Exclusionary Zoning and Justice: Concentrated Disadvantage, Intergenerational Poverty, Persistent Legality

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How do you bring a topic as foreign and niche as American zoning policy, integrate it into a discussion for justice, and make it an argument which isn't obscured by the necessitation of the use of niche language of zoning law? How can a policy argument over a subject most people don't even think about be made palatable enough to offer up to everyday people for critical assessment and constructive commentary?

Introduction

Zoning laws—laws that govern what can and cannot be done with land in America—are found in nearly every major US city. First adopted in 1916 by New York City, they were a way for cities to regulate the exposure of their inhabitants to industry. Factories were increasingly common during this period, sometimes called "second industrial revolution," but were also relatively unregulated, a reality that corresponded to a high number of industrial fires (Hirt, 2016). However, zoning soon became a way for populations of power, largely the white and the rich, to control the movement and proximity of minorities, those considered distasteful and/or bad for good neighborhoods. Ordinances yielding this kind of effect are referred to as exclusionary (Sager, 1969). It's hard to gauge the breadth of this issue in terms of how many cities have adopted exclusionary zoning policies, largely because ordinances are constructed at the local level of government and there are no standardized approaches. This means that the methodologies for accomplishing exclusionary zoning are widely varied, limited only by the creativity of the governing body dictating them, usually an elected or appointed zoning commission that requires the approval of the local town/city council (American Planning Association, 2011). There are, however, a few exclusionary zoning (EZ) policies that are more common than others. For the purpose of illuminating how these zoning policies interact with

individual lives and to circumvent the use of the niche language of zoning law, I will describe three common EZ ordinances using a hypothetical prospective homeowner: Steve.

Exclusionary Zoning, Sampled

Steve has been saving up to achieve a significant milestone, often cited as a cornerstone to the achievement of the American Dream: he's finally ready to own a home. He lives, like 80 percent of Americans do (American Community Survey: 2011-2015, 2016), in a city and is happy with the density of resources, culture, and social opportunity. In short, he would be happiest if he could buy a home within the city limits, either near the core or in the suburbs. Imagine that he's dreamt of building his dream home from the ground up and now that he's found the perfect city, one of the last things left to do is to select the perfect plot of land. He does some searching and finds a great neighborhood with a huge lot of land that's being sold, in pieces, by the owner for people to build houses on. Very excited, Steve selects the patch of land that he would like and approaches the owner about buying it.

He is not, however, sure about how much land is the correct amount for him, so like the informed consumer that he is, he turns to the internet. The only relevant empirical data he can find on the subject is a report on soil permeability and water. Basically, the report says, the optimal amount of land depends on the absorbency of the soil—one should select a size that allows for the family's outgoing sewage to be far enough away from the clean water supply so as to not risk contamination of the drinking water (Hoover, 1951; American Society of Planning Officials, 1952). The report cites that 20,000 square feet is optimal for a family of four, assuming the plot of land is not already in close proximity with the city's public works piping system (Hoover, 1951). Because Steve can neither confirm nor deny the public works piping status of the land, and because 20,000 square feet is just within his budget, he decides to use this as the

reference point for the offer he wants to make to the buyer. Of course, it is an extreme rarity, given the state of urban density today, for urban land to be unconnectable/unconnected to city water sources (American Housing Survey, 2013) but this is a hypothetical so let's assume it is possible for Steve. So Steve, having picked out a nice, big piece of land approaches the seller with his offer only to hear the person refuse to sell him the land because the piece Steve wants is too small—people who want to build in this neighborhood must buy at least an acre of land.

This type of ordinance is called "**minimum lot size zoning**," and a recent study has revealed that around 35% of the US housing market has something like it, mandating one acre per single-family residence (Gyourko, Saiz, and Summers, 2008). Steve objects that this doesn't make sense; the lot he's bought is big enough for a family of four and it's only him planning to live here for now. Besides, an acre is 43,560 square feet, why would it be required for him to buy so big a piece of land as this? Moreover, doubling the land doubles the price, putting the neighborhood out of his budget. He cannot afford to live in this neighborhood if the smallest piece of land he can buy is so big.

