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Integrity & Incentives: Seeking Equity in Historic Preservation Law

Anneka Olson

University of Washington Tacoma, anneko@uw.edu

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Abstract

In this article, the author presents a case study of mobile home park residents seeking historic designation in the face of neighborhood demolition. The neighborhood's ineligibility to become a historic site under current law can help demonstrate larger patterns of inequitable outcomes within historic preservation practice. In particular, the author argues that the application of preservation law—despite being formally neutral regarding issues of racial and socioeconomic equity—reinforces existing racial, economic, and spatial inequities. Drawing on the challenge of legal closure from critical legal studies (CLS), the author argues that law and historicity are mutually constituting, and that subjective notions of historicity are embedded in the law. The article further suggests that the legal structures that govern historic preservation practice are socially constructed, and therefore contestable. Accordingly, the author proposes that we instead consider the designation of historic structures as a process, helping to illuminate the subjective and contextual nature of the construction of historicity. Using historic preservation to achieve more equitable outcomes, this article suggests, will require a more critical look at the formalized race-neutrality embedded in preservation's legal structures.

Keywords: historic preservation law; cultural preservation; community economic development; equity

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Defining Historicity

Shady Acres: Mobile Homes as Historic Sites?

On April 19, 2016, residents of Shady Acres Mobile Home Park in Ellensburg, WA, read in the local newspaper that the land under their homes had been sold to the county government to make room for the expansion of adjacent rodeo facilities. According to the newspaper, a consultant had been hired to “assist residents in their move” (Major, 2016, para. 7). The relocation would take place within the year, since the homes, many of which are older than 50 years, were too fragile to be moved. This was the first that any of the hundred residents had heard of the sale, and the tight-knit community of mostly-Latino homeowners sprang into action. Within a few months, the community had conducted a census to provide more accurate reporting on the numbers of residents; they held rallies, and contacted lawyers who worked with the community to identify their legal right to stay (Willmsen, 2017). A year later, their fate still uncertain, community organizers made a presentation to a group of historic preservation professionals, asking ‘Could preservation law offer one avenue to secure the continued existence of the mobile home park?’ By and large, the preservation professionals responded that—though lamentable—the site would probably not meet the eligibility thresholds to be considered historic at the local level.

Alongside zoning, historic preservation is one of the more powerful regulatory tools available in local land use law. Historic preservation offers an enticing toolbox for those who seek to influence and control their built environments—and, compared with zoning, historic preservation ordinances often provide an opportunity to impact

aesthetics, limit demolition, and to manage urban change (Goldhagen, 2011). Downtown Ellensburg has been a nationally landmarked historic district since 1977, so historic preservation law is well known to this community. Yet, in the case of Shady Acres, preservation law was inaccessible to the site—and therefore, to the residents of this neighborhood. There is no overt prohibition on landmark designation for mobile home parks *per se*; there is actually some limited precedent for the designation of these sites in other areas (Reynolds, 2002). Additionally, the owner-occupied mobile home structures met several of the historic significance standards, a series of five requirements that buildings must fulfill to achieve historic recognition. Set by the Secretary of the Interior and administered by the National Park Service (NPS), the standards are implemented at the state and local level, and include a requirement that buildings be at least 50 years old. In order to prove the historic significance of Shady Acres, a nomination could highlight the park as an example of vernacular mobile home architecture that demonstrates a significant national trend in urban development as a site representing the importance of post-rail transportation networks in increasing the population and prosperity of Ellensburg, or a location important to the generational Latino and working-class community in the area, which has historically worked to support the ranching and rodeo functions often touted by the town's boosters.

