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2020

Socialists and Housing

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back into place the prior rule, from the Obama Administration, which everyone expects will be revived and become permanent if Trump is defeated in November 2020.

Finally, what would happen for developers when the rules have been changed, and if the changes are upheld in court? The Waters of the United States final rule will be restricted to include discharges of water into major rivers, harbors and coastlines, but will not cover the "feeder" entities like creeks, canals, ponds etc. which the 2015 rule had covered. Developers win.

The Trump appointees' "push the envelope" critique of the prior Administration's rules can certainly be debated. The consequence of the wider scope of the 2015 Waters of the United States rule was that EPA and Army Corps of Engineers could have and did apply veto power over some development plans. A final court decision or post-Trump presidential decision would be very closely watched by the developers and the environmentalists alike.

In January 2018, the Supreme Court ruled that litigation over the WOTUS rule must begin in federal district courts.⁷ Currently, several federal district courts across the country are hearing challenges to the 2019 WOTUS rule.⁸ It may take until months after the 2020 presidential election to call the issue final. But the prudent counsel for the developer must continue to pay close attention.

Will the Trump 2019 removal of environmental permits as a barrier to development be "dead on arrival"? Will counsel for the land developer watch the cases flow by, and wonder what the regulatory issues will be when the ultimate set of water pollution control rules emerge from the swampy maze of environmental debates? Stay tuned!

⁷National Ass'n of Mfrs. v. Department of Defense, 138 S. Ct. 617, 199 L. Ed. 2d 501, 85 Env't. Rep. Cas. (BNA) 2155, 2018 A.M.C. 29 (2018).

⁸See e.g. New York v. Wheeler, Case 1:19-cv-11673 (SD NY 2019).

Zoning and Land Use Planning

Socialists and Housing

Michael Lewyn*

Review, Samuel Stein, *Capital City: Gentrification and the Real Estate State* (2019)

Socialism is in the news. The Democratic Socialists of America (DSA) now has 48,000 members.¹ Presidential candidate Bernie Sanders calls himself a socialist, as does high-profile U.S. Rep. Alexandria Ocasio-Cortez, and numerous other state and federal legislators.² Some of these socialists often claim that they do not favor Cuba- or Venezuelan-style socialism, but instead merely favor a generous, heavily unionized welfare state comparable to that of European democracies such as Sweden or Denmark.³

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¹See Gideon Resnick, There Will Now Likely Be Two Democratic Socialists of America Members In Congress, Daily Beast, Aug. 9, 2018, at <https://www.thedailybeast.com/rashida-tlaib-alexandria-ocasio-cortez-dsa-democratic-socialists-of-america>.

²See Chris Mills Rodrigo, Ocasio-Cortez, Cornyn feud over Mussolini tweet, The Hill, Feb. 26, 2019, 2019 WL 923644 (citing them as examples of "growing number of elected officials who self-identify as some form of socialist"); Resnick, supra note 1 (Rep. Rashida Tlaib of Michigan also a socialist, as are at least three state legislators).

³See John Haltiwanger, Here's the difference between a 'socialist' and a 'democratic socialist,' Business Insider, Feb. 11, 2020, at <https://www.businessinsider.com/difference-between-socialist-and-democratic-socialist-2018-6> (Sen. Sanders rejects attempts to equate his views with "authoritarianism and Communism and Venezuela" and claims that "What democratic socialism means to me is we expand Medicare, we provide educational opportunity to all Americans, [and] we rebuild our crumbling infrastructure"); Chris Moody, Bernie Sanders' American Dream is in

But in *Capital City*, planner/academic Samuel Stein⁴ sets out a more traditionally socialist agenda for real estate law, endorsing socialization of land.⁵ His book has been lionized by progressive media.⁶ While traditional economists argue that sky-high housing costs in cities such as New York are the result of inadequate supply, Stein argues that private housing actually creates gentrification and high rents. In this review, I begin by discussing Stein's description of the cost crisis, and go on to discuss his argument and some of his proposed remedies for high rents and gentrification.

I. Introduction To The Crisis

Stein begins by correctly explaining the cost crisis facing many Americans. In his introduction, he notes that "rents in the United States have doubled over the last two decades"⁷ while wages have remained stagnant.⁸ In Black neighbor-

Denmark, CNN Politics, Feb. 17, 2016, at <https://www.cnn.com/2016/02/17/politics/bernie-sanders-2016-denmark-democratic-socialism/index.html> (When asked what socialism means to him, Sanders stated "I think we should look to countries like Denmark, like Sweden and Norway . . . and learn what they have accomplished for their working people"); Jesus Fernandez-Villaverde and Lee E. Ohanian, How Sweden Overcame Socialism, Wall Street Journal, Jan. 9, 2019, at <https://www.wsj.com/articles/how-sweden-overcame-socialism-11547078767> (quoting remark by Ocasio-Cortez that "My policies most closely resemble what we see in the U.K., in Norway, in Finland, in Sweden").

⁴See The Graduate Center, City University of New York, Earth and Environmental Sciences, Samuel Stein, at <https://www.gc.cuny.edu/Page-Elements/Academics-Research-Centers-Initiatives/Doctoral-Programs/Earth-and-Environmental-Sciences/Student-Bios/Samuel-Stein> (describing author's credentials; he was a planner and is currently an urban studies instructor at Hunter College).

⁵Samuel Stein, *Capital City: Gentrification and the Real Estate State* 171 (2019) (endorsing "a principle grounded in a radical shift in property relations: *socialized land*." (emphasis in original)).

