

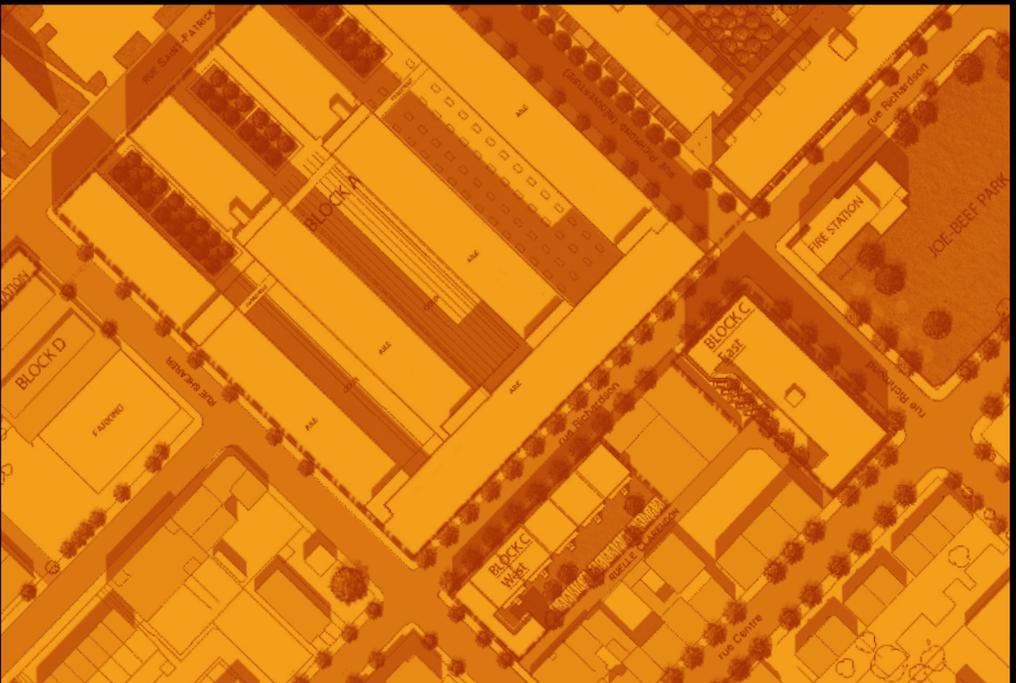
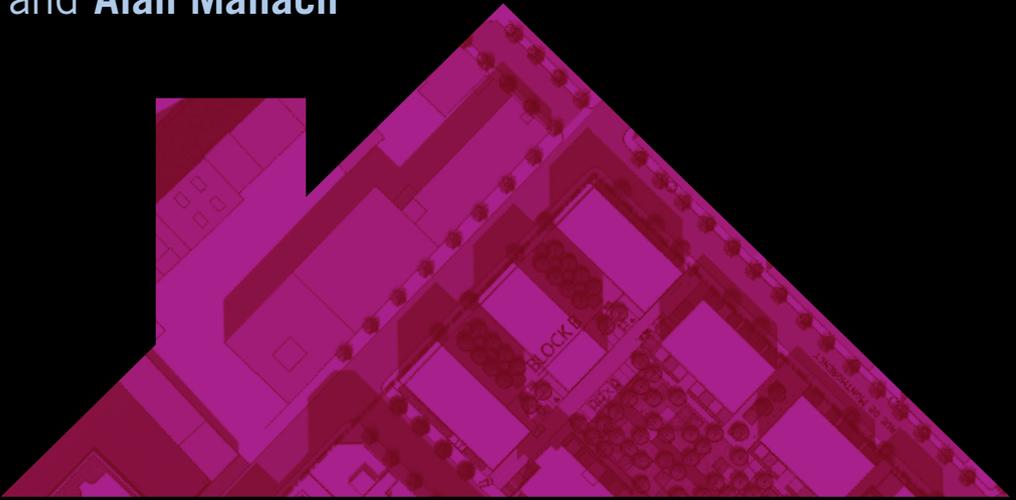
Inclusionary Housing in International Perspective

Affordable Housing, Social Inclusion, and Land Value Recapture

Edited by

Nico Calavita

and **Alan Mallach**





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 **LINCOLN INSTITUTE**
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Foreword

It is a pleasure to accept the kind invitation from this book's editors to offer some preliminary reflections on this work and the issues it raises: affordable housing, social inclusion, and land value recapture, all considered through a comparative analysis of inclusionary housing as a specific technique to achieve such goals.

This book is important because it provides the reader with relevant information about and analysis of how inclusionary housing works in North America (United States and Canada) and five European countries (United Kingdom, Ireland, France, Spain, and Italy). An additional chapter offers overviews of inclusionary policies in other countries such as South Africa, Israel, India, New Zealand, Colombia, and Malaysia. With its origins in the 1970s in the United States as a reaction against racial segregation and its territorial shadow of exclusionary zoning, inclusionary housing has gradually spread and been adopted in many other regions of the world. There are several reasons for the success of this policy.