But to many readers, this question of designating a mobile home park as a historic site will stretch notions of historic significance—what I term historicity—and, in so doing, it will ask them to consider more deeply how certain sites come to appear deserving of historic designation. For example, across the street from Shady Acres, a bar that has long served the rodeo-going community is also in the footprint of expansion, but,

as the April 19, 2016 newspaper article is quick to point out, the County has taken steps to ensure that the bar will remain open, even though nothing about this tavern's age or architecture differs significantly from the mobile home park (Major, 2016). In this case, preservation law was not necessary, since the site's cultural importance was previously assumed. The County's approach regarding preservation of the mobile home park, compared with their approach to the bar, can help to illustrate that the determination of historic significance is often reliant on deep-seated assumptions, collective identities, and power. Drawing on this case study, I will argue that preservation law and notions of historicity are mutually constituting, meaning that these subjective notions of historicity are embedded in the law. Through what I term the *process of preservation*, perceptions of historicity inform legal designation, ultimately limiting the kinds of sites—and communities—that can benefit from historic preservation. Finally, by illustrating the outcomes that we see as a result of present preservation practice, I will argue that the application of preservation law—despite being formally neutral regarding issues of racial and socioeconomic equity—reinforces existing racial, economic, and spatial inequities.

Historicity & Law: The Process of Preservation

Social constructions of historicity have a significant impact on what we value and preserve. Using historic preservation to prevent demolition is not new; and neither is it new for communities to seek increased control over the aesthetics and land use of their neighborhoods while using historic preservation—indeed, this is embedded within the origins of the historic preservation movement (Tipson, 2004). In using the example of Shady Acres, I am seeking to illustrate the high stakes, for some communities, of having access to these legal tools. This is an important question for those who seek more just and

equitable urban outcomes. Throughout this article, I use the concept of equity as a way to highlight the importance of asking *who* might benefit from particular policies or practices. As Brand (2015) has pointed out in her research on community mobilization, how we understand and measure the equitable distribution of resources is itself often highly subjective and informed by historical context, identity, and differences in epistemological frames. Additionally, throughout this article, I focus on the results of the implementation of preservation law. This is in keeping with urban theorist Fainstein's (2000) emphasis on seeking more just planning outcomes, not merely designing more transparent planning processes. However, I am not using this case study to make a normative argument about preserving this site under current preservation law. Instead, I use it to frame a larger discussion that can illuminate the application of historic preservation law and its relationship to equity. In addition, by highlighting preservation as a process, I am aiming to problematize notions of historical authenticity, following Milligan's (2007) observation that notions of authenticity—as with historicity—are socially constructed.

This article is a critical legal investigation and I begin with the assumption, borrowed from Critical Legal Studies, that law is not a closed system, but rather a system that codifies prevailing assumptions, practices, politics, and power relations, and that is continually in flux, even as it touts its own immutability (Blomley, 1994; West, 1998). Drawing upon this case study and the foundations of Critical Legal Studies, I investigate larger questions in historic preservation. How are constructions of historicity codified into law? How do current legal structures limit—and, in some cases, dis-incentivize—the alliance of social equity purposes and historic preservation? Why is historic preservation,

as a tool, accessible to some and not others? Who is left out of the current legal construction of historic preservation?

As sociologist Saito (2009) has argued, despite the fact that preservation law—like much public policy post-1960s—is formally neutral on the topic of racial and economic equity, it still often leads to inequitable results, disproportionately privileging dominant histories and affluent white communities (p. 182). In this article, I will explore the specific legal mechanisms that guide the implementation of preservation law to better understand where legal structures constrain more equitable preservation practice. I will also argue that historicity and law are mutually determining (law ⇔ historicity). Current preservation law demonstrates that determinations of historical significance are influenced by the legal criteria currently in place—but perhaps less obviously, our understanding of what *seems* authentic, important, and historic has been codified into law. Again borrowing from Saito (2009), I will argue that preservation can transform our understandings of buildings as “blighted” into those that are “historic”—but these concepts, in themselves, can be racially coded. As this article seeks to demonstrate, this has important ramifications for whose stories are remembered, which heritage is preserved, and who has access to preservation’s legal tools. To put it otherwise, the purpose of this article is to understand the *process of preservation*. As I will argue, historicity is socially constructed, which influences what sites, communities, and histories are eligible for preservation—and this, in turn, determines who can benefit from the legal controls and incentive structure that preservation can confer. By bringing legal criteria into the foreground—and showing how this has changed over time—I seek to demonstrate that preservation law, too, is socially constructed and therefore contestable.