⁶See, e.g. Niki Saval, The Plight of the Urban Planner, Nov. 20, 2019, at <https://www.newyorker.com/books/under-review/the-plight-of-the-urban-planner>; Roshan Abraham, Can Cities Build Their Way to Housing Equity? A New Book Suggests Not, Pacific Standard, July 8, 2019, at <http://psmag.com/ideas/sam-steins-capital-city-can-cities-build-their-way-to-housing-equity>.

⁷Id. at 3.

⁸Id.

hoods, 44 percent of income goes to housing.⁹ Millions are homeless or precariously housed.¹⁰ Urbanites are stuck in a no-win situation: if neighborhoods become more appealing in any way, property values go up and less affluent renters might be displaced,¹¹ but in the absence of investment, neighborhoods decline.¹²

Stein blames this on something he calls "the real estate state"- the alleged fact that "real estate capital has inordinate influence over the shape of our cities."¹³ Stein describes "the real estate state" as "a government by developers, for developers."¹⁴ He complains that the parameters of public debate "are painfully narrow . . . property rights are sacred and should never be impinged; a healthy real estate market is the measure of a healthy city; growth is good."¹⁵ This sort of rhetoric suggests that high-cost cities like New York¹⁶ have laissez-faire real estate markets.¹⁷ Of course, this is not the case: the most expensive cities have the most layers of regulation and relatively slow rates of housing growth. For example, a new working paper from researchers at the University of Pennsylvania and Harvard University shows that land use regulations are more onerous in the high-cost San Francisco and New York regions than in any other metropolitan area.¹⁸ The authors focused on a wide variety of factors, including (among other things) the number of regula-

⁹Id. at 4.

¹⁰Id. ("Last year . . . 2 million people in the United States went homeless and 7 million more lived in precarious housing situations").

¹¹Id. at 42 (describing gentrification and displacement), 196-97 (if planners "aim to make space more beautiful and friendly for working-class residents . . . [landowners] raise the cost of living").

¹²Id. at 196-97 (describing disinvestment).

¹³Id. at 5.

¹⁴Id. at 38.

¹⁵Id. at 38-39.

¹⁶Id. at 6 (noting that book mostly focuses on New York).

¹⁷In fairness, Stein is not foolish enough to believe this; for example, he admits that in the 2000s, large chunks of the city were downzoned to reduce the amount of buildable space. Id. at 86-87.

¹⁸See Joseph Gyourko et. al., The Local Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index 5, at <http://realestate.wharton.upenn.edu/wp-content/uploads/2020/>

tory approvals required for a rezoning, the stringency of minimum lot size requirements, the existence of impact fees, whether municipalities required land to be set aside for open space or affordable housing, and the length of the permit process.¹⁹

However, this study focused on entire metropolitan areas, including many suburban municipalities.²⁰ Stein mostly writes about the city of New York- but even the city of New York limits landowners' right to build to a greater extent than do some other American cities. In some cities, a zoning board and/or city council approval might be enough to approve a zoning change,²¹ but New York has created additional obstacles for developers. First of all, New York has created neighborhood review boards which have the right to comment upon development proposals.²² Although these boards do not have veto power over development, they are a source of delay, and "Not In My Back Yard" (NIMBY) activists may use community board meetings to organize against a project.²³ And in New York, a borough president has the right to review a rezoning, thus creating a second avenue for anti-development activists to block new housing or employment.²⁴ Finally, the city bureaucracy can propose downzoning a neighborhood on its own, which means that even less new

01/Working-Paper-2020.pdf (describing these markets as "most highly regulated markets in the country").

¹⁹Id. at 42-48.

²⁰Id. at 61.

²¹See, e.g., City of Las Vegas, City of Las Vegas Zone Change Application, at <http://lasvegasnm.gov/document-center/Zone-Change-Application.pdf> (zoning change requires application to "the City's Planning & Zoning Commission with recommendations to City Council who will make the final approval").

²²See Sheila Foster and Brian Glick, Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment, 95 Cal. L. Rev. 1999, 2033 n. 119 (2007).

²³See Michael Lewyn, Government Intervention and Suburban Sprawl: The Case for Market Urbanism 73 (2018).

²⁴See John Mangin, The New Exclusionary Zoning, 25 Stan. L. & Policy Rev., 91, 100 (2014).

housing is permitted than in the past;²⁵ Stein himself admits that affluent white neighborhoods were frequently downzoned in the early 21st century.²⁶ Over the decades, New York City has downzoned so aggressively that 40 percent of Manhattan's buildings could not be built under the current zoning code.²⁷ And New York actually builds new housing at a far lower rate than less expensive cities.²⁸

Having said that, there are two very large grains of truth in Stein's argument. First of all, local governments have a strong incentive to keep property prices high and growing. As Stein writes, planners usually seek "to raise property values- either because they are low and landowners want them higher, or because they are already high and city budgets will fail if they start to fall."²⁹ But this would be true even if real estate developers were politically powerless- both because most cities have individual homeowners who use ever-rising costs to profit from their investment, and because higher property values mean more property tax revenue for government itself.³⁰

Second, it is also true that the most politically powerful developers do certainly gain political favors from government,³¹ just like other industries. But this reality seems perfectly consistent with the existence of highly restrictive zoning. If government allows fewer developers to build, the few that are allowed to build are going to have less competition, higher profits, and more power.

