LAND USE REGULATIONS: RACIAL OPPRESSION BY ANOTHER NAME

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Maximum lot coverage (including garage area): 40% of lot area," "30% Encroachment rule," "Maximum building height (one story): 17 feet." These seemingly mundane regulations are in effect in my rapidly gentrifying neighborhood of Warm Springs, California ("Single-Family Residential Zoning Standards for Additions"). Collectively, these rules are known as land use regulations (LURs), which can also regulate zoning, density limits, and minimum setbacks. Throughout America, they determine how individual plots of land will be used, from the appearance and location of a building to whether it will be used for residence or commerce. City governments claim that these regulations foster growth while preserving community character.

However, LURs often have more insidious intents. By restricting development, they also make cities less affordable for low-income minority residents, thus reinforcing racial segregation. We have made little progress in Black-white residential segregation over the decades, with segregation declining at "a very slow pace" since its peak "around 1960 or 1970" (Logan and Stults 2). Today, "the typical white lives in a neighborhood that is 75% white, 8% black" while "the typical black lives in a neighborhood that is 45% black, 35% white" (Logan and Stults 3). Exclusionary LURs have endowed the racial bias of white homeowners with the legitimacy and power of supposedly race-neutral government regulation, allowing them to avoid confronting their prejudices while perpetuating a system of racial oppression.

Governmental forays into regulating the spatial distribution of residents can be traced back to the early twentieth century. In his book *The Color of Law*, Richard Rothstein writes about the history of government-enforced segregation. The most infamous of these segregation tactics was a process known as redlining. The Federal Housing Administration refused to insure mortgages (effectively cutting off home loans) for people living in the predominantly African American communities, which were drawn in maps as red (undesirable) by the Home Owners' Loan Corporation (64). However, redlining was preceded by the more extreme policy of racial zoning. Baltimore introduced racial zoning in America in 1910 by prohibiting either race from buying a home in a block that was majority owned by the other race; this law was imitated throughout the South (Rothstein 44).

The spread of racial zoning, however, should have come to an abrupt end with the *Buchanan v. Warley* decision of 1917. The Supreme Court struck down a racial zoning law in Louisville, Kentucky, not because it was racially motivated, but because the Fourteenth Amendment protected property rights, effectively ensuring the right of white homeowners to sell to African Americans (Fischel, *Zoning Rules!* 79). Though the

decision allowed some southern state courts to strike down similar laws, many cities ignored the decision (Rothstein 46).[1]

Alas, the *Buchanan* decision did not bring an end to racial zoning; instead, it spurred racial LURs to evolve into economic LURs. For example, Chicago's 1923 zoning ordinance targeted Black communities specifically for high-density housing and manufacturing, segregating them into hazardous regions with lower incomes (Shertzer et al. 236). Such zoning translated "into economic disparities" (219). Although these laws never explicitly state the words "black" or "white," they have the same effect as previous racial zoning laws, constraining low-income minorities to undesirable industrial districts. This tactic was endorsed by the Supreme Court in the 1926 decision of *Village of Euclid v. Amber Realty*, in which the exclusion of apartment buildings in zoning was deemed to be constitutional. The decision was riddled with racial bias, with Justice George Sutherland writing that "the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district," and that they "come very near to being nuisances" (Rothstein 52-53). Justice Sutherland's coded words reflect the racist sentiments of white homeowners by indirectly associating African American and immigrant families, through their apartment homes, with parasites that harm the neighboring white communities. The barely disguised racial animosity contained in the decision shows that the Supreme Court intentionally gave cover for cities to preserve explicitly racist zoning laws in the form of implicitly racist economic zoning.

Exclusionary zoning regulations continued even after the *Shelley v. Kraemer* decision of 1948 made private racial covenants—clauses in a home's deed that banned the sale of the home to African Americans—unenforceable (Whittemore 16). These exclusionary zoning regulations failed to achieve their legal goal of maximizing total land value; however, Edward L. Glaeser and Bryce A. Ward, in studying Boston's LURs, note that minimum lot sizes are connected to the density and demographics of communities (277). Communities with higher minimum lot sizes, a type of LUR, were whiter and more educated. Boston is not unique: multiple studies nationwide have linked land use controls with the exclusion of African American residents.[2] This gap between the stated goal of exclusionary zoning regulations and their true effects indicates that the real intent behind them is not economic exclusion, but rather racial segregation.