Measuring Equity in Historic Preservation Practice

Historic preservation has a history, and this history guides and shapes the current assumptions, politics, and practices of preservation. Here, I will provide an overview of the current outcomes of preservation practice, as well as contextualizing them as historically situated. I will begin with the “diversity deficit”—the lack of plural histories represented in current landmarks registers—and connect this to the debate in preservation practice over the prioritization of architectural resources versus cultural histories (Tipson, 2004; Wells & Lixinski, 2016). Further, I will argue that this lack of plurality in the preservation process produces disparate benefits for different communities, which are divided along race and class lines—and has important ramifications for which communities have access to the legal tools and incentives of preservation.

The “Diversity Deficit”

Preservation has long had a “diversity deficit.” In 1996, fewer than five percent of properties listed on the National Register of Historic Places were related to women’s history; in 2004, of the 77,000 properties listed in the National Register, only 1,300 were connected with African-American heritage, 90 with Hispanic, and 67 with Asian (Hayden, 1996, p. 54). According to cultural historian Kaufman (2004), “Taken together, these properties amount to 3 percent of what is intended to be a comprehensive inventory of the nation's heritage” (para. 9).

Historic preservation practice—and the law that governs it—has undergone several important changes over the last hundred years, with shifting priorities that have alternatively privileged patriotic, architectural, or cultural history. Historic preservation in the United States dates to the turn of the 20th century, when preservation was focused on

saving landmarks that were directly linked to telling the patriotic history of the early United States. Under urban renewal, the federal government incentivized the demolition of historic buildings, providing funding and political support for the elimination of “blight.” The historic preservation movement was a reaction to this policy, spurring the passage of the 1966 National Historic Preservation Act (NHPA) and marking a distinct turn towards a focus on architectural preservation—that is, saving buildings because of their architectural interest or history, rather than their relationship with significant historical people or events (Sprinkle, 2014). In the 1990s, a growing emphasis on cultural preservation grew, exemplified by urban historian Hayden’s (1996) book, *The Power of Place*. The book asked readers to reconsider some of the long-standing assumptions about whose history should be preserved, and instead argues that we ought to claim “the entire urban cultural landscape as an important part of American history” (Hayden, 1996, p. 11). This new model of cultural preservation recognizes that all places, not only grandiose buildings, might provide opportunities for interpretation—even gaps in the landscape might “have stories to tell that are worthy of community memory” (Tipson, 2004, p. 314).

Despite this turn towards cultural preservation, there remain significant barriers to eliminating the “diversity deficit,” and it is this the Shady Acres case study can illustrate. By surveying the racial and socioeconomic disparities in landmarked structures, it is clear that preservation practice continues to prioritize white, dominant histories, even though this overt prioritization is rarely, if ever, articulated. Indeed, Hayden’s (1996) book initiated an increased awareness around this problem, and sparked many to create new pathways to elevate marginalized, racially diverse histories within preservation—but the

numbers remain staggeringly low. This deficit can be explained, in part, by political and institutional inertia, as well as the lack of adequate resources to research and nominate this history. But there are also specific *legal* definitions that maintain these current notions of historicity. As Kaufman (2006) has pointed out, many cultural histories are disqualified because they do not have extant architectural resources to represent them: “The challenge is that many important historical experiences did not take place in buildings that have survived intact. They took place in open fields, barrios, labor camps, union halls, social clubs, street-front churches, bunkhouses, tenements, cabins, factories, and docks” (para. 61). The stakes of telling a more inclusive history are high, as “gaining public recognition for historic places helps make invisible communities visible” (Kaufman, 2006, para. 61). The history that we represent matters, especially in contested public arenas where these stories often have the potential to impact agenda-setting, public perception, and policy outcomes.

