, and the pier at the foot of North 2nd Street in Brooklyn. The Dock Department also maintained a recreation space between East 17th and 18th Streets in Manhattan. New York City Department of Docks and Ferries, *39<sup>th</sup> Annual Report for the Year Ending December 31, 1910* (New York), 321-24.

<sup>163</sup> “New Recreation Piers: Resorts for the City’s Poor,” *The Commercial Advertiser*, May 25, 1897. Also: “A Recreation Pier,” *New York Tribune*, May 3, 1897.

<sup>164</sup> Citizens Union, *Small Parks and Recreation Piers for the People* (Citizens Union, 1897).

<sup>165</sup> “New Recreation Pier,” *The Commercial Advertiser*, Jun 22, 1897.

<sup>166</sup> The speech was followed by Rev. Father Brann, who said that the pier had been raised by capitalists who demonstrated “a care for the people and their wants” that would “stamp out any germ of socialism or anarchism.” “Recreation Pier Dedicated to All,” *New York Press*, Sep 26, 1897.



*Recreation Pier, New York.*

Image 6.9: Recreation Pier, New York

Courtesy of the Museum of the City of New York<sup>167</sup>

The recreation piers hosted dances, pageants, kindergartens, promenades, and concerts. In 1897 on the East Third Street Pier, the Dock Department arranged for music by Joyce's Military Band five nights a week and weekend afternoons all summer long.<sup>168</sup> Merchant philanthropist Nathan Straus set up sterilized milk dispensaries on the recreation piers.<sup>169</sup> During the 1905 school year the East Third Street Pier served as a makeshift classroom for an overflow of 1,100 students from local public schools.<sup>170</sup> In the summer of 1910 "the piers were thronged every afternoon with children" learning folk dances under the direction of the PPA,<sup>171</sup> and 500 children closed out an end-of-summer folk dance festival on the East 24<sup>th</sup> Street Pier in September 1910, overseen by the Dock

<sup>167</sup> Illustrated Postal Card Co. / Museum of the City of New York. X2011.34.4255.

<sup>168</sup> "A Roof Garden on a Pier," *New York Sun*, Jun 27, 1897.

<sup>169</sup> "Nathan Straus's New Depot," *NYT*, Aug 26, 1897. The Department of Docks annual reports recorded a license to Straus for the privilege of operating milk stands on the recreation piers through 1913. Straus's son, Nathan, Jr., would serve as president of the Park Association from 1928 to 1933.

<sup>170</sup> "Pier School Opens Today," *NYT*, Oct 18, 1905.

<sup>171</sup> New York City Department of Docks, 1910, 16.

Department and the PPA.<sup>172</sup> The PPA hosted a number of activities on the piers, including play centers and concerts. In an arrangement with Dock Commissioner Tompkins for the summer of 1911, the PPA was granted permission “to use all of the recreation piers as play centers” which would be “devoted to regular *playground activities*.<sup>173</sup>



Image 6.10: Activity on a New York City Recreation Pier, circa 1900<sup>174</sup>

#### Return to Dock Functions

Chapter 298 of the Laws of 1892 authorized the use of piers for recreation purposes under the authority of the Department of Docks.<sup>175</sup> The Dock Commissioner suggested that, “This work should naturally come under the head of public charities, but our Department has been authorized...and we find it a pleasant duty.”<sup>176</sup> The chartered responsibilities of the Department of

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<sup>172</sup> “Last of the Pier Dances,” *NYT*, Sep 11, 1910.

<sup>173</sup> Madeline L. Stevens, PPA Report on Play Activities, Mar 7, 1911, GBP 79: Parks & Playgrounds Jan-March 1911 (emphasis mine). The Outdoor Recreation League also supported the use of piers for recreation purposes, and lobbied the city for recreation infrastructure improvements on the piers, ORL minutes Jul 28, 1898, USS, Reel 17, Series 8.

<sup>174</sup> Detroit Publishing Company, Recreation Dock, New York (circa 1900), accessed Oct 9, 2017, Library of Congress digital file from original <http://hdl.loc.gov/loc.pnp/det.4a09037>.

<sup>175</sup> “To afford the inhabitants of New York greater opportunity for healthful recreation than they now possess, and to accomplish such end the Department of Docks is hereby authorized to construct or rebuild the piers set apart under the provisions of this act for public use...” L. 1892, Ch. 298.

<sup>176</sup> “The Recreation Docks,” *New York Tribune*, Jul 16, 1897.

Docks included the regulation of the waterfront “and the setting aside of parts of it for such purposes as may be best calculated to *promote the interests of our city.*” The Department was otherwise concerned with managing physical infrastructure and dredging the waterways, and with the general “obligation to watch over and promote the commercial growth of the city.”<sup>177</sup>

In 1914 Howard Bradstreet noted that four city departments—schools, parks, docks, and the borough presidents’ offices (which managed the streets)—oversaw recreation programming and facilities:

In each of these, two phases have to be considered—the one for which the department is primarily established, e.g. lighterage problems in connection with the docks; strictly park problems, e.g., care of grass, surface, trees, etc., in the case of parks, and the incidental ones whereby some form of recreation has been made possible.<sup>178</sup>

Landscape architects and recreationists could debate what constituted a “strictly park problem,” and the courts could be conscripted into demanding that administrators recognize certain uses of parks as non-park purposes (necessitating alienation legislation). But the piers were more directly vulnerable to enlistment into other fields of power. The essential role of the Department of Docks in “promoting the interests of our city” could at one moment mean seaside slum relief; this became incidental after the declaration of war in 1917.

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The United States Senate voted to support a declaration of war against the Imperial German Government on April 4, 1917, and the House of Representatives followed suit on April 5, 1917, in a slightly less fateful vote, New York City’s Committee on Recreation of the Board of Estimate and Apportionment resolved to extend the use of the city’s recreation piers to the federal

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<sup>177</sup> New York City Department of Docks, *Twelfth Annual Report for the Year Ending April 30<sup>th</sup> 1882* (New York), 11.

<sup>178</sup> Howard Bradstreet, NYC recreation organization memo, Mar 27, 1914, GBP 80: Parks & Playgrounds 1914. Bradstreet had served as PPA secretary before taking over the new City Bureau of Recreation (within the Park Department) in 1909. He wrote extensively on the bureaucratic organization of play.

Department of War.<sup>179</sup> While the immediate effects of the declaration of war were perhaps not felt in the daily operations of most branches of New York's municipal government, Commissioner of Docks R.A.C. Smith dealt directly with the consequences of the national situation.

Beginning in the summer of 1917, Commissioner Smith had to deny requests for the recreational uses of waterfront infrastructure. He turned down a request from the Manhattan Borough President's office to open a floating bath on Dock Department property off of Riverside Drive, because the "slip must be kept open for maritime uses and particularly for Government craft..."<sup>180</sup> Commissioner Smith also rejected a request to use the pier at East Third Street by a local school principal who promised she could vacate the pier in a moment's notice if it were needed for emergency defense use. Smith replied, "It is impossible to comply with [the] request as the Federal Government has already taken over this structure for war uses. It is no longer under the control of this Department."<sup>181</sup> The 50<sup>th</sup> Street recreation pier was taken over by the Army to receive injured soldiers and dispatch them to local hospitals.<sup>182</sup>

The port was stripped to its "essential" service transporting materiel to and from Europe. The Commissioner of Docks reflected on the work of his department during the year 1918:

Confronted at the very outset with the necessity for meeting the demands of the United States Government for facilities at this Port to speed up the transportation of troops and the shipment of supplies, it was apparent that the character of the work of this Department during the year would be predominantly national rather than local.<sup>183</sup>

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<sup>179</sup> Meeting minutes of the Committee on Recreation of the Board of Estimate and Apportionment, Apr 5, 1917, GHR 31:42. (I do not know whether the committee, if it had so chosen, could have withheld the use of city piers from the War Department).

<sup>180</sup> Commissioner of Docks R.A.C. Smith to Manhattan Borough President Marcus M. Marks, Jun 25, 1917, MANY Mayor Mitchel Correspondence Received, Roll 23, Box 23:238.

<sup>181</sup> Smith to Featherstone, Oct 30, 1917, MANY Mayor Mitchel Correspondence Received, Roll 23, Box 23:239.

<sup>182</sup> New York City Department of Docks and Ferries, *47<sup>th</sup> Annual Report for the Year Ending Dec 31, 1918* (New York), 5.

<sup>183</sup> Department of Docks and Ferries, 1918, 3.

Because of these national demands, responsibility for local ferry service devolved to the city's Department of Plant and Structures (L. 1918, Ch. 646), and the care of dockside "marginal streets" was transferred to the Office of the Borough Presidents (L. 1918, Ch. 515).

When the war ended, the Department of Docks did not reclaim street care or commuter services. In 1920 the Commissioner of Docks wrote that the use of the port for the war efforts had revealed the inadequacy of the system to handle the diverted demands for continued commerce, and thus the goal would be to return the ports to "their equilibrium."<sup>184</sup>

Perhaps the piers could have returned to their robust pre-war recreational use if the Department of Parks had previously established clear jurisdiction over the recreation piers, which it had assumed, only briefly, in 1915.<sup>185</sup> The Department of Docks correspondence file from 1917 contains letters that had to be forwarded to the Department of Parks because letter writers, including employees of other city departments, could not identify the proper jurisdiction of the piers.<sup>186</sup> Conversely, in 1912, when the Department of Docks controlled the recreation piers, the PPA had to inform the (municipal) Public Recreation Commission that recreation piers were actually under the jurisdiction of the city.<sup>187</sup>

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<sup>184</sup> New York City Department of Docks, *49<sup>th</sup> Annual Report for the Year Ending December 31, 1920*, (New York), 3.

<sup>185</sup> Cabot Ward, "Park Administration," *Proceedings of the Academy of Political Science in the City of New York* 5, no. 3 (1915): 141; Also: Henry Bruere, *New York City's Administrative Progress 1914-1916: A Survey of Various Departments Under the Jurisdiction of the Mayor* (New York: M. B. Brown, 1916), 298. (I could not find any reference to the substantive meaning of this jurisdiction; I cannot say if the Dock Department retained responsibility to maintain the physical infrastructure of the piers). The New York City Department of Docks and Ferries *45<sup>th</sup> Annual Report for the Year Ending December 31, 1916* lists the recreation piers in a section entitled "Waterfront property owned by the city and occupied by other departments" under the heading of the Park Department (pg. 49). In the summer of 1916 there was a polio epidemic in New York, which limited public recreation programming for children. By the following summer the country was at war and the docks were in the service of Department of War.

<sup>186</sup> MANY Mayor Mitchel Correspondence Received, Roll 23, Box 23:238.

<sup>187</sup> Report of the PPA Secretary, Oct 31, 1912, GBP 80: Parks & Playgrounds 1912. There were not always clear divisions between private (charitable) and public recreation responsibilities during the early days of public play provision on the piers (see: PPA Report of the Play Supervisor, Summer Season 1915, GBP 80: Parks & Playgrounds 1915). Howard Bradstreet, on behalf of the Park Department, requested \$200 in emergency cash from the PPA to cover city debts. PPA play leaders offered free services to the city, including the labor of trained play leaders (Report of the Summer Work of the PPA, Season of 1910, GBP 78: Parks and Playgrounds Jan-Aug 1910). In the summer of 1912, the PPA pledged to raise the \$2880 necessary to provide music on recreation piers when the city could not come up with the funds (Report to the Secretary (PPA), Jun 26, 1912, GBP 80: Parks & Playgrounds 1912).

After the war there was public pressure to reopen the piers to recreational use, but they were being used as supply sheds, or had suffered infrastructure damage. The East 112<sup>th</sup> Street pier was being used “to store goods for a railroad company.”<sup>188</sup> When the East 24<sup>th</sup> Street Pier was returned to the city by the Navy after the war, it was used to store street cleaning material.<sup>189</sup> The Sinking Fund allocated money to the Department of Docks to repair the defunct recreation piers; but because the Department of Docks was singularly committed in post-war policy to restoring the transportation and commerce functions of the port, the repairs were not pursued with haste, if at all. Parks Commissioner Gallatin complained to Mayor Hylan in the summer of 1919 that the 50<sup>th</sup> Street pier was still taken over by the Federal government; and he complained again in July 1920 that the Department of Docks had repaired only two piers.<sup>190</sup> The recreation piers were not incorporated into the park equivalence afforded to playgrounds.<sup>191</sup>

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In my professional work, dissertation research, and personal interest in the parks of New York City, I have heard specific objections to hot dog vendors, newsstands, and ugly bicycle racks in parks. I have heard broad philosophic opposition to the commercialization, neoliberalization, and privatization of parks. A scan of recent news stories about New York City parks would return several years-long debates about the redesign of “a six-inch step,”<sup>192</sup> or the appropriate ground cover for a recreational path. But I have never encountered complaints about signs that designate a portion of a public park for the exclusive use of a limited group of people—“No Adults Except in

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<sup>188</sup> “Public School Notes,” *NYT*, Sep 16, 1922.

<sup>189</sup> “Want Recreation Pier Used as Such Again: Welfare Workers Say It is Occupied as a Garage and Storehouse by City,” *NYT*, Dec 18, 1921.

<sup>190</sup> Gallatin’s Secretary to Hylan’s Secretary, Jul 2, 1919, MANY Mayor Hylan Correspondence Received Box 132: 1427; Gallatin to Hylan, Jul 31, 1920, MANY Mayor Hylan Correspondence Received Box 133: 1429.