But let's imagine that our Steve is naturally a problem-solver and is willing to be flexible. After giving it some thought, he realizes that the acre of land is within his budget if instead of building a house for the family he wants to have one day, he builds a house just big enough for him, right now. Conveying his plan to the seller, he makes an offer on the acre only to hear that this neighborhood also has **minimum building size** requirements; he has to build in proportion to the acre.[1] Steve, of course, is annoyed. These rules, the seller insists, are not being made up on the spot; they are clearly outlined in the city's zoning code. Still, these two ordinances combined

[1] Both minimum lot size and minimum building size zoning ordinances are classified as **density zoning measures**, measures that aim to control the number of households per unit of land (Rothwell and Massey, 2010).

have made it impossible for Steve to have a house in this neighborhood—he simply cannot afford it. At this point, it seems like life in this neighborhood is a lost cause for Steve, but since this is a hypothetical and anything can go, let's imagine that Steve is *still* willing to compromise. Perhaps, he muses, he can live below his means in this neighborhood so that he can save up to buy and build for his future family. He asks the seller to point him in the direction of nearby apartments, suitable for one. In a plot twist that should, at this point, border on predictable, the seller informs Steve that there are no apartments in this neighborhood because it is zoned exclusively for single-family housing units; only stand-alone houses are allowed. For the purposes of this paper, we'll call this kind of zoning **dual residential zoning.** Formally, it doesn't have any common-tongue name, but it is a staple of Euclidean-style zoning, a style which compromises policies creating physical zones for industry and commerciality which are separate from one another and from zones for housing (Hall, 2007). Typically, there are single-family dwelling residential zones and separate multi-family dwelling residential zones in the Euclidean style and it's been estimated that nearly 97% of cities and municipalities with independent governments and populations over 5,000 zone with this approach (Dietderich, 1996). In tandem with and standing independently of minimum building and lot size ordinances, dual residential zoning effectively creates a paywall, keeping families with lower incomes from moving into certain places, establishing a "de facto" segregation between the richer and the poorer.

Initially, this paper was intended to be an empirical investigation of zoning on two accounts. First, ignorant of the reality that the term "exclusionary zoning" even existed, I wanted to discover whether zoning ordinances were being wielded as tools to covertly accomplish segregation. If I were to discover such a phenomenon, my second hope was to determine if it were having intergenerational impacts on people's financial well-being. Basically, the question

was: is zoning complicit in the perpetuation or success of intergenerational poverty? It turns out that this question was remarkably easy to answer, merely a matter of discussing two distinct sets of empirical literature in the same context.

Exclusionary Zoning --> Concentrated Poverty --> Intergenerational Poverty

It turns out that exclusionary zoning has been on the mind of social scientists and law professionals alike for decades now. There is readily available literature linking EZ to class-based segregation[2] and there is literature linking concentrated poverty to intergenerational poverty. Thus, the proposed relationship outlined visually in the subtitle of this section can be supported with existing evidence. This section will provide an overview beginning with the literature assessing the consequences of exclusionary zoning.

While several scholars have posited the likely relationship between exclusionary zoning and increased class-based segregation, empirical literature establishing the relationship statistically is not as common as one may expect. Still, it does exist. Lens and Monkkonen (2016) examined the 95 biggest cities in the US, attempting to establish a relationship between land-use regulations and segregation by income. They found that as density land-use restrictions (like minimum lot size ordinances) increased so did income segregation, especially in encouraging the wealthy to move out of more mixed-income neighborhoods in favor of wealthy neighborhoods. Interestingly, their investigation also revealed that where ordinances originated from the local-most level of government, these areas also had the higher rates of income segregation—more so than the areas where state governments had more control over regulating

[2] Over the course of this paper, "class-based segregation," "concentrated poverty," and "concentrated disadvantage" will be used as synonyms, differential names for a singular construct. The rationalization behind this is that class-based segregation, by definition, requires that the poor be forced to live only among the poor.

land-use (2016). And although exclusionary zoning accomplished via convoluted zoning procedure is not discussed in detail within the current paper, it has been mentioned that exclusionary zoning is a many-headed beast, not exclusively or even typically accomplished via density zoning measures. To this point, Lens and Monkkonen (2016) also find that the more complex the municipal development review process, the more segregated low-income households are.