Preservation as a Legal Tool

Concerns over the lack of equity in historic preservation are not new. As legal historian Newsom (1971) wrote in his early critique of historic preservation, “Blacks and Historic Preservation,” urban renovation of historic structures in Georgetown spurred displacement of the Black community in Georgetown, while implicitly suggesting that the existing community did not comprise part of the neighborhood’s history. However, Newsom was quick to point out that the problem is not with historic preservation *per se* (“preservation is not evil”) but rather its implementation (p. 431). Instead, he asks how preservation could be employed to benefit marginalized groups, celebrating the cultural history already enmeshed within these communities, as well as limiting their

displacement. Thus, in addition to expanding the field to tell more plural histories, an equitable approach to historic preservation must also address substantive questions of impact, for example, *who* is eligible to benefit from the incentives and regulatory controls? As I will demonstrate in my overview of legal structures, preservation is a powerful legal tool and regulatory incentive structure—indeed, it is often compared with zoning as one of the more substantive tools for local land use (Goldhagen, 2011; Hershman, 1980). Historic preservation’s “toolbox” also offers a way to manage change and exert control over built environments. Further, it is often aligned with significant levels of incentives and funding—so, in tallying the impact of preservation on urban outcomes, it is important to consider which communities are able to access these powerful regulatory tools and incentives. As the case of Shady Acres can demonstrate, some communities face legal barriers to utilizing historic preservation as a tool. In addition, the *kinds* of incentives that are offered are often heavily skewed towards affluent white communities—further ensuring that these communities have an inducement to access preservation law, while poor and working-class communities of color do not. Thus, even in its formal race-neutrality, the law shapes racialized outcomes through its interpretation within historic preservation practice.

Preservation & Law

Historic preservation is guided by federal legislation, state law, and local ordinances, all of which influence governance and implementation. In this section, I will briefly review the historical development of historic preservation legislation and describe its impact on preservation practice, specifically focusing on the federal level, since this constrains state and local law. In addition to demonstrating that preservation law has

changed over time, and is therefore dynamic and mutable, I will focus on the specific legal mechanisms within the *process of preservation* that: 1) guide the determination of historicity and significance; and 2) offer incentives to employ preservation law.

Legal Frameworks of Preservation

After the National Park Service (NPS) was created in 1916, the agency became responsible for maintaining several historic sites, but it was not until the passage of the Historic Sites Act of 1935 that preservation had a legal framework. The Great Depression created a national identity crisis, which generated a renewed demand for connections to American history (Sprinkle, 2014). The Historic Sites Act of 1935 emerged against this backdrop, mandating a widespread survey of historic sites. This resulted in the creation of the National Historic Landmarks program, a new legal category for federal recognition of historic sites. Under this law, any sites added to the register would be owned and managed by the NPS.

The National Historic Preservation Act of 1966 also emerged from a series of contextual political factors that made the law politically desirable and expeditious. Though it does not mention the federal urban renewal program by name—a decades-long program that subsidized the demolition of historic buildings—the legislation refers to a growing concern over the destruction of historic built environments across the country, recognizing that “historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency” (National Historic Preservation Act, 1966). The legislation went much further than the 1935 Act, creating the National Register of Historic Places, which continues to operate with a different set of criteria than that of the National Historic Landmarks program. Though these criteria

previously existed at an administrative level, NHPA created a legal mandate for the creation and widespread adoption of the significance criteria. With the change in management of historic sites, the standards did not need to be as stringent, since more sites could be added to the register without requiring federal ownership, maintenance, and funding. Further, under this new law, designation relied on the initiative of local groups to nominate landmarks to the register. Building on the criteria developed for the National Historic Landmarks, “the organizers of the newly expanded National Register... ‘modified’ the existing NHL criteria ‘to accommodate other properties,’ liberalizing the concept of integrity”—thereby allowing the Park Service to “grow the National Register ‘as quickly, and reliably, as possible’” (Sprinkle, 2014, p. 19). The revised criteria were determined in 1969 and have changed little since then, continuing to guide preservation at both the federal and local levels.