<sup>191</sup> I am only focusing on the process of playground consolidation during the “Reform Park” era. There are a limited number of piers under the control of the contemporary Parks Department. And the Parks Department will likely play a larger role in waterfront management as parkland becomes incorporated into a system of critical infrastructure to mitigate the effects of sea level rise.

<sup>192</sup> Emily Frost, “Parks Dept. Chief Yells at Parents for Opposing UWS Playground Renovations,” *DNA Info New York*, Jul 2, 2014, <https://www.dnainfo.com/new-york/20140702/upper-west-side/parks-dept-chief-yells-at-parents-for-opposing-uws-playground-renovations>.

the Company of a Child”—a formulation of restricted access that I imagine would be considered widely objectionable (if not illegal) using any other set of individual attributes (e.g. “No women except in the company of a man”).<sup>193</sup> The use of parks for playgrounds, and the dedication of formerly unrestricted space to the exclusive use of children, shows the full and successful naturalization of playgrounds *in* and *as* parks. As Lillian Wald wrote, the work of play promoters effectively established “the recognition of the child’s right to play as an integral part of his claim upon the state.”<sup>194</sup>



Image 6.11: “No Adults Except in the Company of a Child”<sup>195</sup>

I have tried to show that the child’s right to play did not have to be asserted in parks. But the fact that the category of parkland was amenable to such an extensive incorporation of recreation sites has implications for the contemporary exchange of land in New York City. As Logan and Molotch state as the opening premise of *Urban Fortunes*, parcels of city land are commodities and we

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<sup>193</sup> There are 8.5 million New Yorkers; undoubtedly someone has registered a complaint. I have seen restrictions on “people without dogs” entering dog runs, but this is presented as a liability issue. Dog runs might become as naturalized as playgrounds, though proposals for new runs can still be sources of neighborhood contention.

<sup>194</sup> Wald, 1915, 96.

<sup>195</sup> Playground in Washington Square Park (Manhattan), Feb 2016, author photograph.

should attend to “the social context through which they are used and exchanged.”<sup>196</sup> In this case, the context is the bounding of a particular category of land for constrained terms of exchange. In this way, Lamont and Molnar suggest the relevant task—the identification of the mechanisms associated with the breaching and reconstitution of the categorical boundaries of parks.<sup>197</sup> The inclusion of playgrounds into the jurisdiction of the Parks Department expands the interpretation of legitimate park functions, the basis for the determination of parkland alienation. The boundary ecology<sup>198</sup> of progressive era recreation consolidated numerous parcels of city land into a very sticky jurisdiction. Today in New York City, Robert Moses Playground—a city block of asphalt bisected by an air vent—is subject to a more difficult, lengthier, and more contested process of exchange than if that asphalt were under the jurisdiction of another city agency.

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<sup>196</sup> John R. Logan and Harvey L. Molotch, *Urban Fortunes: The Political Economy of Place* (Berkeley: University of California Press, 1987), 1.

<sup>197</sup> Lamont and Molnar, 2002: 187.

<sup>198</sup> Abbott, 1995.

## Chapter Seven: Contemporary Mechanisms for Park Defense

In this chapter I discuss some of the legal and administrative mechanisms available to contemporary park defenders.

- First, the decision in *William v. Gallatin* has been coupled to claims for the preservation of parkland on the basis of the public trust doctrine. “Doctrinal creep” has led to a strong claim that parks are “protected by the public trust doctrine.” While the public trust doctrine traditionally applied to public rights of use in waterways, in contemporary New York State it has been extended to apply to municipal parkland and is used to justify claims that park incursions are unlawful, inappropriate, or in violation of the publics’ rights.
- Second, state and federal environmental bond acts specify restrictions on alienation and demand particular terms of compensation for alienated land. While requirements only obtain over the specific parcels of land that have been acquired or improved by the bond funds, the practice of compensatory alienation appears to have become standardized across all parkland exchange; furthermore, the pricing of parkland in this way does not appear to have corrupted the preciousness of parks or accelerated the rate of parkland exchange.
- Third, an additional layer of administrative protection is afforded to parks that have been designated as “scenic landmarks” under the 1973 amendments to New York City’s landmark preservation law.
- Fourth, I consider the booster argument that parks “pay their way.”

## Part 1: The Application of the Public Trust Doctrine to City Parkland

In 2006, a coalition of Brooklyn community groups sought to prevent the use of a portion of Brooklyn Bridge Park for a housing development on the argument that the plan “violated the public trust doctrine, which forbids private development on parkland unless specifically approved by the Legislature.”<sup>1</sup> A February 2014 suit filed by the City Club of New York to enjoin the construction of a shopping mall on parkland stated, “The idea of the shopping mall’s proponents that one can exploit perceived ambiguities in an ancient statute…threatens the integrity and strength of the public trust doctrine.”<sup>2</sup> In New York City, contemporary claims for the protection of parks under the public trust doctrine are framed as rights, for example the statement that, “Asphalt Green is a park *entitled* to the protection of the ‘Public Trust Doctrine.’”<sup>3</sup>

A recent *CUNY Law Review* article on the legal protections afforded to New York City parkland argues that there has been a “trend toward the evisceration of the public trust doctrine.”<sup>4</sup> I argue instead that there has been a trend toward “doctrinification” of the concept articulated in *Williams v. Gallatin*, that the state legislature is the ultimate sovereign authority in sanctioning the use of municipal parkland for “non-park purposes.” In New York State common law (and common usage) the concept of land held in trust for the public by the state as a trustee has shifted over time to the current demand for the rightful protection of parks “under the public trust doctrine.”

The following exchange, between a citizen park advocate and an audience member at a conference on private property rights, in 2015, illustrates the (new and tenacious) association between *Williams v. Gallatin* and explicit “public trust doctrine” claims:

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<sup>1</sup> Nicholas Confessore, “Judge Dismisses Suit Against Park Plans,” *NYT*, Nov 29, 2006.

<sup>2</sup> The City Club of New York, “Flushing Meadows Corona Park,” accessed Aug 1, 2015, <https://web-beta.archive.org/web/20150808222832/http://cityclubny.org:80/projects/flushing-meadows-corona-park>.

<sup>3</sup> NYS Assemblyman Adam vs. City of New York, Supreme Court of the State of New York—New York County, Motion date Aug 6, 2009, emphasis mine.

<sup>4</sup> Thomas Honan, “These Parks Are Our Parks: An Examination of the Privatization of Public Parks in New York City and the Public Trust Doctrine’s Protections,” *CUNY Law Review* 18, no. 2 (2015): 111, <http://academicworks.cuny.edu/clr/vol18/iss2/10>.

*Audience member:* What was the date on the last statute or the Public Trust Doctrine what date was the legislative enacted for that?

*Park Advocate:* I think it's a case law thing.

*Audience member:* Case law, okay.

*Park Advocate:* In other words, take a look at *Williams v. Gallatin*, but it's widely recognized.<sup>5</sup>

There is a common contemporary formulation of the public trust doctrine as it applies to municipal parkland in New York State: “Under the public trust doctrine, state legislative approval is required before parkland can be alienated or used for an extended period for non-park purposes.”<sup>6</sup>

In the 2001 decision *Friends of Van Cortlandt Park v. City of New York*, Judith Kaye, chief judge of the New York State Court of Appeals, wrote that:

In the 80 years since Williams [v. Gallatin], our courts have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes.<sup>7</sup>

Interpreters of Judge Kaye’s decision have reformulated the statement “parkland is *impressed with a public trust*,” to read, for example, “In New York, the *public trust doctrine* includes protection of public parks from alienation and use for non-park purposes.”<sup>8</sup> It appears that the *Friends of VCP* case has facilitated a popular legal grievance that couples the substantive decision in *Williams v. Gallatin*—the use of parks for non-park purposes requires “legislative authority plainly conferred”—to the claim that parks are “protected by the public trust doctrine,” an ancient (highly mutable) doctrine through which “perpetual use [of navigable waters] was dedicated to the public.”<sup>9</sup>

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<sup>5</sup> “Victory in Appellate Court Against the City of New York, But Battles Loom,” 19<sup>th</sup> Annual National Conference on Private Property Rights, accessed Nov 4, 2017, [prfamerica.org/speeches/19th/VictoryInAppellateCourt.html](http://prfamerica.org/speeches/19th/VictoryInAppellateCourt.html).

<sup>6</sup> Anthony S. Guardino, “The Public Trust Doctrine Brought into Focus,” *New York Law Journal*, Sept 23, 2015, <http://www.newyorklawjournal.com/id=1202737876794/The-Public-Trust-Doctrine-Is-Brought-Into-Focus>.

<sup>7</sup> *Friends of Van Cortland Park, v. City of New York*, 95 N.Y.2d 623, 630 (N.Y. 2001).

<sup>8</sup> Honan, 2015: 123 (emphasis mine).

<sup>9</sup> Sax, 1970: 475.

- Between 1920 and 2001, there were 28 cases that cited *Williams v. Gallatin* in matters relating to the use of public land in New York State courts.<sup>10</sup>
  - Only one of the 28 cases that cited *Williams* mentioned the “public trust doctrine.”<sup>11</sup>
- After the 2001 *Friends of VCP* case, there have been 13 cases that cite *Williams v. Gallatin*.<sup>12</sup>
  - Of those, ten make some version of the claim that the “public trust doctrine” obtains over or protects parks, using the explicit language of the named doctrine.

*Williams v. Gallatin* (1920) established the (vague) test that the municipal use of parkland for “non-park purposes” requires legislative authorization. But the decision did not include any variation on the language of “a public trust.” It simply affirmed that before the city could use a park for a non-park purpose it must obtain express authorization of the state legislature: “No objects, however worthy...which have no connection with park purposes, should be permitted to encroach upon [a park] without legislative authority plainly conferred....”<sup>13</sup> This passage cites as a reference the case of *Brooklyn Park Commissioners v. Armstrong* (1871), which is perhaps the origin of the trust claim, though that case referred only to Prospect Park as land *held in trust*, requiring the authorization of the state before it could be put to uses other than parkland.

The New York State Office of Parks, Recreation and Historic Preservation’s *Handbook on Alienation* cites *Brooklyn Park Commissioners v. Armstrong* (1871) as the first application of “the public trust doctrine” to parkland by a New York court. In 1861, by an act of the New York state legislature, the city of Brooklyn acquired land for the construction of Prospect Park, “to provide for

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<sup>10</sup> Based on a reading of comprehensive casetext.com citations (from July 1920 to July 2017) to *Williams v. Gallatin* 229 N.Y. 248 (N.Y. 1920), in New York State Supreme Courts, the Appellate Divisions of the State Supreme Court, and the Court of Appeals, excluding: 1) one case related to liability for an accident while driving in a park; and 2) one case that attempted to extend the public trust doctrine to private agricultural land.

<sup>11</sup> *Matter of Ackerman v. Steisel*, 104 A.D.2d 940, (N.Y. App. Div. 1984). The reference was made by the judge, and not as a claim by the plaintiff.

<sup>12</sup> While I cannot compare this to the increase in the volume of cases seen by New York courts in the past 16 years, there was approximately one case citing *Williams* every three years between 1920 and the 2001 *Friends of VCP* decision. Since 2001 there has been nearly one *Williams* citation per year.

<sup>13</sup> *Williams v. Gallatin*, 229 N.Y. 248, 253 (N.Y. 1920).

the city of Brooklyn, its people and the public, a park. Lands taken for such purpose are taken for a public use.”<sup>14</sup> The act granted the city the power to take full title to the land, forever, for use as a public park. When the city realized that it had acquired land in excess for the construction of the park, it appealed to the state for permission to sell the surplus land. The court, in *Brooklyn Park Commissioners v. Armstrong*, confirmed that the power to sanction this sale indeed resided with the state. The case, in fact, said nothing of a “doctrine” of public trust, only the act of holding land in trust:

[T]he act of 1861 vested the lands in the city of Brooklyn forever... Though the city took the title to the lands by this provision, it took it for the public use as a park, and held it in trust for that purpose.<sup>15</sup>

If the city of Brooklyn had taken title to the land free from such trust, “of course” it could have conveyed the land as it pleased. But “receiving the title in trust for an especial public use, it could not convey without the sanction of the legislature.”<sup>16</sup>

One approach is to argue with interpretations that retroactively create strong public trust doctrine claims. For example, in 2015, Honan wrote, “Historically, the common law public trust doctrine in New York provided protections for the public’s interest in its parks,”<sup>17</sup> offering a citation to *795 Fifth Ave Corp* (1963), which reads, “The parks of New York City *are in the nature of a public trust* to be administered in the public interest by the city’s duly-elected officials.”<sup>18</sup> In *795 Fifth Ave Corp*—the legal case against the construction of the Huntington Hartford Café in Central Park—the plaintiffs had standing to sue as taxpayers under General Municipal Law 51, which authorizes complaints against city officers and commissioners “to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to

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<sup>14</sup> *Brooklyn Park Commissioners v. Armstrong*, 45 N.Y. 234, 238 (1871).

<sup>15</sup> *Ibid.*, 243.

<sup>16</sup> *Ibid.*

<sup>17</sup> Honan, 2015: 110, with citations to *795 Fifth Ave. Corp* (1963); *Sax* 1970; & *Brooklyn Park Comms. v. Armstrong* (1871).