In another representative study of US housing markets, utilizing 2000 jurisdictions, Gyourko, Saiz, and Summers (2008) found that the most highly regulated neighborhoods in terms of both general and exclusionary zoning, had higher local government involvement in regulation establishment, had greater opportunities for vetoing new development, were more likely to be more than 1.4 standard deviations above average in income and had higher numbers of white households. This compared to the areas with the bottom third of land regulation. And while some could argue that density regulations are a necessary response to strains on the availability of urban land, Gyourko et al. (2008) also found that the most highly regulated places were the least densely populated, suggesting that the primary motivation for density regulation is not actually a desire to make the most out of our dwindling stock of urban land.

Rothwell and Massey (2010) also established a positive relationship between restricting density and concentrated poverty after analyzing a representative sample of incorporated places across the 50 largest metropolitan areas in the US. However, going further than pre-existing literature had been able to, Rothwell and Massey, via the comparative usage of statehood and population density data in 1910, provided support for the idea that exclusionary zoning *causes* income segregation. But, what, if anything, are the consequences of living in segregated communities? What does it mean to live in a neighborhood where everybody is low-income?

Generally, the outcomes for individuals living and growing up in neighborhoods of concentrated disadvantage are unideal. Several studies link neighborhood poverty to increased likelihood of dropping out and increased rates of teenage pregnancy (Wodtke et al., 2011; Harding, 2003; Leventhal and Brooks-Gunn, 2000; Ensminger et al., 1996). Moreover, it's been found that kindergarteners entering school from poor neighborhoods are less prepared for school than their non-poor neighborhood counterparts, even after controlling for household academic achievement and income levels (Morriseey and Vionpal, 2018; Evans, 2004). Schools and daycares that serve low-income families in low-income neighborhoods often also perform worse than schools in higher-income neighborhoods, in part because public education resources are scarcer and it can be difficult to draw teachers to underperforming schools (Evans, 2004; Leventhal and Brooks-Gunn, 2000; Mckinney et al., 2007).

Yet, negative outcomes from concentrated disadvantage are not limited to the domain of education. Neighborhoods characterized by poverty also tend to have higher crime or arrest rates than neighborhoods with median incomes above the poverty line (Hipp and Yates, 2011; Sampson et al., 1997). Moreover, poorer neighborhoods are more likely to be lacking in basic and safe infrastructure, including things like well-kept and adequate housing and responsive and dependent municipal services (Joint Center for Housing Services at Harvard, 1999; Wallace and Wallace, 1998). And, in terms of wealth, Ludwig et al. (2012) found that declines in neighborhood poverty translated to increases in ratings of subjective well-being in newly-moved participants, after controlling for confounding variables this indicates that neighborhood disadvantage has detrimental impacts on inhabitant mental health.

And, as predicted, these neighborhood-level characteristics do influence intergenerational poverty by way of limiting economic mobility. It's easy to imagine that having fewer members

of the population graduating with a high school degree *and* graduating from a low-quality school could lead to decreased employability across a neighborhood, therefore limiting both income and income growth. Indeed, research suggests that school quality is a significant predictor of future earnings in the positive direction, so that as school quality in childhood rises, so dose income in adulthood (Chetty et al. 2011). Further, Rothwell and Massey (2015), using data collected from representative sample of 18,000 individuals in 5,000 families annually since 1968, developed a model to estimate economic mobility across neighborhoods with varying levels of disadvantage. Their data suggests that if individuals born in neighborhoods at the bottom fourth of income were instead born into the top-fourth, their lifetime household income would be increased by $635,000.

Given the breadth and specificity of the literature connecting EZ, concentrated poverty, and intergenerational disadvantage, given the almost intuitive nature of those relationships, I began to ask a new question: How is exclusionary zoning perfectly legal within our country? Where is the justice? Isn't what is happening to our unfortunate, hypothetical Steve and the millions of real households occupying American land, unjust?

Answering this question, involves a lot more nuance and necessitates arguments that are more theoretical and morally-informed than the initial proposed question. Luckily, there is a logical place to start: When it comes to assessing justice in the United States, the Supreme Court is often viewed as the authoritative expert, the place to which one should turn for a definitive assessment of a policy's "rightness" or "wrongness" with respect to the liberties and rights that our constitution guarantees us.

If, at first glance, exclusionary zoning may appear to fall out of line with the constitutional ideals and civil rights guarantees of the country, it has not been successfully established as

unconstitutional in the United States despite state Supreme Courts hearing many cases surrounding the issue. The single most important reason for this is the precedent set by the federal Supreme Court's first ever ruling on zoning in general.