The Tax Reform Act of 1976 created the Historic Preservation Tax Incentive Program, available to structures that are listed on the National Register. To date, over 39,000 historic buildings have utilized this tax incentive. As historic preservation scholar Ryberg-Webster (2015) pointed out in her article about the tax credit program, the purpose of these tax credits was largely an effort to spur urban investment, especially against the backdrop of significant reductions in direct federal grants to urban locales. Changes to the law in 1986 significantly modified the kinds of projects that were eligible for the tax credit: The credit cannot be used for owner-occupied homes and must produce some kind of income, meaning that most beneficiaries of the credit have largely been well-resourced projects with substantial budgets.

The Significance Criteria: Integrity

Historic preservation law has changed in relation to outside factors, including economic crises, urban renewal demolition, and shrinking federal funding for cities. Legislative change is ongoing, which might provide yet another example that law is shaped by our understandings of historicity, pragmatic considerations, and political will. Additionally, within the *process of preservation*, two legal mechanisms constrain the ability to offer broader, more equitable benefits. First, one of the significance criteria—integrity—is particularly important in determining historic significance. Second, the incentive structure, including the Historic Preservation Tax Incentive, shapes access for the kinds of projects, sites, and communities that can benefit from preservation law.

The National Park Service uses five criteria to determine eligibility for listing on the National Register of Historic Places; these same criteria are used in the state and city ordinances that designate historic districts and sites at the local level. These five criteria pertain to a building's relationship to historically distinguished people, historical trends or events, unique or monumental architectural style, the embodiment of a vernacular style, or a building's relationship to an already-designated historic district or site. In theory, the criteria seek to make an objective, uniform set of standards that can guide historic designation. Yet, embedded within these criteria are deep-rooted assumptions about whose history matters and what ought to be preserved.

One of the criteria which deserves specific attention requires that a building maintain historic "integrity." Integrity has seven components, including five "hardware" components—materials, workmanship, setting, design, and location; and two "software" components—feeling and association. As Sprinkle (2014) noted in his history of the NPS

criteria, the purpose of the integrity criterion is to ensure that historic sites are truly authentic—to “draw the line between history (what happened in the past) and heritage (what people *feel* happened in the past)” (p. 48). Prior to 1966, the threshold for integrity was necessarily higher, since the Park Service had limited resources and funds to care for all of the historic properties on the National Historic Landmarks List. Along with the other criteria, the integrity standards were modified after the creation of the National Register of Historic Places in 1966, expanding eligibility—specifically because “one of the goals of the National Register was to provide a vehicle through which deserving properties received financial assistance” (Sprinkle, 2014, p. 61).

The integrity criterion acts as a gatekeeper, designed to maintain a high level of factual authenticity for designated historic sites. Yet it is also often the automatic disqualifier for vernacular buildings that may have been heavily used and modified. In his call for broader plural histories, Kaufman (2004) pointed to the integrity standard as the “most troublesome” limitation on a more inclusive history, arguing that it “saddles preservation efforts with an unintended bias against working-class and immigrant history,” since these buildings are often used and modified over time (para. 61). In addition, the standard often relies on legal *interpretation* of the criteria. For example, Putnam-Miller (2003) described the experience of the Women’s History Landmark Project, a concerted effort to research and nominate significant sites in women’s history. As part of this effort, NPS reviewers utilized the integrity standard to limit eligibility of several sites significant to women’s history. Despite the ostensibly different integrity standards for historical and architectural sites, the tendency “was for the staff...to hold properties nominated for historical significance to the same standard as those properties

nominated for architectural significance” (Putnam-Miller, 2003, p. 324). In other words, there may be an invisible conflation between the preservation of buildings and those places that are important for cultural or historic reasons. Those responsible for making this assessment matter, too—both “feeling” and “association” are, by necessity, subjective and dependent upon the individual experience and identity of the assessor.