<sup>18</sup> *795 Fifth Ave. Corp. v. City of N.Y.*, 40 Misc.2d 183, (N.Y. Misc. 1963) (emphasis mine).

restore and make good, any property, funds or estate of such county, town, village or municipal corporation.”<sup>19</sup> In his 1963 decision, Judge Markowitz affirmed the wide discretionary power of the Park Commissioner to protect the public interest in parks. This included the placement of a restaurant pavilion in Central Park, which was vigorously opposed by park preservationists. The judge ruled that the location of the restaurant was a question of policy, not law, and that the Commissioner had not in fact acted to cause injury.<sup>20</sup> The legal strategy of park defenders in *795 Fifth Ave Corp* and in *Williams* was to argue that the city was causing injury in the execution of policy. The trust doctrine claim, for the protection of the dedication of property to the public, is substantially different.

Carol Rose develops Sax’s suggestion that “some property inherently belongs to the public,” though Sax himself did not support this interpretation.<sup>21</sup> MacPherson distinguishes common property, in which an individual possesses a right to not be excluded, from public property, in which the state possesses a “corporate right to exclude.”<sup>22</sup> This tension is at the heart of the trust obligation held by the state in parks—is parkland merely state property, or are there truly “common” rights held by the diffuse public in the land?<sup>23</sup> When I asked one lawyer about this distinction, they told me that the question was “academic.” I am going to table this discussion—and the question of whether

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<sup>19</sup> General Municipal Law §51. As I discussed in Chapter Two, *Williams v. Gallatin* was also pursued as an Article 51 taxpayer suit, initiated by an advocacy organization with powerful lawyers on its board, a history of using taxpayer suits to pursue grievances, and organizational ties to the good government reformers who championed the use of taxpayer suits as a means of asserting expert policy authority over city officials.

<sup>20</sup> This works explicitly against the point Honan attempts to argue, that the interest of the public supersedes the current administrative approval of revenue-generating private events in parks.

<sup>21</sup> Rose, 1998: 359.

<sup>22</sup> C.B. MacPherson, *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 5.

<sup>23</sup> There is a question about whether the state can alienate its own land. Berck makes a strong claim that the state has “duties” it must meet under the public trust doctrine. In coming to this conclusion, he makes a leap of interpretation from the New York State Constitution—“Forest and wild life conservation are hereby declared to be policies of the State” (Article XIV Section 3)—to argue that although this article does not contain explicit trust doctrine language, “it can be deemed to be a codification of the Public Trust Doctrine,” Gregory Berck, “Public Trust Doctrine Should Protect Public’s Interest in State Parkland,” *New York State Bar Association Journal* 84 (2012): 46.

the doctrine “impose[s] an affirmative duty of resource preservation on legislative bodies”<sup>24</sup>—because in existing application to parks in New York, the doctrine functions as a way for citizens to turn to the courts as a check on perceived administrative mishandling of the disposition of a public resource, much as Joseph Sax had intended. Sax searched for a doctrine that would allow citizens to hold public agencies accountable to environmental concerns via “effective judicial intervention,”<sup>25</sup> and the public trust doctrine fit the bill.<sup>26</sup> (Sax published his article in 1970, before the institutionalization of NEPA-mandated federal environmental review processes and similar state-level “little NEPA” reviews. Sax’s concern with “legislative subversion by special interests”<sup>27</sup> remains relevant in fears of regulatory capture). According to Sax, “Public trust law is not so much a substantive set of standards for dealing with the public domain as it is a technique by which courts may mend perceived imperfections in the legislative and administrative process.”<sup>28</sup> He says this “is no more—and no less—than a name courts give to their concerns about the insufficiencies of the democratic process.”<sup>29</sup> In current New York State practice, the doctrine functions as a court-ordered demand that administrators and legislators take a “hard look” at the conversion or disposition of parkland.

A different approach follows the robust sub-literature on the public trust doctrine as legal fiction—either a deleterious misreading of history to justify the undermining of private property rights,<sup>30</sup> or a necessary and useful fiction that generates socially desirable outcomes, obviating the need to locate a “true” history of the doctrine.<sup>31</sup> The question then becomes: how has the “story” of

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<sup>24</sup> Serena M. Williams, “Sustaining Urban Green Spaces: Can Public Parks be Protected Under the Public Trust Doctrine?” *South Carolina Environmental Law Journal* 10 (Summer 2002): 43.

<sup>25</sup> Sax, 1970: 474.

<sup>26</sup> Ibid.

<sup>27</sup> Kearney and Merrill, 2004: 807.

<sup>28</sup> Sax, 1970: 509.

<sup>29</sup> Sax, 1970: 521.

<sup>30</sup> William D. Araiza, “The Public Trust Doctrine as an Interpretive Canon,” *U.C. Davis Law Review* 45 (2012).

<sup>31</sup> Hope M. Babcock, “The Public Trust Doctrine: What a Tall Tale They Tell,” *South Carolina Law Review* 61 (2009).

the public trust doctrine's protection of public parkland developed and circulated; and given its prevalence, what are the implications for continued park preservation?

### The Role of the Community Boards

When I began this project I thought that New York City's community boards might serve as a mechanism for iterative civic learning about parkland protection. In 1951, Manhattan Borough President Robert F. Wagner, Jr., created 12 Manhattan Community Planning Boards.<sup>32</sup> Members of the community boards, serving as volunteers, were to advise the borough president on local problems in "housing, social service and welfare, hospitals and health, schools and education, parks and recreation centers, civilian defense, libraries and other public functions."<sup>33</sup> The advisory role of the boards was incorporated into the city charter in 1961 and expanded to all five boroughs. In 1962, Manhattan Borough President Edward R. Dudley described the boards as "advisors and consultants," partners in two-way communication with the Borough President's office.<sup>34</sup>

Today in New York City, changes to the city map begin in consultation with community boards. 59 boards, each comprising up to 50 volunteer members, perform a legally mandated advisory role in city land use planning decisions.<sup>35</sup> The city's Uniform Land Use Review Procedure (ULURP) requires proposed developments, zoning changes, city land disposition, and budget priorities to start their bureaucratic journeys in community board review.<sup>36</sup> There are functional

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<sup>32</sup> Now known simply as "community boards." On the history of community planning, see Marci Reaven, "Citizen Participation in City Planning: New York City, 1945-1975" (PhD diss., New York University Dept. of History, 2009).

<sup>33</sup> Reaven, 2009: 144, citing Martin B. Dworkis, *The Community Planning Boards of New York* (New York: New York University Graduate School of Public Administration, 1961), 39.

<sup>34</sup> Edward R. Dudley, "Information: Community Planning Districts Borough of Manhattan," Dec 31, 1962, HSS 114:16. Dudley's successor, Constance Baker Motley, also stressed the importance of "two-way communication" between the neighborhoods and her office. Office of the President Borough of Manhattan Press Release, Jan 12, 1966, HSS 138:6.

<sup>35</sup> The contemporary powers granted to community boards were codified in 1975 City Charter revisions. Community board power expanded again with 1989 charter revisions.

<sup>36</sup> While community boards play an exclusively advisory role, one early assessment of their influence found that 19 of the 20 zoning reversals approved by the Board of Standards and Appeals in 1977-78 (of 41 petitions for reversal) had originated as CB recommendations. Joseph F. Zimmerman, "Evolving Decentralization in New York City," *State & Local Government Review* 14 (1982).

accounts in which community boards subvert true community power, channeling popular discontent into a ceremonial role. There are more admiring assessments of the boards' power to grind planning gears to a halt, effecting change through obstruction.<sup>37</sup> Regardless of the effectuation or subversion of community power, the ULURP process mandates public announcements and public hearings. Community boards provide the setting for repeated public (and publicized) discussions about planning goals and neighborhood development priorities, and become a forum, however constrained, for political discourse.<sup>38</sup>

In this way, I thought that the community boards might function as a type of "civic infrastructure" necessary for the "empowered deliberation" described by Fung and Wright.<sup>39</sup> Community boards hold monthly public meetings with institutionalized mechanisms for communication in which members justify their opinions and debate proposals for city improvements. Boards are composed of citizens representing interests at a local, decentralized level, but articulated via their chartered duties to the workings of city government. In the context of this repeated commitment to meet and discuss, I thought that the deliberation of alienation cases (or the informal discussion of high-profile cases occurring in adjacent districts) might function as a form of "pragmatist learning," and the concept of a park as a particular type of space with attendant protections, including protections under the public trust doctrine, might develop.<sup>40</sup>

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<sup>37</sup> On community board process and power, see: Peter Marcuse, "Neighborhood Policy and the Distribution of Power: New York City's Community Boards," *Policy Studies Journal* 16 (1987). The boards were often frustrated by a lack of technical capacity and limited involvement in the decision-making processes of city agencies. Office of the Borough President of Manhattan (circa 1966), "Proposals for Improving the Operations of the Community Planning Boards," WSA 14:14. In 1966, for the first time, Motley provided the twelve Manhattan boards with a total of seven civil service administrative assistant positions.

<sup>38</sup> John Brigham and Diana R. Gordon, "Law in Politics: Struggles over Property and Public Space on New York City's Lower East Side," *Law & Social Inquiry* 21 (1996): 275.

<sup>39</sup> Archon Fung and Erik Olin Wright, "Deepening Democracy: Innovations in Empowered Participatory Governance," *Politics & Society* 29 (2001): 5-41.

<sup>40</sup> "A Pragmatist institutionalism understands institutional formation and change as the interpretation and elaboration of meaning." Christopher K. Ansell, *Pragmatist Democracy: Evolutionary Learning as Public Philosophy* (New York: Oxford University Press, 2011), 39.

In February and March 2016, I attempted to contact the chairperson of the committee responsible for oversight of the parks for each community board in three of the city's five boroughs. Community board members serve as volunteers, and dedicate an extraordinary amount of time and care to the matters of their districts. Perhaps because of the demands of this volunteer position, direct contact information for park committee chairs was often unavailable to the public. I reached the chairs via their respective District Managers, a paid professional support staff position assigned to each board. District Managers served as gatekeepers. Of the 38 districts that I contacted, I heard back from 12 managers, and I conducted interviews with a total of 13 individuals serving on 10 boards.<sup>41</sup> I will not generalize beyond these statements, but use them as a basis to revise my expectations about the role of community boards in circulating legal claims about the protected status of parkland.

Alienation is a rare enough occurrence that few boards deal with multiple (if any) cases. I spoke with members of four boards that had been involved in some discussion about the alienation of parkland. However, when I asked members how those discussions had informed subsequent deliberation about park policy, each spoke about the particularities and limits of the cases to generalize to other situations. One board member mentioned that their district's case "was such a weird thing" and so complicated that it had not been instructive in the board's dealings with other park policy matters.

Board members expressed concerns about very local issues. One member, from a district that had debated an alienation case, said of subsequent matters before the board:

Our discussion, our debates, tend to be very specific. They tend to be about a playground in a park, or a basketball court in a park. Should it be resurfaced, should it be removed, should it be enlarged, is this the right place in the park for it, should it be somewhere else in the

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<sup>41</sup> While most individuals granted me permission to use their names and affiliations, some requested anonymity, and the population of board members is small enough to deduce unnamed member identities. I have used pseudonyms for parks, and I do not name individuals. I refer to individuals as "they/them."

park?...The issue in Maple Park was very specific...[to] that particular location. I don't anticipate that we'll see anything like that again.

When I asked another member if the alienation debate in their district had informed subsequent park policy, they drew instead from the variety of lived experiences of parks, "Parks have to serve many purposes and many people, and no one group should ever be able to say, well, the park is only for this purpose. Parks are for different purposes."

I heard only one statement about the implications of alienation procedures for park policy; it was the claim that, "the State legislation states that if you take ten acres of parkland for some other use, you've got to put ten acres of parkland somewhere else." This, however, is only true for land that has been purchased or improved through specific funding mechanisms (see Section 3, below). The member said that because New York was so dense and developed, the community board was very protective of parkland because "there's no place else...there's no place to trade it off to." The possibility of a land swap didn't show this community board member that parkland was fungible; it showed the extraordinary difficulty of replacing a piece of parkland. The board member explained, "We don't have miles and miles and acres and acres of land that's open and green and free, and that's why we are very very protective."

Befitting people who deal with the specific concerns of their home districts, abstract principles such as "parks should not be used for commercial uses" were quickly qualified when I asked about existing examples: an organization that occupied park space in one district was described as a partner in good faith, "giving back to the community." Another board member stated that parks were not appropriate locations for buildings or commercial institutions, but thought that an existing commercial organization operating within a district park acted as "a good neighbor."

City council members, borough presidents, and the mayor provide capital funding for park projects; they are guided in the allocation of their resources by a Statement of Budget Needs, a document that each community board produces as part of the annual city budget process. The board

members I spoke with identified permissible park uses as ones that would not destroy park infrastructure or require replacement funds. One member told me that debates about proper park purposes come down to “a matter of resources. I think it’s a waste of city resources to have to rebuild the ball fields every few years.”

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Given my incomplete access to community board park committee members (20% of the citywide total; 26% of the boards I contacted), and to the limited negative finding from my conversations about the role of the boards in circulating legal claims (in particular public trust doctrine claims) about proper park purposes, I briefly suggest other ways that the concept of parks as protected public trust land might have spread (each of which would warrant further systematic investigation).

First, participation in community board meetings may serve to connect park defenders to each other. In addition to current community board park committee chairs, I spoke with several “friends of the park” group advocates who told me they had met other park advocates and become involved in opposing specific alienation cases through their attendance at community board meetings. In this way, legal preservation knowledge may circulate through park activist networks.

