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American Dreams, American Realities

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Zoning and Land Use Planning

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AMERICAN DREAMS, AMERICAN REALITIES

Review, *Zoned in the USA: The Origins and Implications of American Land Use Regulation* (2014) by Sonia Hirt

I. Introduction

Because a variety of commentators have defined home ownership as the “American dream”,¹ one might think that home ownership is more widespread in the United States than in other affluent nations. And because Americans value limited government,² one might think that Americans regulate land use less than other affluent nations.

In *Zoned In the USA*, Sonia Hirt proves otherwise: in fact, Americans are less likely to own homes than residents of many other nations, and the homes they do own are more likely to be burdened by mortgages. Moreover, local governments’ fears of other land uses have led to a highly restrictive zoning system.

II. American Dream vs. American Reality: Fewer Homeowners, But More Houses

Hirt shows that in reality, Americans are actually *less* likely to own their homes than residents of many other

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¹See, e.g. The American Dream Coalition, at <http://americandreamcoalition.org> (“most people define the American dream as owning your own home”); Priya S. Gupta, *The American Dream, Deferred: Contextualizing Property After the Foreclosure Crisis*, 73 MD. L. REV. 523, 532 (“the ‘American Dream’ . . . is generally acknowledged to mean owning one’s ‘own’ home”).

²See Philip Bobbitt, *Is Law Politics?*, 41 STAN. L. REV. 1233, 1284 (1989) (“The fundamental American Constitutional ethos is the idea of limited government.”); John McCain, *Limited Government and the Rule of Law*, 5 GEO. J. L. & PUB. POLICY 301, 302 (2007) (“Americans have fought and died for limited government”).

nations. In the United States, 65 percent of all housing is owner-occupied.³ This figure is slightly lower than that of Australia (67 percent) and Canada (just over 68 percent)-and is also well below the European average of 71 percent.⁴ In some European nations, home ownership rates tower over this average: in Romania, for example, 96 percent of all housing units are owner-occupied.⁵ Although former Communist nations tend to have the highest home ownership rates,⁶ even some Western European nations have higher home ownership rates than the U.S., including Belgium (71 percent), Finland (74 percent), Italy (73 percent), Iceland (77 percent) and Norway (84 percent).⁷

Moreover, American ownership of homes is often limited by mortgages: 45 percent of all housing units (and thus about 70 percent of owner-occupied housing) are burdened by a mortgage,⁸ which means that a lender or lender's assignee could easily seize the house for nonpayment. Thus, American "ownership" of houses is in fact quite fragile: some Americans are just a job loss or health crisis removed from foreclosure. By contrast, in the average European nation, only 27 percent of housing units (and thus just under 40 percent of owner-occupied housing) are burdened by mortgages.⁹

Hirt also demonstrates that the idea of the United States as a land of homeowners does have a grain of truth: Americans who *do* own homes are likely to own large, detached single-family homes, rather than attached housing such as row houses or condominiums. 63 percent of American households live in detached single-family homes, nearly

³SONIA HIRT, ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND USE REGULATION 19 (2014).

⁴*Id.*

⁵*Id.*

⁶*Id.* (nations where over 85 percent of units owner-occupied include Lithuania, Croatia, Bulgaria, Hungary, and Slovakia). Eastern European nations tend to have high levels of homeownership because they are more rural, and rural areas tend to be more homeowner-dominated. *Id.* at 21.

⁷*Id.* at 19.

⁸*Id.*

⁹*Id.*

twice the European average (34 percent).¹⁰ So as a rule, Americans either live in detached single-family homes or they are renters: the middle ground of owner-occupied duplexes and row houses is apparently less common in the U.S. than in Europe. In addition, American houses are larger than those in Europe: the median American house is about 1700 square feet, larger than in any European nation.¹¹ And because Americans have big houses on big lots, suburban and urban densities are far lower than those of other nations: for example, metropolitan New York City (including its suburbs) is one-fifth as dense as Prague.¹²

III. Sweet Land of Liberty . . . Not

Why do Americans live as they do? Hirt focuses on one cause: zoning laws that forbid alternatives. As early as the 1920s, half of American land even in central cities was zoned for single-family houses.¹³ She examines the zoning codes of several cities, and finds that today the overwhelming majority of residential land is reserved for such houses. For example, in Cleveland, 36.8 percent of the city's land area is zoned for housing, and 33.1 percent of the city's land is zoned low-density residential (i.e. for single-family houses and duplexes).¹⁴ Thus, about 90 percent of Cleveland's urban residential land is reserved for low-density use. Cleveland is not unusual: El Paso reserves about 99 percent of its residential land for such use, Omaha 96 percent, Jacksonville and Fort Worth about 86 percent, Dallas 84 percent, Atlanta 73 percent, and even New York City just over two-thirds.¹⁵

¹⁰*Id.* at 20.