Exclusionary Zoning and Justice: Supreme Court Precedents

With the first ever comprehensive zoning plans—plans zoning every parcel of land within a city or municipality—coming out of Los Angeles and New York City in the first decade of the 1900s, court cases challenging the right of local governments to dictate the uses of land at all were being heard in a number of state courts with differential findings (Wolf, 2008). The first lawsuit concerning zoning to successfully ascend the appellate courts to arrive before the federal Supreme Court began in Ohio as *Ambler Realty Co v. Village of Euclid* in 1924 (2008).

Basically, Ambler Realty owned almost 70 acres of land in Euclid, a suburb of Cleveland and were planning to develop it into industry when the municipality passed a comprehensive zoning ordinance that would mandate the majority of the land become housing. Lamenting, as most plaintiffs had thus far, a perceived impediment upon their rights to property and liberty as guaranteed under the Fourteenth Amendment, the company sued. Their opponent, the Village of Euclid, argued that zoning was a reasonable exercise of police power. This defense is crucial to understanding the outcome of the case because, police power had previously been established as a constitutional extension of the 10th amendment, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people (U.S. Const. Amend. X)."

Specifically, the term **police power** refers to state governments' power to regulate and enforce behavior and order within their locale, potentially and acceptably infringing upon

individual freedoms, so long as the purpose is to further the "health, safety, morals, general welfare" of their constituents (Cook, 1907). Because maintaining a balance in power between the states and the national government is a major concern of our government, in order to successfully challenge exercises of police power as unconstitutional one has to prove that the enacted (or proposed) legislation is "clearly and plainly and manifestly unreasonable and arbitrary (Wolf, 2008)." This constituted a heavy burden of persuasion on behalf of Ambler Realty. Still, Chief Justice Westenhaver of the Supreme Court of Ohio, did find in their favor. Largely, Westenhaver's opinion concerned itself with the establishing zoning as an unconstitutional exercise of eminent domain and not police power (2008). The gist of the argument was that Euclid was evoking police power to avoid compensating the realty company for the land and profit it was "taking" via the enactment of the ordinance. Importantly, sandwiched inside this opinion and partially informing it, was one paragraph predicting the exclusionary quality of the zoning ordinance as it allowed for the distinction between single and multi-family residential zones:

> "The purpose to be accomplished [by the zoning ordinance] is really to regulate the mode of living of persons who may hereafter inhabit it [Euclid]. In the last analysis, the result to be accomplished is to classify the population and segregate them according to their income or situation in life. The true reason why some persons live in a mansion and others in a shack, why some live in a single-family dwelling and others in a double-family dwelling, why some live in a two-family dwelling and others in an apartment, or why some live in a well-kept apartment and others in a tenement, is primarily economic.

> It is a matter of income and wealth, plus the labor and difficulty of procuring adequate domestic service (qtd in Wolf, 2008)."[3]

However, Westenhaver's finding that the zoning code was "in no just sense a reasonable or legitimate exercise of police power" did not dissuade Euclid from appealing the decision and the case was heard by the US Supreme Court beginning in January 1926. In a landmark decision which would set the tone, as topical Supreme Court cases do, for every relevant charge coming thereafter, the Court reversed the lower finding and legitimized zoning as a constitutional exertion of police power (*Euclid v. Ambler*, 1926). The majority opinion, penned by Justice George Sutherland, set two precedents that trouble the sanctionability of exclusionary zoning in this country. The first is that the Court cited an inability to definitively declare the Village's defense "clearly arbitrary and unreasonable" as the basic rationalization of the decision, saying, in part:

> "If these reasons, thus summarized [from the Euclid argument], do not demonstrate sound policy in all respects of those [zoning] restrictions…at least, the reasons are sufficiently cogent to preclude us from saying…that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare (*Euclid v. Ambler*, 1926)."[4]

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[3] The historic opinions of the Supreme Court of Ohio are not easily accessible to the public, due, in part, to online case records extending only as far back as 1992. However, in his 2008 book, *The Zoning of America: Euclid v. Ambler*, professor of law Michael Allan Wolf reconstructs the progression of the case, the rationales and opinions of its plaintiffs, defendants, and deciding courts via court records, archives, public news as well as the personal correspondence of the parties involved. Wolf maintains a high degree of academic excellence and loyalty to fact, abstaining from any attempt to persuade the reader in one direction or the other on the "rightness" or "wrongness" of any involved party.