However, the Supreme Court has not used such evidence to overturn exclusionary LURs. In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, the Supreme Court decided in 1977 that Arlington Heights' exclusionary zoning ordinance was legal since there was no proof that the council members themselves intended to exclude African Americans. This decision came in spite of the fact that the ordinance was passed under explicitly racist pressure from white residents who admitted they were trying to keep African Americans out of their community (Rothstein 54). The Supreme Court established the precedent that a plaintiff needs evidence of

discriminatory intent to prove Fourteenth Amendment violations (Whittemore 20). This decision from our constitutional democracy's highest legal and moral authority enabled residents to cloak their racism in abstracted regulations—distancing whites from their own implicit bias. It has also fed the harmful belief prevalent today that because our laws today do not explicitly segregate by race, they are necessarily colorblind. This view has been endorsed by the Supreme Court in decisions such as *PICS v. Seattle School District* in 2007, which determined that school integration in many communities is unconstitutional unless it can be proven that the government is responsible for present-day segregation (Rothstein and Badger). This understanding conveniently ignores the history of economic zoning targeting racial minorities, a practice which continues today.

Even still, many argue that exclusionary LURs are only intended to increase property values and lack any discriminatory intent. The most notable economics scholar of LURs, William Fischel, states in his comprehensive book on zoning that "*Buchanan v. Warley* was remarkably effective in halting the spread of legally compelled segregation schemes" and kept "explicitly apartheid regulations off the books" (Fischel, *Zoning Rules!* 79-81). However, there is a long way between apartheid and complete integration. Although explicitly segregationist laws were repealed by the 1960s, as Fischel and others have noted, the Supreme Court has allowed exclusionary zoning ordinances that are segregationist in all but name.[3] As the City and Regional Planning researcher Andrew Whittemore writes, municipalities use zoning to maximize property values, "screen[ing] out anything they perceive to be a 'quality-detracting user' . . . [which] may well be informed by prejudice" (17).

On face value, it is likely that both Fischel and Whittemore are correct that communities do use LURs to raise their home equities and exclude minorities. Anthony Downs confirms their arguments when writing about President George H.W. Bush's Advisory Commission on Regulatory Barriers to Affordable Housing, of which he was a member. According to Downs, the maximization of home equity, along with the fear of "invasion" of white communities by undesirable low-income families, and the associated racial hostility that accompanies this sentiment, are two of the major motivators for exclusionary LURs (Downs 1115). There is empirical evidence for both of these intents, as well: studies have shown that communities with large numbers of poor or minority residents in their surrounding areas were more likely to have less new land zoned for residential purposes, indicating an implicit bias against these groups (Ihlanfeldt 274). However, as Whittemore shows, these two reasons are linked because raising the cost of living within a city also makes it less affordable for most racial minorities. Therefore, exclusionary LURs have become self-reinforcing: as racial minorities are constrained by the exclusionary LURs of wealthy white suburbs and pushed into low-income urban ghettos, negative racial biases among white residents are reinforced. The cycle perpetuates racial segregation. The effect is to create barriers between urban minority communities and white suburbs, as minorities are

excluded from job markets, home equity, and other wealth-building opportunities that would allow them entry into the suburbs.

I have seen this conflation between property prices and racial resentment first-hand at a city council meeting in Dublin, California, close to my old home in Fremont. In the meeting, white and Asian homeowners complained that a new housing proposal would turn their city into "the next San Leandro," referring to a much poorer and predominantly Latinx and African American community on the other side of the East Bay Hills. While they viewed the development as a threat to their property values because of the impact on traffic congestion and local school quality, their comments show that these fears arise from a strong internal racial bias. However, race was never explicitly mentioned in the meeting; the San Leandro comment was as far as the residents went. The discussion still obviously fanned the flames of racial resentment, even if it was unsaid. Such is the beauty of exclusionary LURs.

The cumulative impacts of exclusionary LURs create powerful systems of oppression that reinforce and exacerbate racial inequality and the subjugation of minorities. For one, these LURs have been influential in perpetuating and intensifying the racial income and wealth gaps. The suburbanization of whites spread competitive jobs geographically throughout regions that are less affordable to the poor, thus impeding minorities from attaining incomes that would allow them to enter the suburbs (Rothstein and Badger). Instead, middle- and low-income minorities have been constrained by LURs to rental housing in poorer communities, thus excluding them from homeownership, one of the largest sources of wealth in America. As homes have appreciated over the last several generations, white families have accrued wealth, while pricing out minorities (Rothstein and Badger). Therefore, exclusionary LURs, combined with highly regressive subsidies for the whiter middle and upper classes, such as the mortgage interest tax deduction, have become major drivers of today's inequality.[4]