¹¹*Id.* at 22–23.

¹²*Id.* at 24.

¹³*Id.* at 35, Because suburbs are generally less densely populated than cities, this means that more than half of all American land in metropolitan areas is probably zoned for single-family homes.

¹⁴*Id.* at 49, 52.

¹⁵*Id.* at 52–53 (figures calculated by dividing Hirt's "percent total area lower-density residential" by her "percent total area residential"). The one exception to the above generalizations is Baltimore, where 45.1 percent of the city is zoned for residential use but only 21.4 percent for low-density residential. *Id.* at 52.

By contrast, Hirt found no city in which more than 3 percent of the land is zoned for mixed use.¹⁶

Hirt then compares American zoning to that of several European nations and cities, and finds that American zoning is actually more restrictive than that of major European cities. For example, most of Paris is in a “General Urban” zone. In this zone, allowable uses include “a startling variety of establishments, including houses, apartment buildings, shops, restaurants, cafes and offices.”¹⁷ Thus, Paris allows single-family homes to coexist not just with multifamily housing, but with virtually any non-industrial land use. The city does, however, regulate height and density through height limits, parking regulations and other rules related to urban form.¹⁸

German law outlines four broad classes of zones (residential, mixed, commercial and special) and divides these classes into numerous subclasses.¹⁹ The most common zone, however, is “general residential”—a category in which all non-industrial uses are generally allowed.²⁰ However, density regulations generally prohibit large-scale commercial facilities in residential areas; German planners tend to allow land uses in such zones that are designed to serve a neighborhood, but not those designed to serve an entire city.²¹

Swedish cities typically have detailed development plans that regulate density and building form for areas as small as an individual block; nevertheless, neighborhood-scale retail is generally permitted on ground floors of residential buildings, and cities routinely allow houses to be subdivided into apartments.²²

English-speaking nations are more restrictive than Europe, but less so than the United States. Like American cities, English cities do designate certain areas for housing—but British residential zones often include both single-family

¹⁶*Id.* at 52–53.

¹⁷*Id.* at 70.

¹⁸*Id.* at 70–71.

¹⁹*Id.* at 74.

²⁰*Id.* at 77.

²¹*Id.*

²²*Id.* at 80.

and multifamily housing.²³ Perth, Australia has a system of zones that appear roughly similar to those of the United States- but in Perth, the city's residential category also includes both single- and multifamily housing.²⁴ Canada, like the United States, does have single-use zoning districts - but those districts are often far more dense than their American counterparts. For example, Hirt notes that the lowest-density one-family district in Vancouver provides for a minimum lot size of 334 square meters (or about 1100 square feet), far smaller than the typical American lot.²⁵ Similarly, Toronto's suburbs generally allow more compact development than do some American suburbs.²⁶

Except for her Canadian example, Hirt's analysis suffers from one surprising omission. A city's density has at least as much effect on urban form as the separation of uses. Even New York, America's most compact central city,²⁷ remains so despite single-use zoning.²⁸ But New York is far less automobile-dependent than most American cities,²⁹ in part because it is far more compact, which means that more people can live within walking distance of public transit stations.³⁰ Because density regulation is so important, Hirt's analysis would have been more persuasive had she compared density regulations in European cities to those of American cities. Do European cities restrict density less aggressively

²³*Id.* at 67.

²⁴*Id.* at 85.

²⁵See Hirt, *supra* note 3, at 87 (Vancouver zoning), 22 (average new American house sits on 1800 square feet, slightly more than one-third of an acre).

²⁶See Michael Lewyn, *Sprawl in Canada and the United States*, 44 URB. LAW. 85, 116-18 (2012) (Toronto suburbs allow more compact housing than their Atlanta counterparts).

²⁷*Id.* at 119.

²⁸See *supra* note 15 and accompanying text (describing New York zoning).

²⁹See Lewyn, *supra* note 26 at 97 (comparing New York with other cities).

³⁰*Id.* at 118.

than their American counterparts? American cities' low density³¹ suggests as much, but Hirt does not address the issue.

In sum, other industrialized nations tend to allow far more flexibility in urban areas than the United States: although single-family homes are unlikely to share a block with skyscrapers, such homes may be mingled with small-scale shops and multifamily buildings.

IV. Why?

In addition to explaining the restrictiveness of American zoning, Hirt tries to explain its causes. Early American supporters of zoning argued that zoning would make houses more valuable by protecting them from unwanted land uses.³² But this claim merely begs another question: why were Americans so much more likely than Europeans to believe that differing land uses are so incompatible as to reduce each other's property values?