[4] In many respects, conventional citation standards for US Supreme Court opinions do not yield an obvious place to go to find the actual text. In order to make this information even more readily accessible, a user-friendly version of the Court's full opinion can be found here: https://www.law.cornell.edu/supremecourt/text/272/365 Using Ctrl+F, a reader can search this webpage

The issue with such a precedent lies in the necessitation that a zoning law be "clearly arbitrary" with "no substantial relation to the public health" in order for it to be unconstitutional because there is no robust empirical evidence that universally correlates zoning to true measures of public health promotion. This suggests that the Supreme Court will content itself with assessing the *logic* of the city's argument on public health when determining whether an ordinance is just or unjust. And, in fact, the Court confirmed the reality of this approach in their 1927 ruling in *Zahn v. Board of Public Works*, another case wherein a landowner filed suit against their city's zoning policies that separated land usage, saying, in part:

> "The Common Council of the city, upon these and other facts, concluded that the public welfare would be promoted…it is impossible for us to say that their conclusion in that respect was clearly arbitrary and unreasonable…In such circumstance, the settled rule of this court is that it will not substitute its judgement for that of the legislative body charged with primary duty and responsibility of determining the question."

In other words, in justifying the tradeoff between individual property and liberty rights and public health promotion, local governments don't have to *prove* that an ordinance is good for health, they have only to logically indicate that it *could* be good for public health.

Of course, some could argue, expert evidence supporting the mechanism by which zoning policies protect public health is not actually necessary when common sense alone can reasonably establish that connection. For example, isn't it intuitive that increasing the distance between an industrial plant and a neighborhood does, in fact, decrease the likelihood that children and

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for the word "preclude" (for example) and find the entirety of this passage without the author's contextual edits and outtakes.

families will be exposed to industry pollutants and/or affected by the industrial fires which were so common during the time of the case?

I argue that the consequences of upholding a "logical" but falsely-informed policy as constitutional are dire enough to demand a high burden of empirical proof, regardless of what any particular group of Justices may consider intuitive. Assessments of logic are, I argue, informed by experience and therefore are vulnerable to a bias that should be absolutely intolerable in the stakes of constitutional law. What, for example, is logical in the eyes of a follower of Christian faith with respect to when life begins is different from what is "logical" on that same subject for an atheist whose assessment can, in turn, be expected to differ from that of a biological scientist.

Still another issue with this precedent is that it yields an unreasonably high benefit of the doubt to local governments with respect to zoning. This despite the fact that the members of city councils and zoning commissions are overwhelmingly homeowners who often inhabit the very kind of neighborhood that exclusionary zoning effectively protects: upper/upper-middle class, single-family suburbs (Fischel, 2004). In a country that has repeatedly exhibited a tendency for the white and the rich to use their influence and power to control and segregate in accordance with their own discriminatory belief systems, how much "benefit of the doubt" at such a localized level is too much? As of 2015, there were 19,509 incorporated places in the United States, each having the legal power required to establish their own zoning codes (US Census Bureau, 2015). In the absence of standardization this number represents a multitude of unchecked land-use regulations.[5]

[5] See Appendix for a table highlighting some of the extreme variation in US minimum-lot sizes, all rationalized via the vague police power protection.

The second concerning precedent set via the 1926 opinion of the Court in *Euclid v. Ambler* involved exclusionary zoning explicitly: Sutherland added a response to Westenhaver's prediction that class-based segregation would be one outcome Euclidean-style zoning:

> "With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses. . . that in such sections very often 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. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities-until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed *(Euclid v Ambler, 1926)."*[6]

Apartment houses and those who live in them, Sutherland was arguing, are akin to a nuisance on the level of the neighborhood and thus, if it so happened that Euclidean zoning segregated them away from the rest of the population, it was not unconstitutional but, in fact, a definite promotion of the public good. "A nuisance," he wrote, "may be merely a right thing in a

[6] Emphasis via underline added

wrong place—like a pig in the parlor instead of the barnyard (1926)." It is clear that the majority opinion of the Supreme Court in the case of *Euclid v. Ambler* was not free from bias—these excerpts from the opinion are riddled with classist language and represent classist ideologies. Thus, I conclude that, in this instance, the Supreme Court precedent in establishing the legitimacy of exclusionary zoning signals a deviation from justice that is perpetrated by an unrecognized tendency of the Court to include unjust and biased logic in its decision. However, the pertinent discussion does not end with this conclusion. It should merely inspire yet another question: if the Supreme Court has not yielded a reliable assessment of justice concerning exclusionary zoning, how can we, as consumers of American land, as a collective valuing justice and equality, determine one? A good place to start in answering such a question is with a working definition "justice." I turned to John Rawls theory: Justice as Fairness.