Stein points out that the real estate sector is politically in-

²⁵Furman Center for Real Estate and Development Policy, How Have Recent Rezoning Affecting the City's Ability to Grow? 7-8, at https://furmancenter.org/files/publications/Rezoning_Furman_Center_Policy_Brief_March_2010.pdf (defining downzoning, and pointing out that in mid-2000s, city downzoned almost as much land as it upzoned).

²⁶See Stein, *supra* note 5, at 87.

²⁷See Quoc Trung Bai et. al., 40 Percent of the Buildings in Manhattan Could Not Be Built Today, New York Times, May 20, 2016, at <https://www.nytimes.com/interactive/2016/05/19/upshot/fifty-percent-of-manhattan-buildings-could-not-be-built-today.html>.

²⁸See *infra* notes 67-69 and accompanying text.

²⁹Id. at 10.

³⁰Id. at 37 (noting that public services funded through property taxes).

³¹See Stein, *supra* note 5, at Ch. 4 (describing political favors done for Donald Trump when he was a developer).

fluent, because the real estate sector is a significant donor to political campaigns.³² However, this fact may reflect not the political power of developers, but the high level of government regulation of developers. If business X is politically noncontroversial, X has little incentive to engage in political activity in order to stave off government regulation. But if government can easily destroy X's business by changing (or refusing to change) the law, X has a very strong incentive to support friendly politicians who will not do so. Because zoning rules make development politically difficult, developers have a stronger incentive than, say, pharmacists to give money to candidates for mayor and City Council.

II. How The Real Estate State Raises Costs, or Doesn't

Conventional economic scholarship suggests that places with restrictive zoning tend to have higher housing costs than more permissive cities because of the law of supply and demand: dozens of studies support the proposition that when government restricts supply of housing, prices will normally increase.³³ For example, a study by California legislative staff found that rents grew more slowly in places with higher levels of housing construction.³⁴ Between 1980 and 2013, the housing stock in urban coastal California grew by 34 percent, while housing stock grew by 99 percent in the fastest-growing fifth of urban and suburban U.S. counties.³⁵ Rents rose by 50 percent in the California counties, and only 18 percent in the fast-growing counties.³⁶ Similarly, Jeffrey Zabel and Maurice Dalton found that in Massachusetts, increases in minimum lot sizes were usually followed by

³²Id. at 80.

³³See Christopher S. Elmendorf, *Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts*, 71 *Hastings L.J.* 79, 87–88 (2019); Vicki Been, *City NIMBYs*, 33 *Journal of Land Use and Environmental Law* 217, 227–29 (2018) (same); Daniel Shoag, *Removing Barriers to Accessing High-Productivity Places*, at https://www.brookings.edu/wp-content/uploads/2019/01/Shoag_PP_web_20190128.pdf (as early as 2005, 40 studies had found such a relationship).

³⁴See Legislative Analyst's Office, *Perspectives on Helping Low-Income Californians Afford Housing*, at <https://lao.ca.gov/publications/report/3345>.

³⁵Id.

³⁶Id.

price increases.³⁷ A study by Vanessa Brown Calder found, based on a regression analysis, that in “44 of 50 individual states, rising annual land-use regulation is associated with rising real average home prices over a 35-year period.”³⁸ It logically follows that if New York allowed more housing construction and gutted its zoning laws, it would have lower rents and housing costs.

But Stein argues that new housing actually increases rents, based on 1) a theory that new housing causes a rent gap between existing and prospective rents that leads to gentrification, 2) his view that New York built an ample amount of market-rate housing and yet rents rose, and 3) his rejection of the common scholarly view that new housing causes existing housing to become more affordable. Each of these claims will be addressed in turn.

A. Rent Gap Theory

Stein argues that new development is likely to lead to gentrification and displacement of lower-income renters, based on something called “rent gap theory.” He writes that landowners (who he perjoratively terms “speculators”)³⁹ choose to own property “in a particular location because they identify a gap between the rents that land currently offers and the potential future rents it might command.”⁴⁰ In plain English, this means people choose to buy land in places

³⁷See Been, *supra* note 33, at 228 (also citing other studies). To the extent that these housing restrictions affect prices, they have a variety of other negative effects. High housing costs keep productive workers out of high-cost cities, thus limiting workers' incomes and economic growth generally. Id. at 230–32. Because workers who cannot afford high-cost cities are likely to be poorer than other workers, high housing costs also increase segregation by income. Id. at 233–34. Restrictive zoning also increases automobile-related pollution and greenhouse gas emissions, because such zoning often reduces density, and people who live in less compact neighborhoods tend to drive more because in low-density areas, residences are further from each other and from jobs. Id. at 235. See also Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 *Temp. L. Rev.* 1093, 1097 (2007) (explaining latter point in more detail).

³⁸Vanessa Brown Calder, *Zoning, Land-Use Planning, and Housing Affordability* 7, Cato Institute Policy Analysis, Oct. 18, 2017, at <https://www.cato.org/publications/policy-analysis/zoning-land-use-planning-housing-affordability>.

³⁹See Stein, *supra* note 5, at 49.

⁴⁰Id.

where they can profit from their investment. For example, a developer takes advantage of a rent gap where it purchases an unused building cheaply, renovates the building, “and can then sell the end product for a sale price that leaves a satisfactory return.”⁴¹ Stein writes that rent gaps lead to gentrification and higher housing costs, because when enough individual buildings are brought to their potential level, “the remaining surrounding properties exhibit a rent gap,”⁴² which means that in the absence of government control of rents,⁴³ rents and other housing costs will rise.