On one hand, neo-liberalism—with its tail of privatizations, liberalizations, and deregulations—could explain why many countries have diminished direct involvement in the provision of affordable housing (Kenna 2008). In this sense, inclusionary housing may be understood as a new pragmatic approach by governments in their efforts to provide affordable housing. But beyond being a simple reaction to neo-liberal policies, inclusionary housing may also be viewed as a result of public-private partnerships in the perspective of governance, the new, rising paradigm of public legitimacy. Therefore, the object of this work must necessarily be restricted. We can consider administrative legitimacy as the situation in which an administration has the right to rule but without forgetting social reality: an administration is legitimate when the people it governs widely believe it has the right to rule. It is possible to analyze administrative legitimacy using paradigms that have influenced, and continue to influence, international legal and policy frameworks.¹

Several authors point out different explanations to justify public activity. Prats (2005) underlines the bureaucratic, managerial, and governance paradigms. Their successive presentation does not mean that one has replaced

1. According to Pettigrew (1995, 29), who uses this concept in the field of social sciences, paradigms provide the wider perspective within which a large set of interrelated theories and research studies develop. Thus, a paradigm offers a model that inspires a group of scientists to develop a coherent tradition of theory and research. Paradigms provide the context for theories.

another, but that each one is added to the others, and all of them have prevailed depending on the historical moment in time.

Since the mid-1990s, the paradigm of legitimate administration has changed again, especially in Europe (Commission of the European Communities 2000). A consensus has emerged that legitimacy of public action should be based on the quality of interaction between different levels of government and, by extension, between them and the private sector and civil society.

In the context of increasing complexity and fragmentation, the focus moves now toward a paradigm presently under construction: a new form of government that is more cooperative, where public institutions and the private sector participate and cooperate in the formulation and implementation of public policies generating a performing network. This model involves transitions from unilateral decisions to formulas based on public persuasion and negotiation, and from hierarchical management of public organizations to formulas based on coordination and cooperation among public authorities to mobilize resources and distribute efforts among public and private bodies (Cerrillo 2005).

In this sense, inclusionary housing can be considered a specific technique that is developed in a concrete sector and reveals the creation of a network of housing agents (e.g., governments, market operators, nonprofit organizations) involved in the task of providing affordable housing and creating sustainable cities from the social point of view.

On the other hand, in connection with its goal of achieving social inclusion, inclusionary housing can also be understood to be a reaction against past social housing practices and the tendency of many toward urban segregation (e.g., council housing in the United Kingdom, public housing in the United States, *grands ensembles* in France, or *poligonos* in Spain). In Europe inclusionary housing can be considered a tool to meet society's needs for social and territorial cohesion (Ponce Solé 2006).

As Nico Calavita and Alan Mallach write in their preface, the aim of *Inclusionary Housing in International Perspective* is to integrate “theory and practice, with practice informing theory and theory guiding practice, to the end of influencing urban policy making in ways that improve the quality of life of those who have little power and few resources.” This explains why the book enlists the help of various national case studies to try, ultimately, to answer specific questions: To what extent does inclusionary housing actually result in the creation of social and affordable housing? Who benefits from inclusionary programs? What is the interplay between inclusionary housing and more traditional public sector programs for the provision of affordable housing?

The methodology used here is comparative—not as a relative value, which would suggest that one country’s efforts were “better” or “worse” than another’s, but as an assessment. What has been accomplished through inclusionary housing in each country? What problems have arisen in the course of those efforts, and what measures have been taken or not taken in the field to address and resolve those problems? But this poses crucial questions concerning the methodology: To what extent can the comparative method be useful in dealing with inclusionary housing? For whom can this method be of interest and why?

Such a comparative methodology is a very useful means to understand inclusionary housing properly, notwithstanding the different inclusionary responses of each country based on its own history, culture, economy, politics, legal and administrative traditions, and institutional settings. At the end of the day, there are global problems in a globalized world, and national inclusionary housing techniques have in common a broad strategy: using the private housing market to generate nonmarket housing and to mix the two together. Thus, beyond other kinds of considerations, the comparative method can help national policy makers, public managers, and lawyers better understand their own inclusionary housing techniques².

Beyond academic specialists, this book will be of interest to various agents engaged in real estate governance networks (e.g., landlords, property developers, citizens, companies, or nonprofit organizations). From a legal perspective, the comparative approach of this book can be useful for legislators and courts as well. To some extent, a globalized world must mean a globalized law, and legal exchanges are a reality even between high national courts, as the example of the U.S. Supreme Court and the European Court of Human Rights demonstrates (Tsen-Ta Lee 2007).³

Inclusionary Housing in International Perspective is also relevant for those interested in other problems, including public policies related to land use, housing, and social inclusion, such as school segregation (Ponce Solé 2007; Rusk

2. From the legal perspective, a variety of arguments have been used to justify the utility of comparative methodology: It can be an aid to world peace, for example, or it can be used as a tool for research to reach a universal theory of law. This methodology can contribute to international unification and harmonization, is frequently useful for academic study, and can help students gain perspective. It can aid the international practice of law, be an instrument of law reform and policy development, and even a gap-filling device in law courts (Örücü 2000).