In her analysis of the “buildings as history” approach to preservation, Milligan (2007) called into question the very foundations of the integrity criterion, pointing out that all of the evaluative standards for preservation—especially integrity—require the social construction of authenticity. But herein lies the challenge—by definition, if historic significance is socially constructed, the criteria will lean more heavily on the original object (i.e. buildings or historic sites) to determine authenticity. In other words, it is easier to quantify and document the factual validity of a building rather than its cultural meaning. Merely attempting to achieve a set of standards for determining authenticity also obscures the very arbitrary, subjective, and socially-constructed nature of authenticity itself (Milligan, 2007). Without explicitly saying so—and, in fact, by creating these ostensibly “objective” standards—the criteria limit the designation of sites important for cultural, versus architectural, reasons.

If we apply the integrity criterion to Shady Acres, the heavy modification of the buildings disqualifies the site from fulfilling the hardware components of integrity. This lack of architectural criteria can also be used to confirm that this place does not satisfy the more subjective standards of “feeling” and “association”—confirming the intuitive assumptions of many historic preservationists that a mobile home park cannot fulfill this criterion. Despite the fact that neither the hardware or software components have much

bearing on the potential *cultural* significance of a place, they reinforce the perceived lack of historicity of the site. But, as the history of the standards suggests, the determination of historicity is not “closed;” these standards have changed over time due to shifting political and pragmatic considerations. Though not overtly legal, the significance standards are administratively determined as a direct result of legislative mandate, resting on decades of administrative precedent.

In 2012, a revision of the standards sought to separate physical integrity from notions of authenticity, acknowledging that authenticity, as the “capacity of a historical setting to be an accurate representation of a specific cultural time and place,” is “multidimensional and rarely absolute”—indicating that the agency may be edging towards a more expansive cultural preservation framework (NPS Advisory Board, 2012, pp. 12-13). However, this may not adequately address some of the problematic elements of having criteria serve as a gatekeeper. In the case of Shady Acres, the lack of integrity stalled any further discussion of cultural significance, and would likely disqualify the buildings from being acknowledged for their cultural significance. By creating an “objective” framework for analyzing historicity, the standards limit debate. And as I have sought to demonstrate, embedded within these standards are assumptions about whose history matters, which can limit the kinds of communities who can access preservation law.

Incentive Structures

If we think of *preservation as a process*, fulfilling the integrity criterion is the first step in determining access to the regulatory controls and incentives that preservation can offer. These are what Tipson (2004) has called “the tangential benefits of

preservation,” defined as “those achievable by means other than historic preservation, such as aesthetics (a category discrete from architectural merit), tourism, local economy, property values, ‘quality of life,’ etc.” (p. 294). In other words, certain groups often use preservation as a *tool* in order to achieve certain outcomes—but these outcomes often have little to do with the preservation of collective memory or historic resources. These “tangential benefits,” which I refer to as incentives, offer motivations to utilize preservation law to shape the built environment. But they are structured to privilege the use of preservation of certain sites and therefore certain communities.

The Federal Historic Rehabilitation Tax Credit (FHRTC) is emblematic of the disparity in access to preservation benefits. As discussed previously, this program seeks to correct the disincentive in the federal tax code against the rehabilitation of historic buildings—and it also offers owners a motivation for placing buildings on the historic register. Under the Tax Reform Act of 1986 (the current legislation concerning the tax credits), the kinds of eligible users and uses are highly constrained. The law prohibits developers from using the tax credit for owner-occupied structures, and requires that the uses be revenue-generating—so a school listed on the National Register, for instance, would only be eligible for the tax credit if it was adaptively reused for an income-generating purpose, not for continued use as a school. Instead, the tax credits incentivize rehabilitation, which provides a new means of incentivizing urban investment, even as neoliberal policies reduced overall federal funding to cities (Ryberg-Webster, 2015).

Additionally, some have criticized the use of tax credits as an alternative to direct government funding, since they often fall outside of the normal processes for legislative spending analysis. According to policy analyst and historian Swaim (2003), “tax credits

should be scrutinized and evaluated as direct spending programs are... [and we] should ask if the credit is structured in a rational and equitable manner” (p. 34). Because there is no legal requirement that tax credits be analyzed as direct spending would be, the spending is largely hidden from public view, and questions of equity—who benefits?—go un-asked. As urban historian Klemek (2007) has argued, the tax credit has had other political purposes, as well, helping to secure support from real estate groups for historic district designation. Despite early resistance from real estate groups in New York City, real estate regimes have continued to flourish under the shift towards historic rehabilitation.