Stein suggests that rent gaps are normal when market-rate housing is built. He writes that new housing “saturates New York City with market-rate housing”⁴⁴ and that this would in turn mean that “rent gaps will occur in the surrounding area; landlords will seek to close them through rent hikes and evictions.”⁴⁵ As a result, even if the city requires new housing to include some units affordable to low- and moderate-income renters, “more working class people will be displaced through gentrification than will ever be housed in the new [lower-income housing].”⁴⁶

Stein seems to be consistent in his opposition to new market-rate housing: while others might only oppose new housing only if it leads to the demolition of existing housing,⁴⁷ Stein opposes new market-rate housing on public housing parking lots, even if it is used to subsidize maintenance

⁴¹Id. at 49 (citation omitted).

⁴²Id. at 50.

⁴³Id. (suggesting that rent control creates a citywide rent gap that holds down rents). Stein believes that rent control actually works to hold down rents. I note, however, that mainstream economics rejects this view. See Conor Dougherty, *Why Rent Control is A Lightning Rod*, New York Times, Oct. 12, 2018 at <https://www.nytimes.com/2018/10/12/business/economy/rent-control-explained.html> (“economists from both the right and the left are in almost universal agreement” that rent control reduces housing supply and thus increases costs in long run).

⁴⁴See Stein, *supra* note 5, at 98, quoting Rob Robinson, NYC housing advocates and the global struggle, City Limits, March 20, 2015.

⁴⁵Id. at 99.

⁴⁶Id.

⁴⁷Id. (criticizing such new housing).

for the public housing.⁴⁸ Stein also writes that except in rich neighborhoods,⁴⁹ any future development should “not only match[] [a neighborhood’s] aesthetic patterns but also its income mixes”⁵⁰ so that rich areas become poorer and poor areas must stay poor. Although Stein suggests that upzoning might be appropriate in wealthy areas under certain circumstances,⁵¹ the logic of his argument suggests that market-rate housing is bad whenever it is more expensive than older housing: if new housing makes older housing more expensive, logically this should be the case even in wealthy areas.

Stein’s argument overlooks the effect of zoning restrictions on “potential future rent.” Potential future rent is not fixed by developers; otherwise, every apartment in the nation would rent for millions of dollars per year. Rather, it is created at least partially by the interaction of supply and demand. It therefore seems to me that restrictive zoning may actually increase potential rent: a city that severely limits the supply of housing will normally increase the price of such housing, which in turn means that the rental income potentially available to a new building’s landlord will be higher than the rental income that a landlord might get in a more permissive city. If I am right, restrictive zoning may *increase* potential future rent, and thus increase rent gaps. If this was not the case, cities that allowed the most housing would inevitably have the highest housing prices—obviously an absurd result.⁵²

Moreover, the use of rent gap theory to oppose new housing assumes that new housing increases the value of exist-

⁴⁸In particular, Stein criticizes a mayoral proposal that would allow parking lots and other open space surrounding public housing, *id.* at 103, to be leased to private developers, asserting that unspecified “public housing residents feel even less secure in their tenure and even more squeezed in by the rich.” *Id.* at 110.

⁴⁹Id. at 159–60 (endorsing inclusionary zoning, but only as tool to import low-income housing into affluent city neighborhoods).

⁵⁰Id. at 161.

⁵¹Id. at 99 (“Unless targeted towards wealthy areas”, upzoning leads to gentrification, even if new housing is accompanied by some units affordable to lower-income households).

⁵²See *infra* notes 67–69 and accompanying text (evidence otherwise); Lewyn, *supra* note 23, at 79–80 (high growth regions tend not to have the highest housing costs).

ing housing nearby, thus creating a rent gap where none existed. On the other hand, some studies suggest that new housing not only holds citywide rents down by increasing housing supply, but might even have the same effect on nearby housing. In particular, a study by economist Brian Asquith and two colleagues suggests that “new construction in low-income neighborhoods (census tracts) reduces nearby rents from 5 to 7 percent”⁵³ compared to buildings slightly further away from the new housing.⁵⁴ The study was based on evidence from a sample of market-rate buildings completed in 2014–16,⁵⁵ and found that rents within 250 meters of the new buildings were slightly lower than rents within 250–600 meters of the new buildings.⁵⁶

B. What Really Happened In New York City?

Stein relies not just on academic theory but on practical experience, claiming that the experience of 21st-century New York shows that “[s]imply adding housing supply does not necessarily drive down overall prices. In many cases, it does the opposite”⁵⁷ His view seems to be based on the assumption that the city had a building boom in the 21st century. He writes that the city is saturated with market-rate housing,⁵⁸ that “construction cranes were as common as pigeons,”⁵⁹ and that as “skyscrapers rose, rents rose alongside them.”⁶⁰ But in fact, New York allowed less new housing than in the past,

⁵³Brian J. Asquith, Evan Mast and Davin Reed, Supply Shock vs. Demand Shock: The Local Effects of New Housing in Low-Income Areas 2, at https://research.upjohn.org/cgi/viewcontent.cgi?article=1334&context=u_p_workingpapers.

⁵⁴*Id.* at 12–13.

⁵⁵*Id.* at 5–7.

⁵⁶*Id.* at 12–13. The authors note that even in the neighborhoods with new construction, rents increased; the authors suggest that this may be because even before 2014–16, the neighborhoods in which the new buildings were located were gentrifying to a greater extent than those without new construction. *Id.* at 8, 22.

⁵⁷Stein, *supra* note 5, at 89.

⁵⁸*Id.* at 98.

⁵⁹*Id.* at 7.