3. A well-known example in case law in the United States is *Lawrence v. Texas*, U.S. 558 (2003), in relation to sodomy and criminal prosecution. In arriving at its decision, the U.S. Supreme Court referred to the European Court of Human Rights. Likewise, references to United States case law in European Court of Human Rights case law are not unusual (e.g., *Vergos v. Greece*, appl. no 65501/01, June 24, 2004, which uses U.S. Supreme Court case law on religious freedom).

2003), crime prevention (Kumar Kaytal 2002), and environmental design. Place matters, and people interested or working in related areas must be aware of the importance of inclusionary housing and its impacts on other issues.⁴ Thus, where people live is relevant for individual quality of life and also for the quality of our cities and societies. What kind of cities do we want? Do we really want societies that have a shortage of affordable housing and encourage segregated neighborhoods? If the answer is no, then this book makes a valuable effort to analyze a possible mechanism that favors basic human rights and decent, sustainable, and habitable cities and societies.

This having been said, it is obvious that inclusionary housing has some weak points. The book does not avoid these issues, but indeed explores them in an intelligent way. For example, some may criticize inclusionary housing as a tool that tries to solve housing problems generated by market conditions by employing more market conditions. In reality, inclusionary housing is a form of neo-regulation, a way of reorganizing indirect public intervention, “steering but not rowing,” in the context of the so-called regulatory state. To a certain extent, inclusionary housing means using the market to correct market failures by means of public regulations.

This idea leads to a second weak point. As this study points out, inclusionary housing works well when market conditions are good, but is largely ineffective in poor market environments. But this cannot be a criticism of inclusionary housing, per se, because it is not a “magic bullet” that will end all affordable housing problems. It must be considered in combination with other conventional public subsidy-driven affordable housing policies.

The obvious interface of inclusionary housing with the market opens the door to a third possible objection. In comparison with a purely sector-driven process, inclusionary housing can introduce distortions into the affordable housing delivery system, because developers will try to maximize their returns, seek the most affluent households, and try to produce affordable housing for owner-occupancy instead of rental.

The answer to these distortions is not less regulation (that is, less inclusionary housing or none at all) but according to the book more and stronger public regulations. I would prefer to use the expression “smarter regulation” because regulation should, in a clever way, combine households with different incomes with a variety of mixed-tenure housing to counterbalance the probable market strategies.

One final objection can arise. According to the state of the art in housing research, it has not yet been possible to prove beyond any doubt the social

4. Some reflections and publications about the relationships between affordable housing and other urban public policies can be found at www.urcosos.net/e-index.html

benefits of mixed-income housing. Some opinions conclude that inclusionary housing is not a good way to achieve social inclusion and we should forget about this technique. This is not my view (Ponce Solé 2010). Inclusionary housing regulations seem to be based on the assumption that urban segregation is a negative phenomenon that can be prevented or reduced with affordable housing projects, but that is a matter of academic debate. I consider that existing evidence is strong enough to enable the development of public policies in the field of urban planning and housing to achieve mixed communities.

This suggests an analogy with the precautionary principle used in the field of environmental sustainability, and I consider it necessary to use one in the sphere of social sustainability.⁵ Such a principle is an important argument leading to public intervention through inclusionary housing against segregation and in favor of preventing or reducing concentrations of poor households, and consequently social exclusion, in some urban areas rather than waiting for more definitive calculations of urban areas effects.

Although inclusionary housing has pros and cons, as do almost all human endeavors, *Inclusionary Housing in International Perspective* is optimistic about the possibilities for this practice. I think its optimism is borne of realism and do not believe that a pessimist is necessarily a well-informed optimist. This study helps us to be well-informed and maintain hope at the same time as we consider inclusionary housing as a limited, but useful, tool to create better cities and consequently better societies for our future and that of our children.

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5. According to the European Commission, the precautionary principle may be invoked when the potentially dangerous effects of a phenomenon, product, or process have been identified by a scientific and objective evaluation that does not allow for risk to be determined with sufficient certainty. Hence the use of the principle belongs to the general framework of risk analysis, and more particularly in the context of risk management, which corresponds to decision making (EU 2000; 2005).

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Preface

Ultimately, the most important aspect of any policy that deals with a concrete dimension of human existence is how it works on the ground. Inclusionary housing policies and programs are no exception to this principle. In writing this book we have tried to maintain a practical as well as theoretical focus, and to attempt, despite the difficulty of assembling adequate information, to assess the outcomes of inclusionary housing programs as they have been implemented in the seven countries we have chosen to study. This is not a process of making value comparisons, in the sense of suggesting that one country's efforts are "better" or "worse" than another's. Instead, it is an assessment of accomplishments spurred by inclusionary housing, problems that have arisen while pursuing those efforts, and measures taken (or not) to address and resolve those problems in the field.

These questions are particularly important to us, because we both share an abiding interest in integrating theory and practice, with practice informing theory and theory guiding practice, to the end of influencing urban policy making in ways that improve the quality of life of those who have little power and few resources. We have both been engaged in scholarly work that deals with inclusionary housing, but for many years we also have sought to help frame public policy and practice—principally in California for one of us and in New Jersey for the other. For all the interesting and complex theoretical questions raised by inclusionary housing, in the final analysis, the most pertinent is the practical one: Does it work?