Exclusionary Zoning and Justice: A Rawlsian Approach

As the name suggests, Rawls' theory equates justice to fairness. In this theory, Rawls argues that when approaching the issue of deciding what fair and just governance will look like for a society, people should do so collectively, adopting the "original position (Rawls, 1971)." In the original position, all participants are free and equal (unlimited by social hierarchies) and are allowed to advocate for the protection of their own best interests but only from behind a "veil of ignorance (1971)." Behind the veil, an individual is allowed no understanding of their position in society; they are ignorant of their race, gender, wealth, class, personal values, disabilities, etc. Rawls rationalized that in the context of this hypothetical situation, people would be incentivized to reason and negotiate so that if they were to end up occupying the worst possible social position, their interests and general well-being would still be protected. He proposes that this logic yields two principles of justice: the liberty principle and the difference principle.

The liberty principle dictates each individual have as much liberty as possible, as long as everyone else also has that same optimized level of freedom. The difference principle allows for the existence of social and economic inequalities, on two conditions: (1) inequalities are arranged so that they benefit the least advantaged the most and (2) inequalities, particularly those yielding advantageous outcomes, are attached to positions that satisfy a fair equality of opportunity and thus are open to everyone (1971). Applying this Rawlsian understanding of justice to zoning, we can begin to understand where exclusionary zoning goes wrong and what just zoning should and should not look like.

EZ Principle Violations. Given the previously discussed relationship between exclusionary zoning and concentrated disadvantage, it is not an extraordinary leap to make the claim that it undermines individuals' access to equal liberties. Exclusionary zoning, as previously shown, does not allow for people of lower income brackets to choose where they want to live and the poorer quality neighborhoods it plays a role in creating do not give people the freedom to live equally safely, achieve an equal education, or even have equal access to equally healthy food.[7] Moreover, the inequalities in the resulting neighborhoods are definitely not to the advantage of the worst off who, in this case, are the very parties being excluded. This an exclusion that *produces* even more disadvantage for the most disadvantaged. While non-exhaustive, these realities are more than enough to qualify exclusionary zoning as a violation of justice. Possibly, what's more difficult to draw conclusions about, is what good zoning, characterized by a commitment to justice, should look like in the context of American society, if it needs to exist at all.

[7] The section overviewing the empirical connections between zoning and concentrated and then intergenerational poverty begins on page 6 of this document.

Zoning Behind the Veil. Adopting the original position behind the veil of ignorance can allow us to tease apart which aspects of zoning do actually allow for the police power promotion of the common good and which are incompatible with the operation and sustainment of a just society. For example, the Euclidean approach to zoning and, in fact, the Euclid zoning code that came before the consideration of the Supreme Court back in the 1920s separates neighborhoods from factories and industry (Wolf, 2008). This, it can be easily argued, is good for public health and has a good chance of remaining agreeable to persons considering it from behind a veil of ignorance. However, things like minimum lot and building size ordinances would be forced into eradication. Instead, zoning ordinances would seek to elevate the well-being and success of those who are currently being fundamentally disadvantaged. Following this logic, I argue that assuming the Rawlsian original position and approach to justice requires not only the elimination of exclusionary zoning but the enactment of *inclusionary* zoning.

Inclusionary Zoning, A Next Step

Inclusionary zoning, like exclusionary zoning, can look many different ways but at its core it is an affordable housing tool that cities and municipalities can use to mandate the maintenance and development of affordable housing and mixed-income neighborhoods (Furman Center, 2008). While legislation promoting inclusionary zoning is in it's infancy, there are a several cities which have adopted such zoning ordinances either explicitly or covertly. While the breadth and impact of these ordinances lies, to some degree outside of the scope of this paper, burgeoning literature has shown that cities adopting these zoning ordinances have been able to grow their supply of affordable housing and have also managed to keep that housing affordable for periods ranging from 5-10years in D.C. to indefinite in Boston (2008). Unfortunately, the literature has yet to assess the long-term impacts of inclusionary zoning on economic mobility.