By zoning low-income minority communities as industrial areas, cities have also exposed African Americans to dangerous environmental hazards. A 1983 analysis by the US General Accounting Office found that nationwide, "Blacks make up the majority of the population in three of the four communities where the landfills are located" (1). A prominent example in my region is the predominantly Black public housing community of Bayview–Hunters Point in San Francisco, which shares its name with the adjacent Hunters Point Naval Shipyard, a decommissioned nuclear Superfund site. Exposure to these harmful environmental pollutants create long-lasting, often fatal health damage. By disproportionally placing polluting industries next to communities of color (or vice versa), cities are implying that the lives of people of color are valued less than those of whites. Affluent white suburban communities can leverage wealth and institutional power to demand that LURs locate industry far from their homes. That necessitates placing industry next to African American and Latinx communities instead. And thanks to the *Arlington Heights* decision and the

history of oppression, residents are unable to pose a challenge based on racial discrimination. The voices of these white suburbs, and therefore their lives, are given precedence over those of communities of color, thus giving people of color a lower status.

The impact of exclusionary LURs on education follows a similar pattern. Contrary to popular belief, since the immediate aftermath of *Brown v. Board*, school segregation has only worsened: "In 1970, the typical African American student attended a school in which 32 percent of the students were white. By 2010, this exposure had fallen to 29 percent" (Rothstein 179). Perhaps more shockingly, as Nikole Hannah-Jones notes in her article "Choosing a School for My Daughter in a Segregated City," one of the most segregated school districts in America is not in the South, but the Northern metropolis of New York City. This racial hypocrisy was not lost on Kenneth Clark, the first Black person to earn a doctorate in psychology at Columbia University, who "charged that though New York had no law requiring segregation, it intentionally separated its students by . . . building schools deep in segregated neighborhoods" (Hannah-Jones).

Rather than harming white students, school integration makes everyone better off. Hannah-Jones notes data from multiple studies that show that "as Black test scores rose, so did White ones" and "Black adults who had attended desegregated schools were less likely to be poor, suffer health problems and go to jail. . . . [T]hey even lived longer." But racial fears on the part of affluent whites have excluded people of color from their high-performing schools, compounding racial segregation. White parents' desire to provide the best opportunities for their children belies a racial bias against schools with students of color. Once again, the lives of white children are placed ahead of the lives of Black children. Hannah-Jones points out that even Kenneth Clark chose to put his children in a school in an affluent white community. He is quoted as saying that his children "only have one life," but Hannah-Jones adds, "so do the children relegated to this city's segregated schools. They have only one life, too."

Yet exclusionary LURs ignore these children. By preventing African American families from accruing wealth, living in healthy neighborhoods, or sending their children to the same high-quality public schools as white suburban families, exclusionary LURs act as a primary tool for the perpetuation of African Americans' social status as a lower caste, one that has persisted since Jim Crow, and before that, slavery. These systems of oppression are derived from a legal framework that grants white homeowners unwarranted advantages over African Americans, that implies that white lives are more valuable than Black lives.

Because of this history of explicit and implicit racial exclusion, "colorblind" policies can never be enough to reduce segregation and give African Americans equal standing in the housing markets. More is necessary. As Hannah-Jones concludes, "[t]rue integration, true equality, requires a surrendering of advantage." Without surrendering this advantage, the unconstitutional, segregationist land use regulations imposed by

the government—a legacy of slavery—will never be remedied. If white Americans insist on preserving their advantage, they will also preserve the unequal treatment of African Americans upon which the nation has rested since its founding.