This is a multidimensional question, however. At the most rudimentary level it can be answered in terms of the number of affordable units created as a result of inclusionary housing programs, but that is only a partial answer. More salient questions are:

For whom are the units built?

To what extent are they integrated with market-driven housing, and do they truly improve social inclusion?

What are their financial and political costs to the society? and

To what extent do they indeed offer a vehicle for recapture of land value increments?

Many of the programs we study raise these questions in important ways. In France, for example, where inclusionary housing has been a highly productive strategy that maximizes social inclusion goals, the policies raise significant issues with respect to the substantial public sector subsidies needed to carry out that strategy. The French approach also may reflect the extent to which the movement toward inclusionary housing and away from conventional social housing may be leading to a parallel shift in priorities away from housing for very low-income households toward housing for members of the struggling working and middle classes.

In Ireland, as in many U.S. communities, the ability of developers to buy out of inclusionary requirements by making a cash payment to a local authority raises serious questions, particularly if the local authorities have difficulty finding appropriate uses for the money, as often appears to be the case. In some countries, including Ireland and Spain, the extent to which inclusionary housing has been a by-product of the housing bubble raises difficult and sobering questions about its future course and the extent to which it can be looked to as a source of affordable housing in hard as well as boom times.

By looking at these questions and attempting to evaluate the experiences of seven selected countries that have implemented inclusionary housing policies, we not only hope to shed light on important theoretical issues in housing and planning policy, but to go beyond theory in order to inform practice. Our goal in editing and writing this book was to create something of value to scholars and of interest to practitioners and policy makers—in the countries studied as well as elsewhere—to help guide them in framing new inclusionary policies and programs, and in assessing and rethinking those already in place. We hope that we have succeeded in that goal.

—Nico Calavita and Alan Mallach



An International Perspective on Inclusionary Housing

Nico Calavita and Alan Mallach

Inclusionary housing is a means of using the planning system to create affordable housing and foster social inclusion by capturing resources created through the marketplace. The term refers to a program, regulation, or law that requires or provides incentives to private developers to incorporate affordable or social housing as a part of market-driven developments, either by incorporating the affordable housing into the same development, building it elsewhere, or contributing money or land for the production of social or affordable housing in lieu of construction.¹

In most cases a developer, either as a condition of approval or in return for incentives such as density bonuses, sets aside for affordable housing a percentage of the units in a development, selling or renting them to households whose incomes fall below specified income ceilings at prices or rents they can afford. In other cases, a developer may contribute a cash “in lieu” payment to a local housing trust fund, or donate a parcel of land to a municipal land bank or a community development corporation. Under a variation of inclusionary housing known as “linkage,” developers of nonresidential facilities such as office buildings and shopping centers may be required to contribute to affordable housing trust funds. The size of their contribution is linked to the need for lower-income housing generated by the jobs created in the new facility.

1. The terms *affordable housing* and *social housing* have varying meanings, depending on the country under discussion. In Ireland, the two are mutually exclusive categories, while in England affordable housing generally subsumes social housing as well as other forms of housing that are affordable to lower-income households. In the United States, the term *social housing* is not in general use. Except where the context clearly implies otherwise, we will use *affordable housing* as a generic term to refer to any housing explicitly designed to be affordable to and occupied by households who fall below an officially defined income level.

THE ORIGINS OF INCLUSIONARY HOUSING IN THE UNITED STATES

Inclusionary housing originated in the United States during the early 1970s, and gradually spread to Canada, western Europe, and more recently to other countries, including Australia, India, and South Africa.

From the earliest days of affordable housing development in the United States, as elsewhere, housing for lower-income households was seen as a need apart from the housing market. First developed by philanthropists, and then by government agencies, it occupied a separate conceptual space that was physically distinct and legally differentiated from the private market, driven by different impulses, and regulated through different mechanisms than those that emerged to control land use and development in general. Even in the 1960s, when the United States government began to provide funds for private for-profit developers to build low-income housing, the projects they built were no different in concept from those that governments had built a generation earlier—separate housing complexes for low-income families. Indeed, at the time it would have been hard for most developers, not to mention housing officials and city planners, to think that the situation could, or should, be otherwise.

The origins of inclusionary housing in the United States can be traced to a variety of separate strands, which are discussed in chapter 2. In many respects, the initial intellectual impetus for inclusionary zoning came from the civil rights movement of the 1960s and from the recognition of the close relationship between the pervasive racial segregation in American society and the land use regulation system that perpetuated it through what came to be known as *exclusionary zoning*. Indeed, the term *inclusionary zoning* was coined to contrast with the former term, and was first used to refer more broadly to any strategy designed to foster the production of affordable housing in otherwise exclusive, affluent, suburban jurisdictions.