⁶⁰*Id.* at 109. A related claim is that new housing did not add housing units, because of the growth of technically vacant units that were used as second homes or Airbnb units. *Id.* at 109–110. But since older apartments

arguably did not allow housing supply to keep up with demand, and allowed less new housing than many cheaper cities.

According to the U.S. Census Bureau’s American Community Survey, 179,857 of New York City’s housing units were built between 2000 and 2009, and even fewer (120,825) were built between 2010 and 2018.⁶¹ By contrast, 443,808 of the city’s currently-existing units were built during the 1950s, and 447,302 during the 1960s.⁶² numbers that actually underestimate the city’s housing boom during those years, because some older housing may have been destroyed in recent decades. In other words, almost 900,000 units were built between 1950 and 1970, while about 300,000 units were built between 2000 and 2018 (plus whatever units were built in the last year or two). Obviously, there was no building boom by historical standards.⁶³

During this period, the city was adding far more than

and condos can be used as second homes just as easily as newer homes, there is no reason to believe that the existence of new housing caused this growth. Thus, the city’s slow housing growth meant that the negative effect on second homes on overall housing supply, if any, was *more* toxic than it would have been had developers been allowed to build at a 1950s pace. Cf. Michael Lewyn, Do You Believe In Ghost Apartments?, 48 Real Est. L.J. 234 (2019) (vacant “ghost apartments” in high cost cities less common than popular press suggests). Moreover, Stein also writes that gentrification is also accompanied by businesses that are appealing to more affluent residents. See Stein, *supra* note 5, at 42 (when gentrification occurs, older businesses replaced by those “deemed superior largely because they charge higher prices and pay higher rents.”) If the affluent residents of new buildings spent most of their time elsewhere, they would not be able to patronize the new businesses, which as a result would almost no revenue and thus be unable to pay higher rents. I do not see how new housing can both be vacant and promote new businesses that cater to their affluent residents.

⁶¹See United States Census Bureau, Selected Housing Characteristics, at data.census.gov (Table DP04) (“Selected Housing”). Even fewer have been built in the 2010s so far—just over 59,000 as of 2017. *Id.*

⁶²*Id.*

⁶³It could be argued that building large amounts of new housing was impossible in the 21st century, because the city was “built out.” If this was true, the decline in building would be concentrated in the once-rural outer boroughs, as opposed to the older parts of the city that already had a significant pre-1950 housing stock. For example, we might find that in the 21st century, building declined in the outer boroughs but increased in Manhattan, the region’s historic core. But even in Manhattan, more hous-

204,273 jobs. In January 2000, the city had 3.69 million jobs; in January 2018, the city had 4.50 million jobs.⁶⁴ Thus, the city added roughly 800,000 jobs, more than twice the number of housing units added.⁶⁵ Since presumably people who work in New York City are more likely to wish to live there than those who do not,⁶⁶ this fact suggests that housing supply lagged behind demand.

Third, other cities have far more new housing than New York. Table 1 compares New York's post-2000 housing stock to that of other big cities.

ing was built in midcentury. 84,904 of the borough's housing units were built between 2000 and 2018, while 192,000 were built between 1950 and 1969. See Selected Housing, *supra* note 61.

⁶⁴See New York State Department of Labor, Labor Statistics for the New York City Region, at <https://www.labor.ny.gov/stats/nyc/> (click on "NYC Seasonally Adjusted Total Employment 1990–2018").

⁶⁵See NYC Planning, The Geography of Jobs NYC Metropolitan Region Economic Snapshot 8, at <https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/nyc-geography-jobs2-1019.pdf>.

⁶⁶Although this measure of demand is inexact for two reasons. First, this figure may overestimate demand because some city workers might have no interest in living in the city of New York. Second, the figure may underestimate demand because some people with suburban jobs might wish to live in the city, and some people who live in other regions might have been priced out of New York by the region's high housing costs.

Table 1: New York vs. high-growth cities⁶⁷

	Housing units built After 2000 (raw numbers)	Post-2000 housing units per 1000 residents	Median rent per sq. foot ⁶⁸
New York	300,682	35.8	2.87
Houston	231,799	99.6	1.03
Phoenix	133,284	80.2	0.86
San Antonio	137,550	89.7	0.97
San Diego	80,984	56.7	1.71
San Jose	51,857	50.3	2.56
Austin	135,999	141	1.25
Jacksonville	102,415	113.3	0.80
Fort Worth	116,371	130	1.22
Columbus	71,806	80.4	0.85
Charlotte	125,175	151.2	0.89
Seattle	90,241	121.1	1.36
Denver	69,450	69.4	1.34
Wash. DC	53,475	76.1	1.81

As shown by Table 1, every single high-growth city built more housing after 2000 than New York: not just cities with ample room to grow, but even cities like Seattle and

⁶⁷Housing and population data are from Selected Housing, *supra* note 61. Rent data comes from Geoff Boeing and Paul Waddell, Insight Into Rental Housing Markets Across the United States: Web Scraping and Analyzing Craigslist Rental Listings 14–15, at <https://arxiv.org/ftp/arxiv/papers/1605/1605.05397.pdf> (rent data for metropolitan areas rather than central cities). I have chosen to compare New York to cities that (a) are among the twenty largest U.S. cities and (b) had central-city population growth of over 15 percent between 2000 and 2018, in order to exclude small- and low-demand cities that are less comparable to New York. My population data comes from Sarah Janssen, ed., The World Almanac and Book of Facts 2020, at 613.