Hirt suggests that Americans' fears are based on unquantifiable cultural differences. She points out that when cities began to create zoning codes in the early 20th century, large cities were relatively new to the United States. For example, by the time of the American Revolution, only 2 percent of its population lived in cities,³³ and Philadelphia, the nation's largest city, had only 30,000 people.³⁴ By contrast, London had 600,000 people as early as 1700.³⁵ and had one million a century later.³⁶ When urbanization came, it came quite rapidly: for example, Chicago's population increased from 30,000 people in 1850 to over a million by 1890.³⁷ America's transition to urbanization was not tremendously comfortable; urban slums were crowded and packed with disease.³⁸ Thus, the United States spent its first century or so with

³¹See *supra* notes 11–12 and accompanying text.

³²See Hirt, *supra* note 3, at 150–52.

³³*Id.* at 113.

³⁴*Id.*

³⁵*Id.*

³⁶See The Proceedings of the Old Bailey, *London 1800-1913*, at <http://www.oldbaileyonline.org/static/London-life19th.jsp>

³⁷See Hirt, *supra* note 3, at 117.

³⁸*Id.* at 117–18.

minimal urbanization, and then urbanized under traumatic circumstances.

Hirt suggests that because of this history, Americans may have been more willing to support regulatory schemes that sought to ruralize the city by segregating the single-family house from land uses more common in cities (such as apartment houses).³⁹ In support of this view, she cites numerous intellectuals who urged that healthful living was only possible in the countryside surrounding cities,⁴⁰ or who suggested that single-family homes were especially conducive to good citizenship.⁴¹

In England, as in the United States, intellectuals endorsed the idea of “a family home apart from work and the city.”⁴² But this ideal did not dominate policy to the same extent as the United States, because British policymakers desired not just to settle the countryside, but to preserve it from urbanization; as a result, British government limited suburban expansion and created cities far more compact than American cities.⁴³

V. So What?

Hirt’s work is devoted primarily to explaining the status quo, not explaining why it is socially harmful. Nevertheless, Hirt does explain that single-family zoning has accelerated automobile dependence. Hirt points out that early zoning was quite fine-grained: even though zoning advocates sought to separate single-family homes from businesses, they nevertheless assumed that those businesses would be within walking distance of houses.⁴⁴ But over time, residential zones have become so large that most Americans must drive to work. As a result, the average American drives 15,000 miles

³⁹*Id.* at 127–29 (citing numerous prezoning commentators who feared that homeowner districts were being devalued by incompatible uses), 174–5 (citing other commentators’ glorification of single-family homes).

⁴⁰*Id.* at 121–27 (citing examples).

⁴¹*Id.* at 174–5 (citing other commentators’ glorification of single-family homes).

⁴²*Id.* at 125.

⁴³*Id.* at 127–28.

⁴⁴*Id.* at 182.

per year, more than twice as much as the average German.⁴⁵ More driving means not only more traffic congestion, but also more injuries and fatalities from traffic crashes; the average American traffic fatality rate is more than twice that of Germany.⁴⁶ More driving also means higher greenhouse gas emissions; American cars emit 8600 pounds of carbon dioxide per vehicle, almost three times that of Germans.⁴⁷

Having said that, not all of these results are caused by the regulations targeted in Hirt's book. Her comparative analysis focuses primarily on separation of uses— that is, regulations that separate businesses and apartments from single-family houses. Although these regulations have played some role in facilitating automobile-dependent development, so have a wide variety of other policies, such as minimum parking and setback requirements that force pedestrians to walk through parking lots to reach stores and apartments,⁴⁸ and density restrictions.⁴⁹ A full comparison of American policies in these areas with those of other nations awaits further research.

VI. Conclusion

Hirt proves that despite American suspicion of “big government”, Americans are quite willing to favor highly intrusive government regulation of land use: government zones large amounts of housing for detached single-family houses, and far less land for other residential uses. By contrast, other industrialized countries are more tolerant of mixed-use zoning. These restrictions may contribute to American sprawl. However, it is unclear to what extent such regulations are a cause of automobile-dependent American develop-

⁴⁵*Id.*

⁴⁶*Id.* at 183 (in early 2000s, U.S. had 14.7 traffic deaths per 100,000, while Germany had 6.5).

⁴⁷*Id.*

⁴⁸See DONALD C. SHOUP, *THE HIGH COST OF FREE PARKING* 22, 25 (2005) (minimum parking requirements virtually universal); See Douglas G. French, *Cities Without Soul: Standards for Architectural Controls with Growth Management Objectives*, 71 U. DET. MERCY L. REV. 267, 280 (1994) (places surrounded by parking unappealing to pedestrians)

⁴⁹See *supra* notes 29–30 and accompanying text (discussing nexus between density and automobile-dependent development).

ment; other regulations that Hirt does not focus on may be equally or more important.