The emergence of inclusionary housing also reflected a series of other trends that converged during the 1970s, most visibly although not exclusively in California. These included dramatic increases in housing costs, which paralleled a rise in land use and environmental activism. Again, these forces were felt more intensely in California than most other parts of the country. One outcome of the environmental movement was a broader focus by state and local officials on land use management, including the adoption of growth management controls, such as caps on the number of building permits issued, and the expansion of the use and scope of impact fees. By the 1980s, a further strand had been added: the sharp drop in federal funding for affordable housing production under the Reagan administration. With the loss of public funds for housing, the search for market-based solutions to the growing shortage of affordable housing became even more intense.

The first inclusionary housing programs came into use during the early 1970s in a handful of affluent suburban communities and counties around San Francisco and Washington, DC. The first zoning ordinance that incorporated inclusionary requirements was probably that of Fairfax County, Virginia. It was adopted in 1971 and required that developers set aside 15 percent of their new homes or apartments for affordable housing. While that ordinance was struck down by the Virginia Supreme Court two years later, other ordinances enacted during the next couple of years have remained in place, including those adopted in Palo Alto, California, and in Montgomery County, Maryland, a large, affluent suburban county north of Washington, DC.

The 1980s saw the first linkage ordinances. San Francisco broke this ground with its ordinance in 1981 and was followed by Boston in 1986. The breakthrough *Mt. Laurel II* decision of the New Jersey Supreme Court² in 1983 established not only the obligation of local governments to address lower-income housing needs, but also the legitimacy of inclusionary zoning ordinances as a way of meeting those needs.

THE WORLDWIDE SPREAD OF INCLUSIONARY HOUSING

Inclusionary housing has since spread to other parts of the world, most notably but not limited to western Europe, where it has taken many different forms and reflects both varying social housing policies and different policies with respect to land use regulation and to the relationship between land value increments and the role of the public sector. In light of the strong tradition of public sector direction in planning and housing policy, the late arrival of inclusionary policies in European countries seems counterintuitive. On the other hand, it is perhaps because of the strength of that tradition that inclusionary housing would emerge only when the tradition began to give way to new, competing pressures. As Mallach (1984, 21–22) wrote 25 years ago, “the specific approach characterized as an IH program is largely an American phenomenon The inclusionary objectives of other countries are achieved through more direct public sector intervention in the financing and production of housing than in the United States.”

Since then, however, the balance between the private and public sectors has shifted due to the growth of privatization and deregulation and changes to the respective roles of the public and private sectors in land development. Of equal importance, we would argue, is the growing attention given to the goal of social inclusion in housing and the widespread reaction against the massive, isolated, and

2. *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 456 A.2d 390 (1983).

largely segregated public housing projects of the 1950s and 1960s, such as the French *grands ensembles*. Combined with the housing bubble in recent years, all of these strands have contributed to make inclusionary housing a major element in the housing policies of many European nations as well as in the United States.

Privatization and Deregulation

Privatization and deregulation have affected developed countries in uneven ways, reflecting the transition of public policy toward what has been characterized, at least in the United Kingdom,³ as the “neo-liberal consensus” (Crouch 1997). In some countries, such as the United States and Great Britain, major changes in the role of the state have occurred. In others, such as Germany, France, or Austria, the move to liberalization has been softer and less pronounced. The effects of neo-liberalism then, must be understood in “contextually specific ways” hinging on the “interaction of neo-liberal programmes with inherited institutional and social landscapes” (Brenner and Theodore 2002, 334).

Consistent with privatization and deregulation, many European countries as well as the United States have diminished, in some cases drastically, their direct involvement in the provision of social housing. At the same time, it is important to recognize that the state has adapted pragmatically to changing socioeconomic and political circumstances (Doherty 2004). To characterize the state as having abdicated its responsibilities would be incorrect. The authors of a thematic issue of the *European Journal of Housing Policy*—which reported on the changing role of the state in relation to welfare provision, housing, and homelessness in six western European countries—used terms such as *restructuring* (Busch-Geertsema 2004), *restyling* (De Decker 2004), or *reorganizing* (Doherty 2004) to describe changes in welfare and housing policies.

This is certainly true in the United States as well, where direct production of social housing on the part of the federal government has been drastically reduced, but a multisectoral, decentralized housing development system has emerged in its place. The U.S. Department of Housing and Urban Development (HUD) has financed demand-side or market-oriented programs, such as the housing choice voucher program (formerly Section 8). Through its low-income housing tax credit program, HUD has indirectly provided resources for both nonprofit and for-profit developers. In this new model, states and localities have assumed new responsibilities, and nonprofit housing developers have

3. The United Kingdom (U.K.) comprises all of Great Britain (England, Scotland, and Wales) plus Northern Ireland.

acquired a new importance and the ability to become more than passive followers of federal directives.

In most European countries social housing as such is still seen as outside the purview of the for-profit development sector. In some countries, however, privatization trends have led to significant changes in the relative roles of the public and the nonprofit or nongovernmental sectors, as well as in the growth of partnerships and other relationships between for-profit and nonprofit sectors. The emergence of inclusionary housing policies in many European countries during the 1990s and the increasing popularity of such policies in the twenty-first century are emblematic of the new pragmatic, multisectoral, and decentralized approach of the state to the provision of social housing. While in some cases policies have been paralleled by a decline in public sector spending for social housing, in other cases, as in France and Ireland, they have become a desirable, and arguably preferred, vehicle for the use of public funds to provide social housing.