⁶⁸I note that both Fort Worth and San Jose are in the same metropolitan area with a more expensive city, thus artificially inflating their rents. See Boeing and Waddell, *supra* note 67 (listing metro areas); Emily Deruy, Rents march upward across the Bay Area, The Mercury News, Feb. 21, 2020, at <https://www.mercurynews.com/2020/02/21/rents-march-upward-across-the-bay-area/> (San Francisco rents higher than San Jose rents); Bill Hethcock, Apartment Rents in Dallas-Fort Worth Losing Steam, Dallas Business Journal, August 16, 2019, Dallas Business Journal, at <https://www.bizjournals.com/dallas/news/2019/08/16/apartment-rent-dallas.html> (Dallas rents higher than Fort Worth rents).

Washington that include far less land than New York.⁶⁹ Thus, the claim that New York had a housing boom is not supported by substantial evidence.

Notably, each of the high-growth cities in Table 1 had lower rents than New York- evidence that the law of supply and demand does indeed govern real estate. And even within non-New York cities, cities that allowed the least housing had the highest rents: the two cities that allowed under 60 units per 1000 residents had the second (San Jose) and fourth (San Diego) highest regional rents among the fifteen cities listed. By contrast, the five cities that allowed over 100 units per 1000 residents had median rents ranging from \$1.36 per square foot to \$0.80 per square foot; even the most expensive member of this group (Seattle) had rents 20 percent lower than San Diego, and less than half as high as New York.⁷⁰ Thus, it appears that cities that allow more new housing than New York tend to be less expensive.

C. What About Filtering?

Stein suggests that even if New Yorkers had built new housing at a Austin-like pace, rents would not have stabilized because “increasing supply at the top of the market does nothing to reduce demand at the bottom.”⁷¹ But a significant body of scholarship suggests otherwise: that as new housing units are built, people who would live in the existing older units (or who are moving into a city or neighborhood) instead move into the new units, thus reducing demand for the older units. If enough new housing is built, older housing eventually “filters down” to moderate- or even low-income tenants. Several studies show that filtering is common in most of the United States. For example:

⁶⁹See Janssen, *supra* note 67, at 600, 603–04 (New York encompasses just over 300 square miles, while Seattle and Washington include under 100).

⁷⁰It could be argued that the middle-tier rents of Seattle, Austin and Fort Worth indicate that new housing does not lower rents. But these cities grew more rapidly than most of the other cities, indicating higher demand. For example, Austin grew from 656,562 people in 2000 to 964,254 in 2018, over a 40 percent increase. See Janssen, *supra* note 67, at 613. Similarly, Fort Worth grew by over 50 percent (from 534,694 to 895,008), and Seattle by over 30 percent (from 563,376 to 744,955). Of the other cities listed, only Charlotte and San Antonio grew by over 30 percent. *Id.*

⁷¹Stein, *supra* note 5 at 89.

*A Hudson Institute economic study found that millions of housing units have either “filtered down” or “filtered up” in recent decades. Between 1985 and 2013, filtering added 4.6 million units⁷² to the nationwide inventory of rental housing affordable to households earning 50 percent of area median income.⁷³ On the other hand, 1.7 million rental units became unaffordable to these households during that period.⁷⁴

But in high-cost cities like Los Angeles and New York, the number of housing units that “gentrified” (that is, filtered up and thus became less affordable) exceeded the number that filtered down the economic ladder to become more affordable.⁷⁵ In New York, three times as many housing units “gentrified” as “filtered down.”⁷⁶ Thus, policies that increase housing prices cause gentrification and reduce filtering.

*The Joint Center for Housing Studies at Harvard University found that “downward filtering of higher-cost housing had increased the number of units renting for less than \$400 by 11 percent from the level in 2003.”⁷⁷ However, this number was offset by the number of low-cost units that were removed from the stock by deterioration and demolition.⁷⁸

*a study by economist Scott Rosenthal shows that “controlling for other house attributes, on average house rent and price decline by 0.3 and 0.7 percent per year as the home

⁷²See John C. Weicher et.al., *The Long Term Dynamics of Affordable Rental Housing* 2–3, at <https://s3.amazonaws.com/media.hudson.org/files/publications/AffordableRentHousing2017.pdf>.

⁷³*Id.* at 7 (housing units “affordable if the sum of rent, utilities, and related costs, adjusted for the number of bedrooms, is less than or equal to 30 percent of 50 percent of local area median income.”).

⁷⁴*Id.* at 3.

⁷⁵See Weicher et.al., *supra* note 72, at 152.

⁷⁶*Id.*

⁷⁷See Joint Center for Housing Studies at Harvard University, *America's Rental Housing- Expanding Options for Diverse and Growing Demand* 14, at http://www.jchs.harvard.edu/sites/default/files/americas_rental_housing_2015_web.pdf.

⁷⁸See Weicher et.al., *supra* note 72, at 152.

ages.”⁷⁹ As a result, most lower-income families live in older homes.⁸⁰

Stein dismisses the filtering theory with the assertion that “people generally do not move frequently.”⁸¹ But according to the Census Bureau, about 949,405 New York households moved into their unit after 2014—more than *fourteen times* the number of new housing units built during that period.⁸² And 960,021 moved in between 2010 and 2014—more than *sixteen times* the number of housing units built.⁸³ So Stein’s assertion is implausible.