Second, alienation procedures are lengthy and complicated, and delays can be costly. Parties with development interests in land have a strong incentive to comply with the parkland alienation process, as stipulated in The New York State Office of Parks, Recreation and Historic Preservation *Handbook on the Alienation and Conversion of Municipal Parkland in New York*. The handbook offers a “checklist for municipalities considering parkland alienation,” a copy of the form that cities must submit to the state to request legislative action, and sample language for drafting alienation legislation (which includes different models for drafting legislation with compensatory parkland

replacement conditions). The *Handbook* is free and available online.<sup>42</sup> The full text of the *Friends of VCP* decision is printed in the *Handbook*, the only decision reprinted in full (or cited beyond a single quotation or sentence blurb) in the 77-page guide. Just as the handbook serves as a guide for how to comply with proper alienation procedures, it can also serve as a guide for activists to find fault with the execution of those procedures, and it may be a resource in the pursuit of alienation grievances through the courts.

### Applying *Williams v. Gallatin* to Parkland Today

The decision in *Williams v. Gallatin* states that objects “which have no connection with park purposes” may only be placed in parks *with legislative authority plainly conferred*. While the ruling offered an effusive elaboration of park purposes, the pertinent question of law was whether the city charter granted power to the Commissioner of Parks to enter into a long-term lease of public parkland. To the extent that the lease could be determined within the bounds of the commissioner’s power, a “park purpose” had to be contemplated. But the ruling did not hold parks inviolate. It merely stated that if a park were put to a “non-park purpose” the state legislature was the proper body to make such determination. Park incursions are forbidden without “legislative authority plainly conferred.”<sup>43</sup> The State was held to be the proper trustee of public trust land.

That is to say, in New York State the judicial test for what constitutes a “park purpose” is not a rule of inalienability. The outcome of the *Friends of VCP* case is instructive. Judge Kaye determined that the construction of the water filtration plant in Van Cortlandt Park constituted the alienation of parkland; New York City, in turn, obtained alienation legislation from the state. The

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<sup>42</sup> The New York State Office of Parks, Recreation and Historic Preservation, *Handbook on the Alienation and Conversion of Municipal Parkland in New York* (2012), accessed Aug 4, 2017, <https://parks.ny.gov/publications/documents/AlienationHandbook.pdf>.

<sup>43</sup> *Williams v. Gallatin*, 229 N.Y. 248, 253.

process of obtaining that legislation was a complicated and fraught negotiation, a debate about the politics of land use.

Legal commentators have used subsequent court interpretations of *Williams v. Gallatin* to argue for specific methods of park preservation. Gresham argues that relying on “Williams v. Gallatin does not provide a sufficiently clear statement of park purposes to direct future judicial and administrative decisions.”<sup>44</sup> One suggestion, offered by Serena M. Williams, is to establish specific criteria necessary to authorize the diversion of parkland, including that, “the area would continue to be devoted to a broad public purpose which is either consistent with the public uses of the original area or is one that outweighs the public use of the area as a park.”<sup>45</sup> This leaves open all of the questions unresolved in *Williams v. Gallatin*: what is the purpose of a park and who determines the public benefit of particular land uses? She attempts to list the public purposes of a park, focusing foremost on “recreation,” though this concept is mutable (as I discuss in Chapter Six).<sup>46</sup> Further, the reference that she provides for the application of the trust doctrine to parks on the basis of recreational function actually argues for the provision of recreation in interstitial urban spaces outside of parks.<sup>47</sup>

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<sup>44</sup> Cyane Gresham, “Improving Public Trust Protections of Municipal Parkland in New York,” *Fordham Environmental Law Journal* 13 (2001-02): 276.

<sup>45</sup> Serena M. Williams, “Sustaining Urban Green Spaces: Can Public Parks be Protected Under the Public Trust Doctrine?,” *South Carolina Environmental Law Journal* 10 (2002): 46.

<sup>46</sup> Olmsted also dismissed definitional park policymaking in his 1881 piece, *A Consideration of the Justifying Value of a Public Park*, with specific reference to the ambiguity of the term “recreation” and the broad discretionary powers of administrators (see Chapter Three).

<sup>47</sup> Williams (2002: 52) writes, “When Robert Weaver wrote in 1969 that ‘[w]e must consider the urban citizen who wants his recreation within the city,’ he did not have in mind the public trust doctrine. However, his words provide justification for the use and application of the doctrine to urban parks.” This is an odd citation. Weaver’s essay, “Recreation Needs in Urban Areas,” was published in the 1969 volume *Small Urban Spaces: The Philosophy, Design, Sociology, and Politics of Vest-Pocket Parks and Other Small Urban Spaces*, edited by Park Association president Whitney North Seymour, Jr. The essays in the volume responded to park policy under Mayor Lindsay, directed by his park commissioners Thomas Hoving (1966-67) and August Heckscher (1967-1972). Heckscher and Hoving promoted the creative repurposing of interstitial and derelict parcels of city land to bring recreation to “underserved” communities in whatever space was available: recreation in vacant lots, public housing courtyards, “vest pocket” parks, and in streetscapes converted into public recreation spaces. The 1969 publication nowhere suggests that parkland is necessary to meet the recreation needs of urban populations. Weaver, who served as the first Secretary of HUD under President Johnson, did not make a case for park preservation, but rather for flexibility in recreation programming across a range of city spaces.

Benn argues that to clarify the ambiguities of *Williams v. Gallatin*, “a doctrinal move from *park use* to *public use* is necessary.”<sup>48</sup> Benn proposes that we must ask how the use of parkland results in “a public benefit”<sup>49</sup> (which can be achieved through various governing mechanisms, including private management). Setting aside the argument for the private management of public parks, the question remains how a “public benefit” is determined. This question is particularly relevant for the siting of public works projects on public land, where the benefits of a project may be diffuse, but concomitant environmental harms are unequally spatially distributed. For example, the water filtration plant in Van Cortlandt Park delivers broadly dispersed public health benefits, while the construction of the plant removes open green space from a park that serves a less affluent neighborhood. Different theories of justice suggest different processes and definitions for determining a “fair” distribution of spatialized harms across the city. There are likely ways to incorporate various standards of fairness into the concept of the “public interest” as the basis for park management, but Benn does not address how this might be accomplished.

Honan agrees with Gresham that in the *Williams v. Gallatin* decision, “The lack of a test or theoretical base for future courts leaves too much discretion for judges to determine arbitrarily what a park’s purpose is.”<sup>50</sup> However, there are several problems with establishing a “theoretical” basis for the distinction between what is or is not a park purpose. The law would either be so descriptive as to prevent commonly accepted modern uses of parks (e.g. the New York courts affirmed cross country skiing as a valid form of parkland recreation 18 years after *Williams v. Gallatin*),<sup>51</sup> or it would be so interpretive as to revert to the current “test” established in *Williams*, that a park provide for recreation, amusement, and enjoyment, which are unsettled, relational, and contingent standards.

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<sup>48</sup> Michael Seth Benn, “Towards Environmental Entrepreneurship: Restoring The Public Trust Doctrine in New York,” *University of Pennsylvania Law Review* 155 (2006): 206 (emphasis mine).

<sup>49</sup> Benn, 2006: 215.

<sup>50</sup> Honan, 2015: 126.

<sup>51</sup> *Rivet v. Burdick*, 255 App.Div. 131 (1938).

The work of the National Park Service (NPS) to establish recreation goals that were also compatible with wilderness preservation offers an example of the difficulty of implementing a substantive test for a park purpose. A guiding document for the NPS Mission 66 initiative offered examples of inappropriate requests for park use, including:

[R]equests for gambling concessions, helicopter sightseeing service, summer theater, pocket billiard concession, miniature golf course, miniature train for sightseeing, aerial tramways, dance pavilion, musical comedy theater, bowling alley, jeep sightseeing service, rare bird farm, cable car into Grand Canyon, observation tower, gunnery range, lands for farms and summer homes, private airports....<sup>52</sup>

The NPS dismissed these requests out of hand, saying that its decision to reject these activities was hardly worth explaining. But the NPS struggled with how to evaluate other requests: “How about a ski tow, for example, or a skating rink, or a toboggan slide?”<sup>53</sup> Ultimately, the Mission 66 statement concluded that each question should be decided on its own merits, “on the basis of the following principles: 1) that the activity result in no impairment of significant natural values, 2) that it does not itself become a primary attraction, and 3) that it does not interfere with the opportunity for others to enjoy the park for what it is.”<sup>54</sup>

This statement illustrates the difficulty of creating prescriptive administrative and legislative tests for what constitutes a park purpose, i.e. enjoyment of “the park for what it is.” The definition of “the park for what it is” will be created in contention, and competing positions will rely on multiple sources of justification. Several examples of unacceptable uses in the 1957 Mission 66 document would seem to provoke little consternation today. Many of the activities are not only

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<sup>52</sup> Howard R. Stagner, *Preservation of Natural Wilderness Values in the National Parks* (Washington, D. C.: Department of the Interior, 1957), 14.

<sup>53</sup> Stagner, 1957, 14-15.

<sup>54</sup> Stagner, 1957, 15. In 1964, Secretary of the Interior Stewart Udall set forth a management policy for national parks, in which “natural, historic, and recreational” lands would each be maintained based upon their “inherent values and appropriate uses” (see Jeanne Nienaber Clarke and Daniel McCool, *Staking out the Terrain: Power Differentials Among Natural Resource Management Agencies* (Albany: SUNY Press, 1985), 52). This leads to tautological policy prescriptions, e.g. we don’t build roads through wilderness; wilderness is land without roads.

permissible, but currently beloved in certain city parks: Shakespeare in the Park in Central Park, the Summer Dance stage in Grant Park (Chicago), or golfing in Van Cortlandt Park.

Joseph Sax proposed guidelines for the courts to use “in determining whether a case had been properly handled at the administrative or legislative level,” including, “to question whether the resource is being used for its natural purpose—whether, for example, a lake is being used ‘as a lake.’”<sup>55</sup> When applied to parks in New York, this returns us to the question—is a park being used “as a park” i.e. for a park purpose?

## **Part 2: Preservation Through Bond Legislation**

In this section I discuss the implications of environmental bond funding for ongoing parkland preservation. Federal environmental funding, which supported city parks through the mid-1970s financial crisis, had unintended consequences for parkland preservation. Under the rubric of environmental protection and scenic conservation, New York City was able to supplement its anemic Parks Department capital budget and undertake prosaic maintenance projects, in the process effectively conferring additional protection upon parks. The Land Water Conservation Fund (LWCF), authorized by the U.S. Congress in 1965, offered federal funding for urban parkland acquisition and improvements (administered through the National Park Service under the authority of the Department of the Interior). 71 of 124 LWCF grants to New York City from 1965 to 2010 were approved between 1976 and 1981, the years when the city was frozen from the municipal bond market.<sup>56</sup> These funds were used to support routine capital maintenance, including pool and track renovation, bathroom and playground construction, beach berm repair, athletic field lighting, and

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<sup>55</sup> Sax, 1970: 565.

<sup>56</sup> 54% of the 1,199 grants allocated statewide, 1965 to 2010, were granted during those years of economic downturn.

even the acquisition and installation of park benches.<sup>57</sup> In addition to the LWCF, each of the state bond acts listed Figure 7.1 also place restrictions on parkland alienation.

Figure 7.1: New York State and Federal Environmental Bond Acts with Parkland Alienation Restrictions<sup>58</sup>

<b>Bond Act</b>	<b>Authority</b>	<b>Alienation/Conversion Restriction</b>	<b>Replacement Conditions</b>
Park and Recreation Land Acquisition Bond Acts of 1960 and 1965	State	Disposition or use of land for non-park purposes requires state legislation	None
Outdoor Recreation Development Bond Act of 1965	State	Disposition or use of land “for purposes other than public park, marine, historic site or forest recreation purposes” requires state legislation	None
Land and Water Conservation Fund Act of 1965	Federal	Conversion to “other than public outdoor recreation uses” requires the approval of the Secretary of the Interior	“Substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.”
Environmental Quality Bond Act of 1986	State	Disposition or use of land for non-park purposes requires state legislation	“The substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.”
Environmental Protection Act of 1993 (the “Environmental Protection Fund”)	State	Disposition or use of land for non-park purposes requires state legislation	“The substitution of other lands of equal environmental value and fair market value and reasonable equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.”
Clean Water/Clean Air Bond Act of 1996	State	Disposition or use of land for non-park purposes requires state legislation	“The substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.”

<sup>57</sup> Data source: <http://www.invw.org/data/lwcf/grants-ny.html>.

<sup>58</sup> Source: *Handbook on Alienation*, 2012, 17-19.

## LWCF Conversions

The “conversion” of land supported by the LWCF is a complex process (the Federal alienation process is referred to as “conversion”). A conversion of LWCF-funded land requires a review under the National Environmental Policy Act (NEPA), as well as state-level environmental review. In order for New York City to pass a home rule resolution to request from the state the authority to alienate city parkland, it must conduct an environmental review (including public hearings), as mandated by New York State’s “little-NEPA,” the State Environmental Quality Review Act (SEQRA, authorized in 1976). SEQRA mandates environmental impact statements that may open up a bureaucratic context for making (and learning how to make) compensatory demands.<sup>59</sup> If an agency fails to comply with SEQRA or “makes an improper decision or...fails to undertake a proper review, citizens or groups who can demonstrate that they may be harmed by this failure may take legal action against the agency.”<sup>60</sup> (As with any legal action, this requires citizens to formulate a grievance, which in this case requires both an awareness of the bond-funded status of land, and proper SEQRA procedure. Enforcement will be contingent on public awareness and the technical and financial capacity to pursue a complaint.)