However, the reality that inclusionary zoning satisfies the Rawlsian requirements for justice combined with case studies developing an empirically-based framework for their enactment, already indicates that this direction is preferable to maintaining the state of our zoning policy as it exists today, working to unfairly and unjustly perpetuate poverty and disadvantage.

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Appendix

Table 1. ZONING ORDINANCE REQUIREMENTS FOR MINIMUM LOT SIZES OF 20,000 SQUARE FEET OR GREATER

Community	District	Lot Area Required Per Family
Arapahoe County, Colorado	A2	2 and 1/2 acres
	A3	20 acres
Bedford, Massachusetts		40,000 sq. ft.
Bedminster Township, New Jersey		5 acres
Brookline, Massachusetts		40,000 sq. ft.
Canton, Massachusetts		40,000 sq. ft.
Carlisle, Massachusetts		1 acre
Cherry Hills Planning Dist., Colo.	R-A1	1 acre
Colorado Springs, Colorado	Garden Homes Zone	1/2 acre
	Residential Estates	20, 000 sq. ft.
Concord, Massachusetts		40,000 sq. ft.
Cook County, Illinois	R-1	5 acres
	R-2	40,000 sq. ft.
Cortlandt, New York	R-80	80,000 sq. ft.
	R-40	40,000 sq. ft.

	R-40a	40,000 sq. ft.
	R-20	20,000 sq. ft.
Croton-on-Hudson, N. Y.	R-40	40,000 sq. ft.
	R-20	20,000 sq. ft.
	R-10	10,000 sq. ft.
Dover, Massachusetts		1 acre
El Paso County, Colo. (proposed)	Forest Zone	5 acres
	Garden Home Zone	1/2 acre
	R-Residence	20,000 sq. ft.
Greenwich, Connecticut	RA4	4 acres
	RA2	2 acres
	RA1	1 acre
Ladue, Missouri	R-A	3 acres
	R-B	1.8 acres
	R-C	30,000 sq. ft.
Lake County, Illinois	R-1	5 acres
	R-2	1 acre
Lincoln, Massachusetts		40,000 sq. ft.
Longmeadow, Massachusetts		1 acre
Los Angeles, California	A-1	5 acres

	A-2	20,000 sq. ft.
Lower Merion Township, Pa.	R-1	30,000 sq. ft.
	R-2	18,000 sq. ft.
Maryland-Washington Regional Dist. (Prince George's County, Md.)	Rural Residential	20,000 sq. ft.
Mequon, Wisconsin	R-A	100,000 sq. ft.
	R-B	40,000 sq. ft.
Miami Beach, Florida	RAA	40,000 sq. ft.
Milton, Massachusetts		40,000 sq. ft.
Needham, Massachusetts		1 acre
North Hills, New York		2 acres
Oklahoma County, Oklahoma	R-6	20,000 sq. ft.
Old Westbury, New York	R-B	1 acre
Oyster Bay, New York	A	2 acres
	B	1 acre
River Hills, Wisconsin		5 acres
San Diego County, California	E-1 Estates	1 acre
Scarsdale, New York	1 acre residence	1 acre
	other residence	20,000 sq. ft.
Seekonk, Massachusetts		62,500 sq. ft.

Sherborn, Massachusetts		1 acre
Sierra Madre, California	Resort	5 acres
Somers, New York	R-O2	40,000 sq. ft.
	R-O1	80,000 sq. ft.
Southampton, New York	RO1	40,000 sq. ft.
Stamford, Connecticut	RE-3	3 acres
	RE-2	2 acres
	RE-l	1 acre
	R-20	20,000 sq. ft.
Village of Kings Point, New York		40,000 sq. ft.
Warwich, Rhode Island	AA	40,000 sq. ft.
Watchung, New Jersey		60,000 sq. ft.
Weston, Massachusetts		40,000 sq. ft.
Westwood, Massachusetts		40,000 sq. ft.
Yorktown, New York	Single family residence	40,000 sq. ft.