We can also think about incentives more broadly. In addition to the tax credit, the kinds of incentives that can be accessed through historic preservation law skew towards aesthetic and land use control, working to keep out locally undesired land uses, all in service of maintaining property values. This kind of control—over construction materials or building scale—may not offer the kinds of benefits sought in many poor or working class neighborhoods. In fact, this stringent design review can often increase rehabilitation costs. This, too, might provide some explanation for the diversity deficit—the kinds of benefits that preservation can provide are undesirable to many communities—while the kinds of benefits sought, such as limiting demolition and displacement, or preserving cultural history, are inaccessible. Without addressing the mismatch in incentives, it seems unlikely that the “diversity deficit” can be corrected—nor will preservation contribute to more equitable urban outcomes.

Conclusion

An Equity Agenda for Preservation

At the outset of this research, I asked why historic preservation law, despite its purpose of preserving architectural and cultural history, was not accessible to the Shady Acres community who sought to preserve structures and limit the demolition of their neighborhood. By illuminating the inequitable patterns in preservation outcomes, I have sought to demonstrate that one answer might be found within the often-overlooked legal structures that guide preservation practice. First, the integrity criterion limits notions of historicity. The mobile homes, though they do meet several of the significance criteria, have been extensively modified, and few original materials remain. In addition, the “feeling and association” aspect of the integrity criterion would rely on a local review board to agree with residents that a mobile home park could convey these intangibles. In this case, and in the diversity deficit found throughout preservation, we see a social and spatial pattern—that “some groups receive fewer benefits from preservation efforts than more advantaged stakeholders” (Minner, 2016, p. 80). Thus the law itself—its administrative standards and its interpretation—limits Shady Acres from benefitting from preservation’s legal tools.

As I have argued, law and historicity are mutually constituting, meaning that law determines what is historic—but what we deem historic also influences the law. In addition, the legal frameworks that govern the construction of historic authenticity have changed over time, often in relationship to changing social notions of historic significance, suggesting that law is not closed. The legal governance of preservation practice—what I have termed the *process of preservation*—relies on the way that

historicity is embedded in the law to grant access to preservation's legal tools. As a whole, this process limits the potential for preservation to promote urban equity and justice, instead reproducing patterns of spatial racialization and socioeconomic inequity. Therefore, any legal change would need to go beyond merely modifying the criteria. It must significantly restructure the system of incentives to make preservation more accessible—even desirable—to communities who currently find themselves left out of the equation. A detailed analysis of incentive structures is outside of the scope of this article, but is an area that would benefit from further research.

New Standards for Cultural History?

This article has raised questions about a gap in the legal mechanisms for determining and preserving cultural history. However, in the search for more equitable outcomes, some thorny issues remain in attempts to modify the law. To many preservationists, the suggestion that a mobile home park ought to be designated as historic is deeply unsettling—this would point “toward a world in which every site and every place could be deemed significant and thus in need of protection and regulation” (Bluestone, 2011, p. 258). If we truly take seriously Hayden's (1996) call to reclaim the entire urban landscape as public history, this would pose many new questions about how to determine historic significance.

Meanwhile, the Shady Acres community has secured a five-year lease with the County as the legal process runs its course. Efforts to transfer the land to the local Housing Authority have not been supported at the County level, but the community is continuing its pursuit to secure either a permanent right to stay or full group relocation (Willmsen, 2017). For this community, this is not a legal question, but rather—at root—

one of dignity, survival, and justice. Yet, as this case study also makes clear, inequities in preservation practice do find expression in the law. Therefore, as we ask how we could modify both the criteria and incentive structures to privilege more pluralistic historic sites, it is worthwhile to consider the legal dimensions that keep us from realizing more just urban outcomes.

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