In addition to state alienation legislation, the sale (or jurisdictional transfer) of parkland funded through LWCF grants must also receive federal approval, which requires the “substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.”<sup>61</sup> The “fair market value” of both the land being replaced and the replacement land must be assessed using the methods in the *Uniform Appraisal Standards for Federal Land Acquisitions*.<sup>62</sup>

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<sup>59</sup> See Wendy Espeland, “Legally Mediated Identity: The National Environmental Policy Act and the Bureaucratic Construction of Interests,” *Law & Society Review* 28, no. 5 (1994).

<sup>60</sup> New York State Department of Environmental Conservation website, accessed Oct 13, 2017, <http://www.dec.ny.gov/permits/6473.html>. SEQR is implemented in New York City through the City Environmental Quality Review procedure (CEQR).

<sup>61</sup> 16 U.S.C. § 460l-8(f)(3).

<sup>62</sup> See *Handbook on Alienation*, 2012, 40.

Outside of the parcels of property funded through environmental bonds there is nothing formalized in administrative code, case law, or state legislation that requires the alienation of city parkland to be accompanied by compensatory concessions. And yet, in the past 20 years in New York, no alienation legislation has passed without such terms. Examples of compensatory terms include: using net proceeds from the sale of parkland to pay for capital improvements to other city parks, the acquisition of new parkland, or both; specifying precise land to be exchanged and dedicated as new parkland in return for permission to alienate existing parkland; use-value related terms including the planting of replacement trees or the replacement of specific recreational features (e.g. waterfront parkland, trails); or explicit terms of continued public access to alienated land. The last piece of non-compensatory parkland alienation legislation for New York City was passed by the New York State Legislature in 1993; between 1993 and 2010 every piece of alienation legislation has recognized that the loss of parkland requires some form of park-related compensation.<sup>63</sup> This applies as much to the beloved prototypical park as it does to spaces with little family resemblance.<sup>64</sup> As alienation legislation is increasingly passed with compensatory terms, the number of alienation actions does not increase.

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<sup>63</sup> Source: HeinOnline New York Legal Research Library, Session Laws of the State of New York (1898-2010), covering parkland within the five boroughs of New York City. I have excluded the following legislation: transfer of parkland between jurisdictions (e.g. from a county to a town, preserving the land's park status); legislation pertaining to zoological and botanic gardens operating within parks; legislation pertaining to state parkland. In a review of state session law, I obviously cannot capture illegal alienation actions by public or private entities.

<sup>64</sup> The following is an example of compensatory alienation legislation: In 2006, before the Metropolitan Transportation Authority (MTA), the agency that oversees public transportation in the New York City metropolitan region, began renovation work on the Broadway-7<sup>th</sup> Avenue line subway entrance at 96<sup>th</sup> Street in Manhattan, it first obtained authorizing legislation from the state. This process began with a “home rule request” submitted with majority approval of the New York City Council and the signature of the mayor to the State Assembly and Senate; it passed in both chambers, and was finally signed by the governor. In four pages of detail, the legislation (L. 2006, Ch. 284) describes the dimensions of .0599 acres of parkland that will be alienated by the MTA. In exchange, the legislation specifies a number of compensatory terms, including the dedication of .1543 acres of replacement parkland; if the replacement land is found to be less cash valuable than the alienated land, the difference will be made up and dedicated to park capital improvements. Additionally, the MTA, directed by the Parks Department, will plant 193 trees in the surrounding neighborhood. The alienated parkland onto which the MTA was expanding was not a sliver of a pastoral park, damaging the artistic effect of a unified composition; nor was it a beloved children’s playground or an ecologically sensitive landscape. Rather, it was a street median running down the middle of Broadway Avenue.

The threat of “pricing” parkland was suggested by John Muir: “Nothing dollarable is safe, however guarded.”<sup>65</sup> This is a formulation of the concern about the “corrosive effect of money”<sup>66</sup>—the idea that the value of health, nature, or life “cannot be described meaningfully in monetary terms; they are priceless.”<sup>67</sup> Zelizer describes this as the “hostile worlds” perspective, which suggests that, “certain things might be better kept separate from money and apprehended through alternative metrics of ‘worth.’”<sup>68</sup> But the commodification of parkland (in the sense of subjecting parkland to “market rhetoric”<sup>69</sup>) does not appear to have altered its valuation as precious, or threatened its preclusion from common exchange. In the case of New York City parkland, the protected status of parks does not appear to be corrupted through compensatory alienation practices.

If anything, a case like *Friends of VCP* may function in the manner that Marion Fourcade documented in the aftermath of the Exxon Valdez oil spill. Fourcade describes how the method for pricing the environmental damage from the Exxon Valdez spill produced a cash value so high that it in turn helped to resacralize nature. Instead of a critique of bringing sacred objects into the “cash nexus,” Fourcade asks about the “feedback loop from monetary valuation to social representations and practices.”<sup>70</sup> Bronx political leaders offered their necessary consent for the passage of the Van Cortlandt Park alienation legislation in exchange for \$243,000,000 in mitigation and capital funds for the Bronx Park system.<sup>71</sup> There have been ongoing concerns about the timely application of the

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<sup>65</sup> <http://www.intimeandplace.org/HetchHetchy/damhetchhetchy/debate/muir.html>; in this case the danger was seeing Yosemite as a collection of natural resources (which could be exploited at a price) and not as a sublime (and invaluable) landscape.

<sup>66</sup> Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012).

<sup>67</sup> Frank Ackerman and Lisa Heinzerling, *Priceless: on Knowing the Price of Everything and the Value of Nothing* (New York: New Press, 2004), 8.

<sup>68</sup> Marion Fourcade, “Cents and Sensibility: Economic Valuation and the Nature of ‘Nature,’” *American Journal of Sociology* 116 (2011): 1722.

<sup>69</sup> Margaret Radin, “Market-Inalienability,” *Harvard Law Review* 100, no. 8 (1986-1987): 1859.

<sup>70</sup> Fourcade, 2011: 1728.

<sup>71</sup> Goldsmith, 2006, 187-88. The money came from special revenue bonds issued by the New York City Municipal Water Finance Authority.

mitigation funds and the fair distribution of capital funding to Bronx Parks.<sup>72</sup> My point here is not to assess the fairness of the alienation process or outcome, but rather to suggest that \$243,000,000 in exchange for permission to occupy Van Cortlandt Park with temporary construction and a permanent underground filtration plant could potentially serve as a didactic mechanism showing the extraordinary value of parkland, leading in turn to increased vigilance and demands for park protection.<sup>73</sup> This is an open empirical question.

### **Part 3: Scenic Landmark Law**

The New York City Landmarks and Preservation Commission (LPC) was signed into law on April 19, 1965. In 1954 the U.S. Supreme Court wrote in *Berman v. Parker* that, “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.”<sup>74</sup> Albert Bard translated this into the intellectual foundation for New York City preservationists to argue that the state had a legitimate interest in the regulation of city aesthetics (and could apply police powers to control the appearance of private property).<sup>75</sup> According to New York’s 1965 landmarks law, the LPC could confer landmark designation on buildings that “represent or reflect elements of the city’s cultural, social, economic, political and architectural history” and on districts that possessed “a special character or special historic aesthetic interest or value.”<sup>76</sup> A landmark designation required a property

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<sup>72</sup> See: New York City Independent Budget Office to Croton Facility Monitoring Committee, Nov 25, 2014, [www.ibo.nyc.ny.us/iboreports/2014crotonletter.pdf](http://www.ibo.nyc.ny.us/iboreports/2014crotonletter.pdf).

<sup>73</sup> In practice, the application of those funds over nearly two decades and the open question about whether they resulted in a reduction in the commitment of capital funds from other sources to Bronx Parks may temper the magnitude of the exchange.

<sup>74</sup> *Berman v. Parker*, 348 U.S. 26, 33 (1954).

<sup>75</sup> Albert S. Bard, “Esthetics and the Police Power,” *American Journal of Economics and Sociology* 15 (1956): 265-276. According to Gilmartin (1995, 369-71), the Municipal Art Society, of which Bard was an influential member, had instigated the formation of an advisory mayoral commission on landmarks in 1962 that “built the case for a preservation law.”

<sup>76</sup> Gilmartin, 1995, 372.

owner to obtain a “certificate of appropriateness” from the LPC before conducting external alteration or demolition.

Gilmartin recounts the precarious political passage of the 1965 law, which led to compromises and concessions in the content of the legislation, including the exclusion of notable landscape architecture from the purview of the LPC. Gilmartin quotes Harmon Goldstone, former president of the Municipal Art Society and chairman of the Landmarks Preservation Commission, as stating, “The power to designate scenic landmarks ‘hadn’t been forgotten’ when the law was written...It had been ‘left out...because we thought it was going to be so difficult to get it through.’”<sup>77</sup>

In 1973 the landmarks law was revised and strengthened, and expanded to include the category of “scenic landmarks.”<sup>78</sup> These were defined as “any landscape feature or aggregate of landscape features having a special interest as part of the development, heritage, or cultural characteristics of the City, State, or Nation and designated as such by the Landmarks Commission.”<sup>79</sup> The Parks Council supported the new scenic landmark law and “the additional review process that will now be afforded to some of the city’s most precious open spaces...”<sup>80</sup> The Municipal Art Society, wrote, “With this amendment added to the Landmarks Preservation Law, concerned citizens and park-oriented groups would have a means to deter encroachments or the disfiguring of landscapes *whose value lies in their staying just as they are.*”<sup>81</sup>

According to former Municipal Art Society President Kent Barwick, “People were beginning to understand that Prospect Park and Central Park were not nature...but that they were works of art, that they were artificial places. And so instead of being natural and enduring, they were in fact

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<sup>77</sup> Gilmartin, 1995, 382.

<sup>78</sup> Gilmartin, 1995, 379-424.

<sup>79</sup> Jean McClintock (MAS Parks Committee) to Christiane Collins, Mar 23, 1973, CCC 6:2.

<sup>80</sup> Parks Council memo, n/a, n/d, PAF Series IV, Subseries A 123: 10.

<sup>81</sup> Jean McClintock (MAS Parks Committee) to Christiane Collins, Mar 23, 1973, CCC 6:2 (emphasis mine).

extremely artificial and vulnerable.”<sup>82</sup> Barwick recalled that there were limited mechanisms for preservationists to intervene in parks prior to the 1973 landmark law amendments. The City Planning Commission had no oversight because, “The parks were not zoned, therefore there was really no control other than the budgetary control or the Art Commission, which at that time had a very narrow view of its responsibilities.”<sup>83</sup> August Heckscher (whose tenure as Park Commissioner ended in 1972, before the landmark law revision) wrote that neither the Art Commission nor the Landmarks Preservation Commission (LPC) was “entirely suited to the kind of protection” that parks required; at the time the LPC only oversaw landmark structures located *within* parks.<sup>84</sup>

In 1970, as the Metropolitan Museum of Art planned to expand its physical structure (located within Central Park), the LPC hearing dealt exclusively with the preservation of the museum *building*. Parks Council Executive Director Herschel Post had to implore, “This hearing has as its subject the proposed alteration of a landmark building. I come before you to plead the case for the park—a national landmark—in which this landmark building sits, and sits most ungracefully.”<sup>85</sup> (Central Park had been designated as a National Historic Landmark by the Secretary of the Interior in 1964. As the Citizens Union described it, the designation was toothless: “The designation imposes no legal responsibility, but it does place a moral obligation on those responsible for the landmark to preserve it.”<sup>86</sup> This was of course only enforceable through the old preservationist tactic of moral suasion.)

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<sup>82</sup> Making the Best Better: 35<sup>th</sup> Anniversary Celebration of the 1973 Amendments to NYC’s Landmarks Law, Panel Discussion, Jun 10, 2008. Transcript via New York Preservation Archive Project.

<sup>83</sup> Making the Best Better, Jun 10, 2008. Gilmartin (1995, 389) writes that the fight over the Met expansion focused the Municipal Art Society’s attention on the establishment of a scenic landmark law.

<sup>84</sup> August Heckscher, *Alive in the City: Memoir of an Ex-Commissioner* (New York: Scribner’s, 1974), 274.

<sup>85</sup> Herschel Post, “Statement of the Parks Council Before the Landmarks Preservation Commission Re: The Expansion of the Metropolitan Museum of Art,” n/d circa Aug 1970, PCR 18:5.

<sup>86</sup> “Citizens Union Issues Statement on Political Demonstrations in Central Park,” May 10, 1967, RCW LV:8.

In 1974 Central Park was the first park in the city granted scenic landmark status, making alterations to the physical landscape more difficult to achieve.<sup>87</sup> The Parks Council supported the designation, because “artistic landmarks such as Central Park are the products of creative genius,” and “as a work of art it deserves the additional protection which landmark status will provide.” The creation of a landmark designation report also provided another document to turn to for the design history of the park, and the LPC hearings were a forum in which alterations to the park could be discussed.<sup>88</sup> The Parks Council wrote that the park should be restored and “we suggest that the Greensward Plan, the parks [sic] original blueprint should be a ready reference (along with the extensive written plans for the park by the architects) for the Landmarks Commission when it is contemplating future alterations or maintenance procedure.”<sup>89</sup> In addition to providing an institutional forum in which to discuss (and contest) park design, the designation was also a signal that a park was worth saving.<sup>90</sup>

#### **Part 4: The Booster Case for Park Investment**

One way to preserve parks is to show that they “pay their way.” Although I believe there are methodological flaws in the way this argument is made in contemporary booster literature, I will also argue that maintenance funding may assist in the preservation of parkland.