III. Stein’s Remedy for High Housing Costs

As explained above, Stein believes that new market-rate housing will lead to higher rents, rather than lower rents. So naturally Stein’s remedy is, in his own words, “socialized land.”⁸⁴ At a minimum, public housing would be “expanded into currently private buildings,”⁸⁵ so that land would be gradually socialized. He adds that “in a truly revolutionary scenario, the whole city can be expropriated and redistributed.”⁸⁶ While some self-styled socialists praise European social democracy, Stein seems to think of Communist Cuba as a role model, writing that “Ninety miles from Miami, Cuban land and housing are almost entirely public . . .”⁸⁷ and that the Communist regime “took [Havana], retained the beauty it created, and transformed the social relations that produced it.”⁸⁸

However, Stein does not mention Cuban housing shortages.

⁷⁹Scott Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing?* 23, at <https://pdfs.semanticscholar.org/1082/c7b73d40631df665beb24c80e9b29e964a39.pdf>.

⁸⁰Id. at 24.

⁸¹See Stein, *supra* note 5, at 89.

⁸²See *Selected Housing*, *supra* note 61 (472,055 householders moved in after 2017, and 477,350 moved in 2015–16; by contrast, only 61,022 housing units built during this period).

⁸³Id. (59,083 units built).

⁸⁴See Stein, *supra* note 5, at 171 (emphasis in original).

⁸⁵Id. at 174.

⁸⁶Id.

⁸⁷Id. at 173.

⁸⁸Id. at 185.

In the early 2010s, Cuban government sources admitted that the nation needed to build 60–70,000 housing units per year⁸⁹—about four times the number of housing units that were actually being built.⁹⁰ To make matters worse, Cuba also had so much rundown housing that even the left-leaning British Broadcasting Corporation⁹¹ created a video about “Cuba’s crumbling housing crisis.”⁹²

To solve these problems, Cuba has substantially modified the system praised by Stein; in 2011, the nation legalized private home sales,⁹³ allowing investors to make tattered properties livable.⁹⁴ But even after the reforms, Cuban official agencies admit that only 61 percent of housing units are in “good” condition.⁹⁵ In Havana alone, 130,000 residents live in shelters or substandard housing.⁹⁶ Although there is

⁸⁹See Philip Peters, *Cuba’s New Real Estate Market* 13, at <https://www.brookings.edu/wp-content/uploads/2016/06/Phil-Peters-Cubas-New-Real-Estate-Market.pdf>.

⁹⁰Id.

⁹¹See Torin Douglas, *Does the BBC have a bias problem?*, BBC News, June 18, 2007, at <http://news.bbc.co.uk/2/hi/6764779.stm> (quoting former BBC employees).

⁹²See BBC News, *Cuba’s Crumbling Housing Crisis*, at https://www.youtube.com/watch?v=V3Wg3Gwt_fY&t=76s.

⁹³See Peters, *supra* note 89, at 4–12 (discussing changes in detail).

⁹⁴See Nick Miroff, *\$75,000 will get you a lot of house in Havana— if you’re Cuban*, Washington Post, May 25, 2015, at https://www.washingtonpost.com/world/75000-will-get-you-a-lot-of-house-in-havana—if-youre-cuban/2015/05/25/bbed3d78-fd8f-11e4-8c77-bf274685e1df_story.html; Carlos Garcia Plevan, *Is the real estate market subsiding in Havana?*, *Oncuba News*, Oct. 30, 2019, at <https://oncubanews.com/en/cuba/is-the-real-estate-market-subsiding-in-havana/> (noting that reforms have led to “an undoubted improvement in the appearance of buildings thanks to their rehabilitation, as well as the creation of a significant number of jobs both in construction work and in the gastronomy or accommodation businesses that are being created” but expressing concern over gentrification in parts of Havana).

⁹⁵Redaccion OnCuba, October 7, 2018, at <https://oncubanews.com/en/cuba/society-cuba/population/housing-in-cuba/> (“Only 61 percent of the country’s housing stock . . . is in good condition”).

⁹⁶See Miroff, *supra* note 94; Carlos Garcia Plevan, *Is there a housing policy for city of Havana?*, *Oncuba News*, Sept. 18, 2019, at <https://oncubanews.com/en/cuba/is-there-a-housing-policy-for-city-of-havana/> (130,000 residents lived in shelters).

still a housing shortage, Cuban governments sources claim that housing production has almost tripled, from 16,000 housing units per year in the early 2010s⁹⁷ to 43,000 in 2019.⁹⁸ Cuba's evolution away from socialized land suggests that pre-2011 Cuba might not be the best possible role model.

Stein also mentions China as a role model, pointing out that "[i]n China, land is largely owned by the state, which offers long-term leases to private building owners."⁹⁹ But these owners can buy and sell homes that were once owned by governments; as a result, 90 percent of Chinese families owned their home in the mid-2010s.¹⁰⁰ In fact, according to the International Monetary Fund, "China now has seven of the world's ten most expensive cities for residential property,"¹⁰¹ despite the fact that China limited demand in big cities by requiring rural migrants to live in a city for five years before purchasing an apartment or house.¹⁰² Chinese companies such as Alibaba and Tencent are now making investments in the rental sector, creating a more extensive

⁹⁷ See Peters, *supra* note 89, at 13.

⁹⁸ See OnCuba staff, Government overfulfills housing plan in 2019, but there is still a deficit, *Oncuba News*, Dec. 20, 2019, at <https://oncubanews.com/en/cuba/cuba-overfulfills-housing-plan-in-2019-but-there-is-still-a-deficit/> (admitting that Cuba still has a deficit of over 900,000 houses).

⁹⁹ See Stein, *supra* note —, at 173.