A corollary to the trend of privatizing social housing delivery is the growth of impact fees, when governments require developers to pay all or part of the costs associated with growth. While such fees may also have originated in the United States, they have become widespread in Europe as well. If in the past it was assumed that public infrastructure was a public responsibility, and developers were only required to provide on-site infrastructure, contemporary fiscal pressures on the public sector now make it less able financially to provide the infrastructure and public facilities necessary to maintain acceptable levels of quality of life in the face of growth. Development is thus increasingly paying for the costs that it generates. This is true to varying degrees in all the countries examined in this volume, as in Great Britain, where developer contributions have been formalized in recent legislation, and in Spain, where developers must dedicate roughly half of the area of their projects for public facilities. Both conceptually and technically, extension of this principle to inclusionary housing is not difficult.

Social Inclusion, Segregation, and the Reaction Against the Public Housing Model

While the growth of inclusionary housing in Europe may have been furthered by the public policy shift from traditional statist to more privatized models of service delivery and infrastructure provision, an equally important theme has been the growing concern with social exclusion. This issue emerged in Europe later than in the United States, but over the past couple of decades it has become a major concern of European public policy, arguably with a prominence and a sense of urgency that are far greater than they are in the United States

today. This reflects the increasing visibility and weight of immigrant populations in western European countries, as well as an international reaction against the dominant model of public housing as it was practiced for years, particularly during the 1950s and 1960s.

For a variety of reasons, including the canons of modern architecture that all but dictated that new housing for the masses would be large-scale, mass-produced, high-rise housing, and the pressure in many countries to ratchet up housing production to address long pent-up housing needs, the dominant model often contained thousands of dwelling units. Furthermore, largely due to the availability of inexpensive land, this housing was located at the periphery of the city or metropolitan area, in areas poorly served by public facilities and transportation or commercial establishments.

Over the subsequent decades, these projects increasingly became the repositories of the region's poor and unemployed, and often were homes for the second and third generations of immigrant communities—children and grandchildren of people who had moved into these projects 50 or more years earlier. Segregated from the rest of the city, these housing developments became islands of poverty and unrest. While policy concern about the implications of the geographic and social segregation of these projects certainly predated 2005, that year's violent uprisings in the *grands ensembles* around Paris raised public concern about the human and economic costs of perpetuating segregation at a new and higher level.

It is no exaggeration to state that social inclusion is a significant consideration in the planning and housing policies of every western European country, although the extent to which it drives policy and the manner in which it is addressed varies widely. These policies take two distinct forms. One is the search for ways of integrating isolated public housing projects into the urban and social fabric of the larger regional community, an effort which has led the French government to establish a dedicated agency, the Agence Nationale pour la Rénovation Urbaine (ANRU). The second is fostering social inclusion in new development, by ensuring that such new projects contain economically diverse populations, as well as mixes of tenure types.

As European countries seek to ensure both that new development furthers goals for social inclusion and that new social housing is meaningfully integrated into the larger population, inclusionary housing has emerged as a logical vehicle for such a policy. This is most notable in England, where more than half of the recently built social and affordable housing has been created through agreements between for-profit builders and local authorities that were made possible under Section 106 of the 1990 Town and Country Planning Act. While not

every western European country uses inclusionary housing as defined here, this increasingly widespread policy is likely to grow over the coming years.

The Housing Bubble

A further impetus for inclusionary housing in both Europe and the United States was the dramatic rise in market-driven housing production and prices that began late in the 1990s and continued until the bubble burst in 2007. During this period, particularly in England, Ireland, and Spain, house prices reached unprecedented heights that created affordability problems for struggling middle-class families and young people on a scale not previously seen in those countries. This spike in housing prices and the housing crisis it triggered have forced the state back into housing policy even more deeply.

While triggering affordability problems, the precipitous increase in both the volume of market-driven construction and the cost of housing also gave increased visibility to the opportunities to leverage the market to create affordable housing, particularly through recapture of land value increments that were created by grants of planning permission. This was a central theme of emerging public policy in Ireland and Spain, as discussed in later chapters.

It must be recognized that the housing bubble promoted the use of inclusionary housing as a vehicle for creating affordable housing. This begs the question, to what extent will the bubble's bursting not only slow down affordable housing projects, which is inevitable, but also prompt a rethinking of the strategy itself? Experience in the United States, particularly in California, suggests that periods of economic retrenchment tend to foster reactions against inclusionary housing, just as they do more generally against interventionist and redistributive social policies. One country worth watching closely is Ireland, where the national inclusionary policy dates only to 2000, and where the collapse of the housing market has been more pronounced than in any other European country.

A COMPARATIVE APPROACH TO INCLUSIONARY HOUSING

On both sides of the Atlantic Ocean, the factors leading to enactment of inclusionary housing policies have been similar. This situation reflects both the increasing decentralization and privatization of affordable housing production and the concern for fostering increased levels of social cohesion and inclusion in the face of globalization and growing immigrant populations. The decade-long housing bubble has only added to these concerns. As this new approach to affordable housing becomes part of the developing pattern of devolution of

powers to regions and cities, inclusionary housing policies reflect each country's history, politics, economy, and culture.