The Trust for Public Land (TPL) report, *Measuring the Economic Value of a City Park System*, quantifies property value, tourism, direct use, health, community cohesion, clean water, and clean air

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<sup>87</sup> The 10 NYC scenic landmarks are: Central Park, Prospect Park, Morningside Park, Riverside Park & Drive, Fort Tryon Park, Eastern Parkway, Ocean Parkway, Verdi Square, Grand Army Plaza (Manhattan), and Bryant Park.

<sup>88</sup> As I noted in Chapter Five, Cromley (1984) shows how the landmark designation report for Riverside Park and Drive presents a particular version of the park’s history to the exclusion of a more comprehensive assessment of the politics of the park’s evolving design. I also spoke with a contemporary advocate who fears that the LPC is an easily captured agency—the landmark designation is no guarantee of a specific preservation outcome.

<sup>89</sup> Parks Council memo on Central Park scenic landmark status, n/a, n/d, circa 1974, PAF Series IV: A, 123:10.

<sup>90</sup> See: Howard Irwin testimony to the Landmarks Preservation Commission, Mar 26, 1974, CBL 5:46.

as benefits of a park system.<sup>91</sup> None of the methods for quantifying the value of parks model how people would act in the absence of parks (or how water and air could be improved through other forms of infrastructure investment e.g. bioswales on streetscapes, or permeable surfacing on greenways administered by waterfront authorities). For example, the report uses hedonic pricing to show that proximity to a park increases the price that people are willing to pay for a home. This is different than determining if in the absence of a park the replacement land use would produce more revenue for the city. The model simply prices consumer preferences among an existing set of goods, and does not measure the differential returns to investment on competing land uses. To calculate the value of parks to health savings the report takes the number of physically active park users in a city and multiplies this by the average medical savings observed in the simply dichotomized general “active” versus “non-active” population. This does not ask if active park users would be physically active in the absence of a park, nor does it compare the value of health savings from investing in parks versus other public health measures. I am not aware of any model that asks what the trade off in revenue would be from the dedication of some or all of Central Park land to tax-generating luxury homes or office towers, though there are many attempts to quantify the economic value of Central Park.<sup>92</sup> By arguing that “parks pay” we might worry that pricing places parks in a precarious position, because we will likely find other more economizing land uses when we subject parks to cold cost benefit analysis.<sup>93</sup>

Another recent TPL report quantifies the economic benefits of San José, California’s park system by pricing: the value of stormwater runoff capture, air quality enhancement, property tax

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<sup>91</sup> Peter Harnik and Ben Welle, *Measuring the Economic Value of a City Park System* (The Trust for Public Land, 2009).

<sup>92</sup> To be clear, I think this would be an appalling alteration of the land.

<sup>93</sup> This suggests that when priced trade-offs are presented in political systems that privilege efficiency management, parks might not stand out as the best use of land. This is a different argument than the evidence I present that pricing exchange terms as a concession for alienation legislation does not corrupt the specialness of parkland. (That is, recognizing that there is an exchange value for parkland in the context of a highly regulated exchange system that confers special protections on parks (that are not conferred on other city land) is different than pricing a trade-off in terms of budgetary efficiency between parkland and other land uses).

revenue increases, tourist spending, and health care savings through the promotion of physical activity.<sup>94</sup> These numbers, in turn, are used to justify continued investment in park programming, maintenance, and land acquisition by showing that parks facilitate citywide economic growth. Peter Harnik, of TPL, writes: “Every city... is in competition with every other city, not to mention every other suburb and small town. By performing all of the miraculous functions that people appreciate...parks improve the quality of life in a city. Each amenity...is part of the equation people use to decide where to live. A great park system can positively tip the balance.”<sup>95</sup> Harnik does not consider how more than a handful of cities could take up this strategy effectively in a zero sum development game.

The City Parks Alliance is more explicit in naming the type of residents and workers that cities should hope to attract through parkland investment:

Nations that foster livable cities that support vibrant populations and highly skilled workforces will be winners in the intensely competitive global marketplace of the future. World-class workforces now have unfettered location options worldwide and are actively choosing to live in urban centers that support their needs. Knowledge workers, workers in creative industries, families and young people all will choose urban areas that offer a diverse economic base and amenities that contribute to an excellent quality of life. One of the most important but least recognized essentials to an attractive and healthy urban environment is a well-designed and well-maintained network of city parks...<sup>96</sup>

Logan and Molotch saw that “strivings for exchange value create a competition among place entrepreneurs to meet the preferences of capital investors.” In contrast, the CPA does not appeal to capital investors, but urges the provision of amenities to satisfy the mobility preferences of elite residents whose consumption patterns will drive the local economy.<sup>97</sup>

But booster arguments may work to convince various funding bodies to allocate increased maintenance funds to parks, and maintenance is arguably a form of (or at least precondition for)

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<sup>94</sup> The Trust for Public Land, *The Economic Benefits of the Park & Recreation System in San José, California* (2016), accessed Oct 13, 2017, <https://www.tpl.org/economic-benefits-park-recreation-system-san-jos%C3%A9-california>.

<sup>95</sup> Peter Harnik, *Inside City Parks* (Washington, D.C.: The Urban Land Institute, 2000), 3.

<sup>96</sup> City Parks Alliance website, “The Economic Value of Urban Parks,” accessed Oct 13, 2017, <http://www.cityparksalliance.org/why-urban-parks-matter/economic-value>.

<sup>97</sup> Logan and Molotch, 1987, 13.

park preservation. The “friends of parks” groups, neighborhood activists, and advocacy organizations that lobby for capital improvement funds and increased maintenance dollars for the parks are working, at a step removed, in the field of preservation. I spoke with one park advocate who laughed at how often they repeated the line, “Capitally restoring something and letting it decline and restoring it again from scratch is much more expensive than building a good maintenance program from year to year.”

The material form of parkland offers many potential interpretations, from building lots to empty land, and these advocates are intervening before material degradation alters the functionality or legibility of land as *parkland*. If we take the statement in *Williams v. Gallatin*, that “a park is pleasure ground set apart for recreation of the public,” as the purpose of a park, then the functional preservation of a park requires a level of infrastructure maintenance that allows for recreation and enjoyment. A street full of potholes is still legible as a street and, though compromised, still functional as transportation infrastructure. In contrast, a park without maintenance may lose both its legibility and its functionality. If the experience of enjoyment or the pursuit of recreation is indeed essential to and constitutive of a park, poorly maintained space could destroy the fundamental “parkness” of a park.

## Chapter Eight: Conclusion

This dissertation opened with the puzzling empirical observation that New York City land, a famously precious and volatile commodity, remains relatively stable once it has been dedicated as parkland. Today, public parks cover nearly 20% of New York City's landmass.<sup>1</sup> This persistence—of individual land parcels dedicated to municipal parkland, and of the category-level distinctiveness of parkland—is not accomplished through statutory or constitutional mechanisms, nor is it inherent in characteristics of the land.

Park advocates have been able to contest the “misuse” of parks thanks to administrative law, city code, and legislatively authorized rules for taxpayer standing that have established the conditions for disputing in court. There is a body of case law in New York that states that public parkland is held in trust by the state—requiring legislative authorization to be put to use for “non park purposes.” The definition of a “park purpose” draws on the legacy of park design, the special intentions articulated in the dedication of parkland, and attachments to particular visions of this land as it persists over time within a changing city. The construction of this definition is not simply a semantic or conceptual exercise for park preservationists. It becomes the basis for subsequent tests of alienation in the courts, determining what can be permissibly built or temporarily allowed to occupy space within a park. The precedential accumulation of park purposes, as articulated by the court and implemented in administrative park policy, also informs the framing of threats against parkland. The designation of a building as an “encroachment” redounds beyond any specific local battle over parkland construction; this formulation creates boundaries on permissible uses of a category of land, in turn making the vast estate of city parkland more difficult to exchange.

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<sup>1</sup> 14% of which is held by the New York City Department of Parks & Recreation. Trust for Public Land, *2016 City Park Facts*, <https://www.tpl.org/2016-city-park-facts>. See Chapter One, page 1, for a note on the inclusion of waterfront parkland within this total. The stylized fact remains that a large portion of otherwise saleable New York City land has been made functionally difficult to exchange through its designation as public parkland.

Over the past century, a diverse set of properties in New York City have become bureaucratically entrenched as parks, and sustained through the interplay of organized sentiment and the conceptual development and defense of proper park purposes through administrative politics and contestation in the courts. As C.B. MacPherson has written, “Any institution of property requires a justifying theory. The legal right must be grounded in a public belief that it is morally right. Property has always to be justified by something more basic; if it is not so justified, it does not for long remain an enforceable claim.”<sup>2</sup> The legal and sentimental ideologies of parks strengthen each other. I spoke with a contemporary landscape architect who summarized the distinction of parkland from other forms of public open space:

There are years and years of historic precedent that have strengthened the idea that parkland is important. Public plazas are important too. So I would still be an advocate for open space, for sure. But because we might not have that legal [protection] or that definition that’s really been—it’s almost like a common definition of how important parks are. I mean the legal helps with that, but they work together to, in the public consciousness, to really establish parks as important, and as almost sacred.<sup>3</sup>

As a point of comparison, I want to consider an example of land protected by law but not sentiment; and an example of the construction of broad community attachment to a parcel of old cemetery land that occurred over the course bureaucratic land-use review processes (in turn saving this land from the fate of Manhattan’s many defunct cemeteries that I discussed in Chapter One).

### Law Without Sentiment

Well before the creation of large urban pastoral parks, Boston elites agitated to protect the Common. In 1824, Boston voters approved legislation declaring that the Common “should be forever thereafter kept open, and free of buildings of any kind, for the use of the citizens.”<sup>4</sup> Mona

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<sup>2</sup> C.B. MacPherson, *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 11.

<sup>3</sup> Author interview, March 2016. See Appendix A for details.

<sup>4</sup> Mona Domosh, *Invented Cities: The Creation of Landscape in Nineteenth-Century New York and Boston* (New Haven: Yale University Press, 1996), 133.

Domosh writes that the Common provided a display ground for Boston's upper class and "served as an expression of their cultural aspirations."<sup>5</sup> This interpretation draws directly from the work of Walter Firey, who argued that classic human ecology could not explain land use patterns, such as the preservation of the Common, that fail to maximize the economic value of the land. These land uses could only be understood "in terms of the group values that they have come to symbolize." The Common derives its status as a "sacred object" "from its representation in peoples' minds as a symbol for collective sentiments."<sup>6</sup> The Common allowed Bostonians to "renew their faith, recover their moral force" by gazing upon land that had been set aside from avaricious development.<sup>7</sup>

In addition to symbolism, sentiment generates non-economizing land uses. Firey wrote that attempts to convert Boston's colonial burial grounds to other uses failed because "in every case community sentiments have resisted such threats."<sup>8</sup> Firey's formulation—"community sentiments have resisted"—obscures the organization and mobilization of sentiment. Elsewhere, he suggested that "historical associations" and "literary traditions" fueled part of the sentimental attachment to Beacon Hill, that in turn worked to retain older inhabitants, attract new residents, and resist down-market land-uses such as transient hotels.<sup>9</sup>

The other passage of note is Firey's reference to sentiment succeeding "in every case"—preservation is not a singular accomplishment, but an ongoing mobilization of sentiment that

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<sup>5</sup> Domosh, 1996, 128.

<sup>6</sup> Walter Firey, "Sentiment and Symbolism as Ecological Variables," *American Sociological Review* 10 (1945): 140; 145. This may have been an unfair gloss on human ecology. To the extent that Burgess attended to land value, it was as an index of the process of mobility and not a prediction about "economizing locational activities" (per Firey). For Burgess, "Variations in land values...offer perhaps the best single measure of mobility, and so of all the changes taking place in the expansion and growth of the city." (Ernest Burgess, "The Growth of the City: An Introduction to a Research Project," in Robert E. Park & Ernest Burgess, *The City* (Chicago: University of Chicago Press, 1967 [1925]), 61). Hawley's human ecology was not a study of competition for land but of a process of population-level adjustment to a changing social environment, the "study of the development and form of communal structure as it occurs in varying environmental contexts." The key concept was not competition but "adjustment of [the] organism to [the] environment." Amos Hawley, "Ecology and Human Ecology," *Social Forces* 22 (1944): 403.

<sup>7</sup> Firey, 1945; 140, 144. On Firey's debt to Parsonian structural functionalism see Gerald D. Suttles, "The Cumulative Texture of Local Urban Culture" *American Journal of Sociology* 90, no.2 (1984): 286.

<sup>8</sup> Firey, 1945: 146.

<sup>9</sup> This resistance was organized through the Beacon Hill Association, which lobbied for zoning restrictions. Firey, 1945: 141-43.

persists through time.<sup>10</sup> Olmsted's defenders in the press knew that a park was "only safe when public sentiment is intelligently and actively interested in its behalf."<sup>11</sup> As one contemporary land conservationist told me, in order to protect parks (regardless of the legal status of the land), "Everybody's got to run their own PR campaign and their own...never-ending community engagement process." A recent case of parkland alienation in Milwaukee, Wisconsin illustrates the limits of relying exclusively on legal protection for parkland without the concomitant mobilization of public sentiment.