¹⁰⁰ See Wade Shepherd, How People in China Afford their Outrageously Expensive Homes, *Forbes*, March 30, 2016, at <https://www.forbes.com/sites/wadeshepard/2016/03/30/how-people-in-china-afford-their-outrageously-expensive-homes/#75fae24ca3ce>.

¹⁰¹ *Id.*

¹⁰² See Wade Shepherd, China Now Has An Answer to the Housing Crisis- Its Called Rent, *Forbes*, Oct. 29, 2019, at <https://www.forbes.com/sites/wadeshepard/2019/10/29/china-now-has-an-answer-to-its-housing-crisis-called-rent/#1558e8bf1a60> ("if you're from, say, Chengdu, and you move to Shanghai for work, you can't just jump right in and buy a house like you can in the U.S. or Europe. You must first be able to show a lengthy (currently 5 years) work and tax paying record in the city before you are permitted to enter the housing market-regardless if you can afford it or not. Therefore, migrants to China's top-tier cities must endure what amounts to an extended period of rental purgatory before they can even think about becoming a homeowner.").

private rental market.¹⁰³ According to Chinese news sources, the Chinese rental market is likely to increase by 60 percent between 2018 and 2023.¹⁰⁴ If pre-reform Cuba was socialist and cheap, urban China is neither.¹⁰⁵ So China may not be a role model either for socialists or for capitalists.

As an interim measure, Stein favors making New York's rent control laws permanent and universal-¹⁰⁶ an idea that makes sense for readers who adopt Stein's core assumption that market-rate housing is usually inflationary. The traditional economic argument against rent control is that if landlords and developers cannot profit from housing, they will not bother to create it or maintain it.¹⁰⁷ So if you believe that creation of more market-rate housing is a good thing, rent control may seem irrational. But if you share Stein's assumption, elimination of market-rate housing is a goal of rent control, not an unintended consequence.

IV. Conclusion

Stein's book could be summarized in one sentence: socialism good, markets bad.

In many ways, Stein describes a factual universe I simply do not recognize- one in which expensive cities allow the real

¹⁰³ *Id.* Cf. Xinhua, Chinese apartment rental platform Phoenix Tree Holdings makes NYSE debut, *Global Times*, Jan. 18, 2020, at <http://www.globaltimes.cn/content/1177230.shtml> (Phoenix Tree Holdings, a "leading Chinese apartment rental provider" recently had an initial public offering in the New York Stock Exchange).

¹⁰⁴ *Id.* ("China's residential rental market is expected to grow to 3.0 trillion yuan (or about 437 billion US dollars) by 2023 from 1.8 trillion yuan in 2018").

¹⁰⁵ Stein also cites capitalist Singapore as another example of a place with socialized land. See Stein, *supra* note —, at 173. Although most of Singapore's housing was built as public, its residents own 99-year leases, and may be traded on the resale market like other private housing. See Ng Kok Hoe, public housing policy in Singapore, *global-is-asian*, at [https://lkyspp.nus.edu.sg/docs/default-source/gia-documents/public-housing-policy-in-singapore-with-graphics\(1\).pdf?sfvrsn=7c4b6c0a_2](https://lkyspp.nus.edu.sg/docs/default-source/gia-documents/public-housing-policy-in-singapore-with-graphics(1).pdf?sfvrsn=7c4b6c0a_2).

¹⁰⁶ *Id.* at 162.

¹⁰⁷ See, e.g., Ryan Bourne and Vanessa Calder, Rent Control: An Old, Bad Idea That Won't Go Away, *Governing*, Nov. 5, 2018, at <https://www.governing.com/gov-institute/voices/col-rent-control-bad-idea-making-comeback.html>; Paul Krugman, Reckonings: A Rent Affair, *New York Times*, June 7, 2000, at <https://www.nytimes.com/2000/06/07/opinion/reckonings-a-rent-affair.html>.

estate industry to build huge amounts of housing, while Communist regimes achieve a workers' paradise of cheap, excellent housing. But despite this book's flaws, it is certainly an important book for those of us who wish to understand socialist perspectives on the urban housing crisis.

Digest of Selected Articles

*Libbi Levine Segev and Mark Lee Levine**

"The 2019–20 coronavirus pandemic is an ongoing pandemic of coronavirus disease 2019 (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The outbreak was first identified in Wuhan, Hubei, China in December 2019, and was recognized as a pandemic by the World Health Organization (WHO) on 11 March 2020."¹

"Coronaviruses (CoV) are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-CoV) and Severe Acute Respiratory Syndrome (SARS-CoV). Coronavirus disease (COVID-19) is a new strain that was discovered in 2019 and has not been previously identified in humans."²

COVID-19 has impacted people throughout the entire world. As of March 20, 2020, there were 268,077 reported cases of the virus, with 90,603 people having reported recovered and 11,188 recorded COVID-19 deaths.³ In addition to the serious medical implications of the virus, states of emergency have been declared, businesses have been ordered closed, travel has been restricted or prohibited, schools have closed their doors, communities have been placed in quarantine, stock values have dropped, unemployment has increased, and toilet paper has flown off the shelves.

As individuals, families, businesses and governments scramble to try to cope with the current state of our world, many questions have arisen (and will, undoubtedly, continue to arise) regarding the scope of government powers within the United States. The power of the government to restrict activity has a significant impact on business. The waves cre-

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¹https://en.wikipedia.org/wiki/2019%E2%80%9220_coronavirus_pandemic.

²<https://www.who.int/health-topics/coronavirus>.

³<https://www.worldometers.info/coronavirus/>.