NOTES

1. Racial zoning practices existed well into the 1960s in West Palm Beach and the Orlando suburb of Apopka and survived as implicit law as late as 1987 in Kansas City and Norfolk (Rothstein 47).
2. Kevin Ihlanfeldt's scholarly review finds that jurisdictions with a higher proportion of white residents adopt more restrictive community LURs (270). Rolf Pendall's analysis similarly finds that communities with LURs had lower proportions of African Americans. Most recently, Princeton University researchers Jonathan Rothwell and Douglass Massey also found a negative correlation between the restrictive zoning densities and racial integration (790-791).
3. Additionally, Fischel's economic approach provides a valuable perspective on the incentives to exclusionary LURs. In his paper "Zoning and Land Use Regulation," Fischel states that residents have no incentives to oppose new LURs, since they only affect new residents and development. Repealing LURs is even less desirable, since it would lower home values while transferring most of the advantages of higher wages and employment to neighboring municipalities (421).
4. Beyond inequality, economists have done extensive research on the impact that LURs have on the national economy by limiting growth because of their impact on housing costs. By increasing the cost of urban housing, LURs reduce national mobility, making it harder for people to move to more productive areas with higher paying jobs and quality schools. This effect reduces productivity and income growth, since people get raises by switching to better job matches. In economies with loose land regulations, the agglomeration economies of high-income, high-productivity cities attract people from poorer regions, leading to income convergence, greater productivity, and intergenerational mobility. According to a recent analysis by Hsieh and Moretti, if just New York, San Jose, and San Francisco adopted median LURs, the entire country's GDP would be 8.9% higher, while employment in New York would increase by 1,010% (24). Unlike what many cities promise, LURs actually limit the extent of their economic growth.

WORKS CITED

Downs, Anthony. "The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments." *Housing Policy Debate*, vol. 2, no. 4, 1991, pp. 1095-1116, www.innovations.harvard.edu/sites/default/files/hpd_0204_downs_pt1.pdf.

Fischel, William A. "Zoning and Land Use Regulation." *Encyclopedia of Law and Economics: Civil Law and Economics*, vol. 2, 2000, pp. 403-42, www.dartmouth.edu/~wfischel/Papers/WAF-zoning%20ELEpdf.pdf.

---. *Zoning Rules!: The Economics of Land Use Regulation*. Lincoln Institute of Land Policy, 2015, https://www.lincolninst.edu/sites/default/files/pubfiles/zoning-rules-chp.pdf.

Glaeser, Edward L., and Bryce A. Ward. "The Causes and Consequences of Land Use Regulation: Evidence From Greater Boston." *Journal of Urban Economics*, vol. 65, no. 3, 2009, pp. 265-78, www.scholar.harvard.edu/glaeser/files/the_causes_and_consequences_of_land_use_regulation_evidence_from_greater_boston_2009.pdf.

Hannah-Jones, Nikole. "Choosing a School for My Daughter in a Segregated City." *The New York Times*, 9 Jun. 2016, https://www.nytimes.com/2016/06/12/magazine/choosing-a-school-for-my-daughter-in-a-segregated-city.html.

Hsieh, Chang-Tai and Enrico Moretti. "Housing Constraints and Spatial Misallocation." *National Bureau of Economic Research*, May 2017, www.nber.org/papers/w21154.pdf.

Ihlanfeldt, Kevin. "Exclusionary Land-use Regulations within Suburban Communities: A Review of the Evidence and Policy Prescriptions." *Urban Studies*, vol. 41, no. 2, 2004, pp. 261-83, doi:10.1080/0042098032000165244.

Logan, John and Brian Stults. "The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census." *Diversity and Disparities Project*, Spatial Structures in the Social Sciences, 24 Mar. 2011. Brown University, https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf.

Pendall, Rolf. "Local Land Use Regulation and the Chain of Exclusion." *Journal of the American Planning Association,* vol. 66, no. 2, pp. 125-42.

Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Liveright Publishing, 2017.

Rothstein, Richard and Emily Badger. "The Color of Law." SPUR, 4 Oct. 2017, Oakland, CA. Live Guest Interview.

Rothwell, Jonathan and Douglas Massey. "The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas." *Urban Affairs Review*, vol. 44, no. 6, 2009, pp. 779-806. Sage Journals, www.journals.sagepub.com/doi/pdf/10.1177/1078087409334163.

Shertzer, Allison, Tate Twinam, and Randall Walsh. "Race, Ethnicity, and Discriminatory Zoning." *American Economic Journal: Applied Economics*, vol. 8, no. 3, 2016, pp. 217-46. American Economic Association, www.pubs.aeaweb.org/doi/pdfplus/10.1257/ app.20140430.

"Single Family Residential Zoning Standards." *Plans and Guidelines*, City of Fremont. www.fremont.gov/DocumentCenter/View/36302/R-1-Zoning-Standards.

United States General Accounting Office. *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*. General Accounting Office, 1983, www.gao.gov/assets/150/140159.pdf.

Whittemore, Andrew. "The Experience of Racial and Ethnic Minorities with Zoning in the United States." *Journal of Planning Literature*, vol. 32, 2017, pp. 16-27. Sage Journals, www.journals.sagepub.com/doi/pdf/10.1177/0885412216683671.

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