Preserve our Parks (POP), a nonprofit park advocacy organization based in Milwaukee, has been working to prevent development on the city's lakefront parkland, portions of which were created through extending landfill into the shores of Lake Michigan. Lakebed land in Wisconsin is subject to the public trust doctrine, based on a specific state constitutional clause regarding the public dedication of waterways, and additional statutory clauses defining public rights in lakes and waterways.<sup>12</sup>

At a public lecture, delivered in Chicago in March 2015, a representative from POP spoke about the group's fight against the construction of a private 44-story mixed-use commercial and residential tower, built over the base of a transit hub.<sup>13</sup> He described how Preserve our Parks had argued its case, relying on a forensic legal interpretation of old water infill maps to show that development would occur on the former lakebed of Lake Michigan, thus violating the intended

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<sup>10</sup> In Firey's model, we would expect the persistence of spaces that allow populations to tell stories about themselves. While the preservation of Central Park may occur through comparable processes as the Boston Common, Firey does not account for the diffusion of categorical preservation, e.g. the application of the institutionalized bureaucratic and legal protections enjoyed by Central Park to peripheral playgrounds.

<sup>11</sup> "Organized Protection for Parks," *Garden and Forest* (Jan 1, 1890): 1.

<sup>12</sup> On the Wisconsin state lineage of public trust doctrine protection for navigable waters and lakebed property, and its extension to "recreational enjoyment" and "scenic beauty," see: Robin Kundis Craig, "A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries," *Penn State Environmental Law Review* 16 no.1 (2007): 110-13.

<sup>13</sup> According to the *Milwaukee Business Journal*, POP opposed Milwaukee County selling its existing (publicly-owned) transit center to a private developer, "on grounds that much of the transit center property was formerly part of Lake Michigan, and is protected from private development." Sean Ryan, "Preserve Our Parks Will Not Appeal Lawsuit, Clearing Way for Couture on Milwaukee's Lakefront," *Milwaukee Business Journal*, Aug 18, 2015.

public dedication of the waterfront.<sup>14</sup> But the state legislature, at the behest of the Milwaukee County Board—and, notably, with little other popular protest—passed an act redefining the lakebed line, carving out a parcel of lakefront parkland for development. In response to a question from the audience, the POP representative conceded that the volunteer-run organization had not dedicated its limited resources to mobilizing public sentiment, although he recognized that the lakefront development was publicly popular. The Preserve our Parks website maintains its legalistic read of the case:

Although we lost our battle regarding Downtown Transit Center, we know we had the factual evidence to prove our arguements [sic]... It was only due to State legislation that inflicted a fictitious former shoreline at the site that forced the defeat. The State Legislature should be ashamed as it is their responsibility to protect the rights of its citizens in regard to the public trust.<sup>15</sup>

In contrast, the successful repeal of Central Park alienation legislation in 1892 presents a case in which elected representatives responded to extensive, mobilized public outrage. When the New York State legislature authorized the construction of a seventy-foot-wide racing track inside the length of the western border of Central Park, the *New York Times* called it, “An Outrage on Citizens,” and correctly predicted a swift and angered public reaction.<sup>16</sup> The City Reform Club called a mass meeting, at which an estimated 200 speakers took to the stage (collectively representing more than 200,000 people belonging to labor unions, settlement houses, and religious associations, in addition to elite civic clubs).<sup>17</sup> The City Club raised \$150,000, and hired a publicist who worked with the *Times* to place news articles and fundraising requests. The paper printed a mail-in protest ballot demanding a public meeting to repeal the law because, “the Park was created for the whole public

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<sup>14</sup> Author notes from the public lecture, “A Tale of Two Cities’ Parks: Public Trust as a Protector of Parkland,” hosted by Friends of the Parks at the Chicago Cultural Center, Mar 12, 2015.

<sup>15</sup> Preserve Our Parks website, accessed Oct 16, 2017, <http://www.preserveourparks.org>.

<sup>16</sup> “An Outrage on Citizens,” *NYT*, Mar 18, 1892.

<sup>17</sup> “It Must be Stricken Off: Repeal of the Park Race Track Law Demanded,” *NYT*, Mar 26, 1892.

and should never be despoiled or diminished for the benefit of any class.”<sup>18</sup> Individual civic organizations addressed the racetrack issue at special meetings of their members.<sup>19</sup> The Citizen’s Committee organized and paid for a delegation of New York City business and labor leaders to appear before the Committee on Cities of the Senate and the House in Albany to demand the repeal of the racetrack bill.<sup>20</sup> Before the end of the legislative session, public pressure prevailed and the Central Park alienation bill was repealed.

Additional research could systematically assess the conditions under which the confluence of civic organizational action, issue framing (e.g. the park as a place for all classes), the distribution of press and publicity systems, and the configuration of city and state political institutions lead to successful or thwarted alienation legislation.

### The Re consecration of Manhattan’s African Burial Ground

One possible reason why it is easier to disinter a cemetery than to sell public parkland is that defunct congregations and forgotten heroes have no constituents to mount preservation campaigns. The re consecration of the African Burial Ground National Monument in lower Manhattan serves as a counterpoint to the examples of impermanent cemetery land that I presented in Chapter One, and highlights the important confluence of sentimental attachment to land with institutionalized rules for public participation in land use review processes.

Between approximately 1712 and 1795, New Yorkers of African descent were buried on a portion of the old colonial commons just north of today’s City Hall Park, on the former outskirts of

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<sup>18</sup> Richard Welling, *As the Twig is Bent* (New York: G.P. Putnam’s Sons, 1942), 52; “Now is the Time to Act,” *NYT*, Mar 20, 1892; “The Fight for the Park,” *NYT*, Mar 21, 1892; a modified protest ballot, published after a public meeting had been held, continued to demand the repeal of the law, “Heard by the Park Board,” *NYT*, Mar 24, 1892, “No Race Track Just Yet,” *NYT*, Mar 25, 1892. The article from Mar 24, 1892 also listed by name the elected representatives responsible for the law.

<sup>19</sup> “Surely a Winning Fight,” *NYT*, Mar 23, 1892.

<sup>20</sup> “To Strike a Final Blow,” *NYT*, Mar 31, 1892.

town.<sup>21</sup> In 1796 the city took formal possession of the burial land, over which it constructed Chambers Street and parceled out building lots. For nearly two hundred years the burial site went unmarked and uncommemorated.<sup>22</sup> Art historian (and former Art Commission member) Michele Bogart has written about the history of preservationist campaigns to shape the (evolving) future of the former colonial commons based on selective memories of the site. For most of the 20<sup>th</sup> century, preservationists' competing memory scripts framed the park as a green idyll, a genteel gathering place, or the grounds for important civic institutions.<sup>23</sup> Missing was any organized constituency that remembered (or commemorated) the site as an African burial ground.

In 1988 the General Services Administration (GSA) received Congressional approval to build a federal office complex on two plots of land in lower Manhattan, on the site of the unmarked burial ground. The GSA, as a federal agency, was required to comply with the National Historic Preservation Act (authorized in 1966), which requires assessment of the historic significance of a site under the guidance of the Advisory Council on Historic Preservation. If the review finds a site to be of potential historic significance, it requires the signing of a Memorandum of Understanding that incorporates public feedback. An Environmental Impact Statement (EIS) must also be drafted, which includes an archaeological assessment of the site. The burial ground went unremarked during mandated public hearings, held as part of the process of writing the draft EIS.<sup>24</sup> Andrea Frohne writes that GSA officials and the public became widely aware of the presence of the burial ground after the distribution of the draft EIS report, in July 1990, which briefly mentioned the burial

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<sup>21</sup> The site is delineated by Duane Street (north), Chambers Street (south), Centre and Lafayette Streets (east), and Broadway (west). For a detailed account of the history of landownership and evolution of its uses, see: New York City Landmarks Preservation Commission, "African Burial Ground and The Commons Historic District Designation Report," Feb 1993 (pp. 17-21 cover the specific history of burials of African New Yorkers on the site).

<sup>22</sup> The location, which was clearly marked as "Negros' Burial Ground" on a 1755 city plan surveyors' map, would have been known to scholars of Manhattan's colonial history, Michele H. Bogart, "Public Space and Public Memory in New York's City Hall Park," *Journal of Urban History* 25, no. 2 (1999): 232. Bogart notes that the 1755 map was reprinted in the well-known six-volume survey of New York, *The Iconography of Manhattan Island, 1498-1909*, released by I. N. Phelps Stokes in 1915.

<sup>23</sup> Bogart, 1999.

<sup>24</sup> Andrea E. Frohne, "The African Burial Ground in New York City: Manifesting and Representing Spirituality of Space" (SUNY Binghamton Dept. of Art History, 2002), 20.

ground, and which was sent to “two hundred federal, state, and city agencies and community organizations.”<sup>25</sup> She notes that in December 1990, when the City of New York sold the land to the GSA, both parties were aware that there had been a colonial African burial ground on the site, and that the construction project would likely disinter human remains.

But the GSA did not alter its plans for development or change its imperative of efficient construction. Frohne writes that the GSA also attempted to minimize the significance of the site as an important location for African American history (e.g. suggesting it was a generic “potter’s field,” or not exclusively an African burial ground).<sup>26</sup> This indifference galvanized community demands for proper respect of the site and its human remains. The reconsecration of the African Burial Ground National Monument in lower Manhattan occurred through the work of activists who claimed a connection to the remains of potential ancestors. Religious and political leaders argued that given the erasure of the family history of formerly enslaved people, this could potentially be the gravesite of any descendant of African ancestors.<sup>27</sup> The New York City Landmarks Designation Report for the African Burial Ground and The Commons Historic District, prepared in 1993, notes the symbolism of this once “remote” site within the old colonial city in which churchyards barred African New Yorkers from burial. The report states, “Today this site symbolizes both the oppression under which enslaved peoples lived in America, and their ability to persist in honoring their African heritage while forging a new culture.”<sup>28</sup>

I would expect that over time cemeteries become more difficult to move, as procedural claims are made possible through Federal Code, such as the above-mentioned National Historic Preservation Act (NHPA), and the 1990 Native American Graves Protection and Repatriation Act.<sup>29</sup>

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<sup>25</sup> Frohne, 2002, 20-21.

<sup>26</sup> Frohne, 2002, 25-26.

<sup>27</sup> Frohne, 2002, 40-41.

<sup>28</sup> LPC, *African Burial Ground Designation Report*, 1993: 18.

<sup>29</sup> Pub. L. 101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048 (Nov 16, 1990).

### “Parks as a Special Category of Real Estate”

The distinction of parkland from other forms of city land was articulated by the park advocate who told me that, “Parkland is different. It looks like real estate, but it ain’t.” The advocate continued, “The notion of parks as a special category of real estate, that’s more than just real estate, is codified in law, but kind of enshrined in a probably vague public understanding.” According to the advocate, it was this conceptual, legal, and sentimental distinction that worked together to ensure that a park could not be disposed of with the same ease or through the same process as an excess municipal salt pile.<sup>30</sup> Parkland is different from other forms of city land—it is harder to “undo.”

Throughout this dissertation I have described how park advocates have defended New York City parkland as distinct from fungible city land, insisting that parks are not simply development plots in waiting. Those with alternative designs on parkland have framed the land as empty or useless—Henry Curtis of the Playground Association of America demanded that playgrounds be constructed in place of “empty meadows”; Manhattan Borough President Edward Dudley referred to the proposed P.S. 36 site in Morningside Park as “a little piece of dirt, a small fragment of rock”; Wesley First suggested that Columbia University’s proposed gymnasium complex would occupy “useless rock escarpment.”<sup>31</sup> Against claims of emptiness advocates have argued that parks are in fact unitary artistic designs; against claims of “uselessness” the concept of “park purposes” has been debated.

Debates over proper park purposes involve a space, a set of claimants (including a set of users and some form of state-authorized guardian of the space), and the tools available to make the claims (e.g. park ideals, rights discourse, and the forums in which to express aspirations and grievances about proper park uses). Each fight is also embedded in a larger set of concepts about the

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<sup>30</sup> This differentiation of parks from other forms of public land is not immutable. For a contemporary effort to treat “surplus” city land holdings as a public commons, see the work of 596 Acres, <http://596acres.org>.

<sup>31</sup> Henry S. Curtis, *The Play Movement and Its Significance* (New York: The Macmillan Company, 1917), 101; “Park Site Voted for New School,” *NYT*, Feb 7, 1964; Wesley First memo to CU community, Feb 9, 1966, CCC 8:3.

city, the public, and the relationship and obligations between the two. Finally, the fights are embedded in dual trajectories of the history of a particular park space over time, and the larger pattern of city population and growth. In examining the struggles for urban parkland preservation, we can expand on existing accounts of urban land use processes by drawing in a more complicated set of relationships than is normally implicated in the struggle between organized exchange value interests and defenders of the use value of land. In New York State parks are “impressed with a trust,” the defense of which can trigger years long administrative assessments and court cases that make parkland functionally difficult (and costly) to alienate. This trust also extends through time, implicating the future public of New York and the future trustees of parkland in an indefinite relationship. The struggle for preservation conserves not only contemporary use value, but also continually produces “bequest” value, granted to the public in perpetuity.

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Imagine standing on the Great Lawn in Central Park. Zoom up, like the grade school film showing the world at orders of magnitude, and hover between the stars and our cells.<sup>32</sup> It is stupefying what is assembled here in New York City. The coastline of the five boroughs measures 520 miles and there is probably enough tulle stashed away on a single block of the Garment District to swaddle it all. Riches piled on riches piled on bones and landfill and oyster middens and the deposit of 500 years of building up and tearing down, 10,000 years of clearing and burning and planting. Dig and the island yields up shards of history: each day 150,000 cars pass over the rubble of blitzed British buildings, the landfill foundation for the FDR Drive.<sup>33</sup> Workers at the World Trade Center site uncovered the hulk of a ship built from trees harvested in the forests of Pennsylvania in 1773; a recent restoration project in the northern portion of Central Park uncovered a gatehouse

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<sup>32</sup> Charles and Ray Eames, *Powers of Ten*, 1977.