The two main objectives of this volume are (1) to describe why and how each of seven countries in the study has chosen to adopt inclusionary policies; and (2) to make sense of the variety of these approaches and discern what works and under what circumstances. Particular attention is given to the manner and extent to which each country's inclusionary policies create affordable housing, foster social inclusion, and either provide explicitly or result implicitly in the recapture of land value increments for public benefit. The countries follow this rough typology:

- two countries mandate inclusionary housing (Spain and Ireland);
- two countries explicitly enable the use of inclusionary housing (England and France);
- one country, until recently, provided for neither, thus prompting the emergence of inclusionary housing as a local initiative; however, 2008 legislation seems now to enable its use (Italy); and
- two countries have decentralized land use regulation, where inclusionary housing fits into a variety of state or provincial legal and regulatory schemes (United States and Canada).

Beyond these seven countries, the spread of inclusionary housing, particularly in the past decade, has indeed been worldwide. Chapter 9 offers brief sketches of the inclusionary policies and the policy context in other countries such as South Africa, Israel, India, New Zealand, Colombia, Malaysia, and most recently the Netherlands. Different variations of inclusionary housing have become features of each of these countries' housing and land use policies.

All of the European countries analyzed in depth have some form of inclusionary housing policy in place, although within the context of diverse planning and housing systems. A strong case has been made for the similarity among southern European housing systems in Portugal, Spain, Italy, and Greece (Allen et al. 2004). The housing systems in Spain and Italy share many similarities, as described in this volume, but differ considerably in terms of their inclusionary housing policy. This may reflect different constitutional mandates and, more recently, center-left versus center-right national politics. In Spain, for example, inclusionary housing is mandated at the national level. In Italy, however, recently passed legislation enabling inclusionary housing is both partial and flawed. Some western European countries, particularly the Scandinavian countries and Germany, share

similarities in terms of their sophisticated housing and planning systems, but they tend to use inclusionary housing, as defined here, sparingly if at all.

Housing and Planning Systems

To understand the origins and evolution of inclusionary housing in the seven selected countries, each chapter analyzes how a country's housing system has changed in recent decades in a context of privatization and deregulation, and examines the nature and historical evolution of its planning system. This dual analysis is central to the theme and content of this book and is necessary for three separate reasons.

First, housing provision and land use planning are inextricably linked, since plans designate the amount of land to be dedicated to housing development and lay out the ground rules for that development. When plans create shortages in the supply of land needed to accommodate growth—by reducing or keeping artificially low the quantity or densities of residentially designated land uses—they increase the cost of that land and hence of housing. The rigidity of plans in a context of rapidly changing circumstances may also contribute to a scarcity of land for development and lead to higher housing costs.

The trend toward deregulation has also affected the planning field. The shift toward more flexible planning approaches—and away from both strict regulation of private development on one hand and the public sector's provision of infrastructure and public facilities on the other—emphasizes land market liberalization, negotiation, public-private partnerships, and higher levels of developer exactions.

Second, under inclusionary housing policies, affordable housing is being provided “through the land use planning system,” to use the British expression. Affordable housing used to be produced primarily by the public sector or by social housing providers, on land acquired through either the market or the disposition of publicly owned property. That model has been radically transformed as a result of inclusionary housing programs. For example, in the United Kingdom today, the term *planning and affordable housing* is used extensively in government planning guidance. It refers to policies that either (1) use the development permission system as a means of encouraging developers to include lower-cost units within market housing schemes; or (2) create a subsidy for housing development by granting development permission to “affordable housing” providers on sites that would not normally be released for housing, and which therefore have lower market value (Gallent 2000). The ways in which the provision of affordable housing and planning intersect vary among the countries in this study, but inclusionary housing, by its very nature, straddles the housing and planning fields and thus occupies a unique place in public policy.

Third, inclusionary housing is particularly important as a potential mechanism for land value recapture. This potential is not fully appreciated or understood in the United States for several reasons. The “incidence controversy”—the issue of who pays the costs of below-market units—remains unresolved. Land value recapture is rarely even addressed as an alternative approach to cover costs. Cost offsets such as density bonuses and reduced regulatory standards, many of which come at a cost to the public, are used widely to defuse local opposition and reduce the arguably imaginary costs of inclusionary housing to developers or market-price home buyers. If the relationship between inclusionary housing and land value was better appreciated, it is possible that political opposition in the United States would diminish, and with it the perceived necessity for cost offsets.

Many Europeans hold a long-standing belief that increases in land value result largely from society’s efforts, and therefore do not belong to the landowner. Rather the increased value should be recaptured by the public sector. In Spain, for example, the recapture for public benefit of the land value increment created by public action has been enshrined in the nation’s constitution. There is little doubt among European planners and economists that requiring developers to pay for public facilities and/or affordable housing in ways that increase the cost of development will result in lower land prices. A typical formulation is found in the newsletter of a prominent British property law firm, which states unequivocally: “As inevitably, it falls to the landowner to fund these provisions, by reduction of the sale price, there is often lengthy and sometimes acrimonious discussion as to the need for and the amount of the provision” (Green 2004, 5).