<sup>33</sup> New York City Department of Parks & Recreation website, “FDR Drive,” accessed Oct 12, 2017, <https://www.nycgovparks.org/about/history/historical-signs/listings?id=12179>.

from the old Kingsbridge Road.<sup>34</sup> This is to say nothing more than that the city, like all sites of human habitation, is thick with the material accretion of history and culture. Those layers are sedimented with varying density and richness across globe, and New York, like its few privileged residents with their extravagant wealth, has amassed more than its share.

I have written about what I perceive to be a surprising stability—the reservation of tens of thousands of acres of New York City land in the form of parkland in the midst of the constant churn of the city. But much of the parkland that puzzles me with its surprising persistence is projected to disappear before the city, 500 years old, surpasses that age again.<sup>35</sup> Keep zooming past the touristic view of the city's riches, and just a bit higher Manhattan fuzzes out into a wisp of land snug between an ocean and a continent. That ocean will slowly, then more quickly, and then (perhaps) disastrously overtake the edges of the continent and its surrounding islands. You may disagree with my fatalism.<sup>36</sup> I simply mean to situate this project about land persistence in the context of the broader fantastic and precarious qualities of the ground on which New York City stands.

In the meantime, with the protection of bureaucratically entrenched legal sentiment, I can still picture that years from now, in a New York I wouldn't recognize and can't fathom, there will be people sunbathing on the rocks in St. Mary's Park, jogging in Prospect Park, and playing games of pick up soccer in Flushing Meadows Corona Park. And, much as Olmsted and Vaux could not have conceived of the game of basketball, invented 33 years after the drafting of the Greensward Plan,

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<sup>34</sup> Katie Langin, "Wooden Ship Unearthed at World Trade Center Site from Revolutionary-Era Philadelphia," *National Geographic*, Jul 31, 2014, <http://news.nationalgeographic.com/news/2014/07/140731-world-trade-center-ship-tree-rings-science-archaeology>; David W. Dunlap, "Excavated in Central Park: Traces of Anti-Redcoat Fortifications, Never Needed," *NYT*, Sep 24, 2014.

<sup>35</sup> Andrew Rice, "When Will New York City Sink?," *New York Magazine*, Sep 7, 2016.

<sup>36</sup> I expect that New York City parks, particularly along the waterfront, will become a form of critical infrastructure to mitigate the effects of sea level rise. In some places, these future visions are being built into the physical design of parkland, such as The Hills in Governor's Island Park. The Hills, in the southern portion of the park, designed by the Dutch landscape architecture firm West 8, was built with a 15-foot rise over sea level, based on expectations for increased climate volatility and change. (West 8 website, "Governors Island The Hills," accessed Oct 12, 2017, [http://www.west8.nl/projects/governors\\_island\\_phase\\_2\\_the\\_hills](http://www.west8.nl/projects/governors_island_phase_2_the_hills)).

there will be as yet unimagined diversions incorporated into the conception of “pleasure, recreation, and amusement” pursued across the vast realm of New York City’s public parks.

## Appendix A: Interview Methods

After conducting two years of library research on the history of New York City parkland preservation (which included consulting over 20 archival collections from park and playground advocates and organizations), I turned to the contemporary world of New York City park and open space advocacy. Based on my prior historical research, I wanted to know: 1) how legalistic claims for parkland protection spread through the contemporary land use planning process, focusing on the initial point of consultation—the community boards; and 2) how did contemporary advocates articulate the conditions under which parkland “deserved” protection, and for what reasons?

In February and March of 2016 I conducted 47 formal interviews with a total of 49 participants.<sup>1</sup> I spoke with 13 community board members and 36 other individuals involved in park and open space law, policy, and advocacy work (both paid professional and volunteer work) in New York City. I conducted interviews in person and by phone, depending on the participant’s preference. The shortest interview lasted 20 minutes, the longest 2 hours. On average, conversations lasted for approximately 50 minutes.

I received permission from participants to audio record 44 of the 47 interviews, and I personally transcribed all audio recordings. While many interview respondents granted me permission to use their full names and titles, several requested anonymity. In order to not identify individuals through selective omission, I have chosen to refer to all participants through their identification with broad professional fields (e.g. “urban planner”, “landscape architect”), without names, and using third personal plural pronouns.

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<sup>1</sup> In one instance, I spoke with three members of a community board in a group interview, at the request of the board members.

## Interviews with Community Board Members

As I described in Chapter Seven, in February and March 2016, I attempted to contact the chairperson of the committee responsible for oversight of the parks for each Community Board in three of the city's five boroughs. I reached out to the chairs via their respective District Managers, a paid professional support staff position assigned to each board. Of the 38 districts that I contacted, I heard back from 12 managers, and I conducted interviews with a total of 13 individuals serving on 10 boards.

I wanted to understand how the boards discussed alienation cases, or debated proposed uses of parkland that had historically been considered “non-park purposes” (based on the work of park advocates that I had encountered in my prior two years of archival work); and I wanted to know if the boards were a site of civic learning for rights claims regarding parkland. I did not want my questions to present terms or concepts—such as “parkland alienation” or the application of “the public trust doctrine” to municipal parkland—that might not be operable outside of the cues of the interview context. Instead, I developed a series of four scripted scenarios, in which I posed hypothetical questions about how a board might handle the following situations within its district (with probes to differentiate answers by types of parkland e.g. large landscaped parks, neighborhood parks, playgrounds): 1) a request for a concert permit in a park, with probes to understand how the answer might vary by the commercial nature of the sponsor and the extent of the event’s imposition on the park; 2) the regulation of drone flying and other “recreational” activities that might be coded as a “nuisance”; 3) the construction of affordable housing on parkland; and 4) public infrastructure improvements that would reduce parkland to improve accessibility for individuals with physical disabilities. (In January 2016 I conducted an additional eight informal interviews with parks, open space, and city planning professionals with whom I had prior professional acquaintance to discuss and refine these scenarios.)

## Interviews with Park and Open Space Policymakers and Advocates

Following Fourcade and Healy's project to understand "the social sources of moral ideas," I was interested in tracing the social sources of contemporary assessments of "park purposes," the definition of which, I have attempted to argue throughout this dissertation, is fateful for determining city land use patterns, and for maintaining a boundary classification on a category of land that can only be alienated with strict limitations.<sup>2</sup> Based on a small set of statements that I found in the archives, I had initially expected that I could determine and analyze a set of characteristics on either side of a land exchange, showing how different parties valued parkland in comparison with proposed parcels of exchange land.<sup>3</sup> But I found few cases of public debate over direct land exchange for park alienation. Instead, most debates were those such as I discussed in Chapters Four and Five—about the proper uses of parkland and the adjudication of competing "worthy" public projects.

Because I did not want to impose my own assumptions about the boundary between defensible parkland and other alienable property on the basis of my own understanding of these administrative and legal distinctions, I chose to speak with representatives of organizations that advocate for parks and playgrounds, as well as other forms of public open space (streets, plazas, greenways, community gardens, and land vested with permanent public easements managed by private nonprofit organizations operating under contract with the city).

Of the requests for interviews that I sent to individuals: I received two explicit rejections; I failed to reach ten individuals after three attempts at contact; and I did not successfully schedule

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<sup>2</sup> Marion Fourcade and Kieran Healy, "Moral Views of Market Society" *Annual Review of Sociology* 33 (2007): 300.

<sup>3</sup> For example, when Department of Real Estate Commissioner Frank Lazarus proposed in 1964 to construct public housing within the northern reaches of Central Park in exchange for the construction of nearby neighborhood parks, he was met with almost immediate rebuke. Park Commissioner Newbold Morris released a statement expressing "shock" that, "In exchange for the destruction of Harlem Meer and other popular recreational facilities, the rocky crags, the winding paths, the trees and naturalistic landscapes of these historic parks, [Commissioner Lazarus] appears to believe an equivalent acreage in flat, uninteresting, isolated city blocks would be fair recompense..." Newbold Morris, Press Release, May 7, 1964, [http://home2.nyc.gov/html/records/pdf/govpub/42541964\\_press\\_releases.pdf](http://home2.nyc.gov/html/records/pdf/govpub/42541964_press_releases.pdf).

interviews with two individuals who had expressed willingness to participate via email. In total, 50 invitations to participate yielded 36 completed interviews.

I sampled for saturation, a method for conducting qualitative interviews in which each subject is treated as a case, with interviews continuing to the point of “saturation” (when an additional case yields diminishing marginal returns to theoretical refinement). In sampling for saturation, each instance of a new interview is analogous to another replication of an experiment.<sup>4</sup> The interview protocol evolves over time, as working hypotheses are iteratively refined through reflection on the content of previous interviews.<sup>5</sup> I used the fixed scripted scenarios from the community board interviews, in addition to a series of evolving open-ended questions about the participants’ history working in park, open space, or public space advocacy.

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<sup>4</sup> This discussion is based on: Mario Luis Small, “How Many Cases Do I Need?: On Science and the Logic of Case Selection in Field-Based Research,” *Ethnography* 10, no. 1 (2009): 5-38. Small draws an analogy between sampling for saturation and experimental replication. For example, Claude Steele’s work on stereotype threat has been replicated over 300 times. The first experiment compared test priming between African American and white students. Subsequent replications tested the priming mechanisms between different genders, gender by race, academic subject by gender, etc., and on different tasks, with different priming cues, so that an additional study of e.g. Asian American community college students’ performance on swim tests by gender would contribute little refinement to the extant theory of stereotype threat.

<sup>5</sup> I immediately transcribed interviews, and used open coding in ATLAS.Ti as the basis for a series of draft memos on attitudes toward land preservation. See: Barney G. Glaser & Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research*, (Chicago: Aldine, 1967).

## Appendix B: Versions of the Central Park “Improvement” Map

### Original Map

1. Published in the *New York Times*, March 31, 1918

Reprinted:

- Park Association of New York City, “Going...Going...Gone: A Plea to Stop Invasions of Park Land,” January 1965.<sup>1</sup>
- Albert Fein, ed, *Landscape into Cityscape: Frederick Law Olmsted’s Plans for a Greater New York*, 1968.<sup>2</sup>

### Variations on Original Map

2. *NYT* 1918 map with altered legend reproduced at large scale for public display and teaching by Richard Welling (circa early 1920s)<sup>3</sup>

Reprinted:

- Parks and Playgrounds Association of the City of New York, Brochure, December 1923.<sup>4</sup>

3. *NYT* 1918 map with altered legend reprinted in “Central Park Again In Danger: 80-Year Battle Goes On Despite Consistent Repulses,” *New York Times*, March 16, 1924.

Reprinted:

- “Saving the Parks for their Proper Purposes,” *The American City Magazine*, 31 (August 1924), pp. 93-94.
  - Reproduction of American City Magazine image in *Forty Years of Landscape Architecture, being the Professional Papers of Frederick Law Olmsted* (1973 [1928]).<sup>5</sup>
- *NYT* 1924 map reproduced in December 1969 Save Central Park Committee brochure against the construction of stables in Central Park.<sup>6</sup>

### Other Versions of the Map

4. “Central Park...With ‘Improvements,’” *New York: The Sunday Herald Tribune Magazine*, August 2, 1964.

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<sup>1</sup> Brochure opposing the construction of the Huntington Hartford Café in Central Park, PCR 18:5.

<sup>2</sup> Two-page reproduction in: Albert Fein, ed., *Landscape into Cityscape: Frederick Law Olmsted’s Plans for a Greater New York* (Ithaca: Cornell University Press, 1968), 389-390.

<sup>3</sup> Currently held in the collection of the Museum of the City of New York.

<sup>4</sup> Two-page centerfold reproduction opposing open cut subway construction through Central Park, LWP 28: Central Park Folder.

<sup>5</sup> Frederick Law Olmsted, Jr., and Theodora Kimball, eds., *Forty Years of Landscape Architecture, being the Professional Papers of Frederick Law Olmsted* (Cambridge: MIT Press, 1973 [1928]), 517.

<sup>6</sup> GRL Clipping file: Parks—Manhattan—Central Park 1960-1979.

5. Greensward Foundation map, drawn by Ken Fitzgerald based on information from Alan Becker, 1966.

Reprinted:

- Henry Hope Reed & Sophia Duckworth, *Central Park: A History and a Guide* (New York: Clarkson N. Potter, 1967).
- Gordon Davis, *Report and Determination in the Matter of Christo: The Gates* (New York: Department of Parks and Recreation, 1981).
- Elizabeth Barlow Rogers, *Rebuilding Central Park: A Management and Restoration Plan*, (Cambridge, MA: The MIT Press, 1987).
- Nathan Glazer and Mark Lilla, eds., *The Public Face of Architecture: Civic Culture and Public Spaces*, (New York: The Free Press, 1987).

6. Jack Hope, "The Park," *Natural History: Journal of the American Museum of Natural History* LXXVI, no. 7 (August-September, 1967): 8.

7. *New York Times*, March 1, 1970.

Written Descriptions of the Map (map not replicated)

Melvin Kalfus, *Frederick Law Olmsted: The Passion of a Public Artist* (New York: NYU Press, 1991).

Robert Smithson, "Frederick Law Olmsted and the Dialectical Landscape," in *Robert Smithson: The Collected Writings* (Jack Flam, ed), (Berkeley: University of California Press, 1996 [1973]).

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