The extent to which this belief in the importance of land value recapture is reflected in public policy varies widely in the countries included in this study. A clear relationship exists between the way the effect of inclusionary housing on land values is understood and the underlying system of land use regulation. This, in turn, reflects the nature of each country’s property rights regime. It is important, then, to understand how the planning system in each country has evolved, especially in terms of its attempts at recapturing unearned increments in land values.

A related issue is the legal status of housing generally, and inclusionary housing in particular. Planning and housing systems operate within a framework of constitutionally protected rights, but such rights vary from country to country. While the constitutions of the seven countries studied mention property rights in some fashion, those rights enjoy diverse levels of protection. The rights of ownership may not extend to development, while the right to housing forms part of only a few constitutions and may or may not be meaningful

on the ground. The French experiment with giving its constitutional language meaning through the enactment of a law providing an enforceable (*opposable*) right to housing is unique, and still in its infancy.

In the United States, separate state legal systems, courts, and legislatures have addressed inclusionary housing in different ways, from all but requiring it in New Jersey and Massachusetts, to forbidding it outright in Oregon and Texas. There is no doubt that in Spain and England—and in Ireland after a 2000 supreme court decision—inclusionary housing passes constitutional muster. In Canada, however, questions remain as to its legality when individual cities enact inclusionary programs in the absence of legislation at the provincial level, where the power to regulate the property rights regime in that country resides.

Social Inclusion

Inclusionary housing's important potential as a tool for racial and socioeconomic spatial integration is widely recognized, but it has hardly been considered for this purpose in the United States—except to an extremely limited extent in New Jersey, where the evidence is mixed. While European countries have come to inclusionary housing later, they may ultimately use it as a social integration mechanism more effectively than the United States. This reflects the reality that the issues of spatial segregation and social exclusion generally are taken more seriously at all levels of government in western Europe and by the European Union than in all but a handful of states in the United States.

As a result of the social and economic changes in European countries over recent decades, the multidimensional issue of social exclusion has become the subject of widespread debate and the basis for extensive policy making at the regional, national, and European Union levels. Ironically, in Canada, a strong commitment to social inclusion in housing was central to national housing policy in the 1970s, but it gradually eroded beginning in the late 1980s as the national government disengaged itself from such matters, devolving housing matters to the provinces.

Social exclusion is linked not only to unemployment, poverty, and lack of access to services, but also to housing, which is associated in turn with the increased spatial segregation that has accompanied burgeoning immigration (Griffith 1998; Ratcliffe 1999). With little private market rental housing available and usually no extended family to rely on, immigrants are subject to discrimination. The rates they pay for whatever rental housing they can find are exorbitant, often more than those paid by natives, and that housing is usually in the most undesirable parts of historic urban centers or older first-ring suburbs (Calavita 2005). Immigrants' dependency on social housing during the 1980s

and 1990s, coupled with the increasing “residualization”⁴ of large parts of the social housing stock—particularly in the United Kingdom and France—led to a vicious cycle linking social housing, economic marginalization, and segregation.

Fostering mixed-income communities is seen as an antidote to social exclusion. Many countries have adopted inclusionary housing policies as an important, and even primary, strategy to that end. In England, Section 106 of the 1990 Town and Country Planning Act allowed localities to require developers to provide affordable housing. According to a report prepared for the Office of the Deputy Prime Minister (2005), this act is to be understood in the context of the government’s efforts at “creating mixed and inclusive communities.” The Land Use Act of Spain’s Autonomous Region of Catalonia (2002) requires the dedication of 20 percent of allowed development to affordable housing, with the stated purpose that the public has an obligation to pursue “social cohesion.”

Even more explicitly, Article 55 of the French *loi SRU* (Solidarité et renouvellement urbains), enacted in 2000, embodied an explicit—and controversial—national policy of social inclusion, mandating that every metropolitan commune above a certain population size designate at least 20 percent of its total housing stock as social housing. While the act does not require inclusionary housing, it became a spur for individual communes to impose inclusionary requirements on private developers. That, in turn, led the national government to pass legislation in 2006 explicitly authorizing local inclusionary housing programs. Finally, in Ireland, Part V of the Planning and Development Act of 2000, which requires utilization of up to 20 percent of the land or buildings in new residential developments for affordable housing, was in large part the result of efforts “to prevent new large-scale concentration of low-income households from developing” (Norris 2005, x).

SUMMARY

Global political shifts and changes in economic and social policy have all contributed to the emergence of inclusionary housing as arguably the most significant new public policy direction in the realm of social and affordable housing in recent decades. In the following chapters, the authors explore both how the cross-national variations in political, social, and economic cultures and conditions have led to different forms of inclusionary housing in the countries studied, and how inclusionary housing is working on the ground to address each country’s need for both better housing and greater social inclusion.

4. Scholars and policy makers increasingly use this term to characterize the process, seen both in Europe and North America, by which affordable housing projects, public housing in particular, tend over time to be occupied more and more by populations who are “residual” relative to the majority population, either with respect to low income or minority ethnicity, or both.

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