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In recent years there has been a stream of proposals to reform the regulatory process. Particularly in vogue are proposals to increase the role of private property rights, either by eliminating regulations or by changing them so that property owners can more closely approximate market behavior. Proposals for effluent charges to replace specific emission standards as a means of reducing pollution are an example of this approach. Other critics of the regulatory process have called for extending the scope of regulation and increasing public participation to counteract the influence of private power. Following this approach, several states have increased their supervision of local land use controls, often including elaborate systems for public comment. In the following pages, I will review and criticize the theoretical basis of the privatization approach to regulatory reform, using the example of zoning. I will then discuss how certain weaknesses in regulatory processes can be overcome through extending the scope of human rights, rights entirely removed from the domain of the market.

Neo-Classical Property Rights Theories

The dominant tradition in U.S. political and economic thought is Lockean liberalism.[1] This tradition holds that private property is essential to

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individual freedom and to democratic government, and that government interference with private property rights is suspect as a step toward despotism. With private property so understood as the basis of freedom, the market can then be understood as an expression of that freedom and market efficiency as the embodiment of the free choices of sovereign consumers and producers. This is the foundation of neo-classical economics.

Externalities, which once appeared to be a minor anomaly in neo-classical economic analysis, have emerged as a challenge to the discipline. It followed from the assumption of free exchange in the market that "the owner benefits from all services rendered by his property and suffers for all the damages caused to others by its use," or at least that any deviation from this is voluntary.[2] Economics then faced the problem of accounting for instances where this was clearly not the case, where such things as "the smoke and noise of factories" created what was described as a divergence between private and social cost. The term "externalities" was used to indicate costs or benefits not compensated through the market, and over the years the term became, as E. J. Mishan put it, "a convenient peg on which to hang a variety of economic phenomena which might be used to justify (government) intervention in the private enterprise sector of the economy."[3]

A critique of externality justifications for government intervention was developed by writers who claimed that, as a practical matter, the market is sufficiently flexible to handle the situations frequently used as examples of the need for government intervention, and that the theoretical justification for intervention was incorrect, that only an economic system based on capitalism and private property rights could operate efficiently.

Bernard Siegan presented the practical critique of zoning: that it is at best unnecessary and at worst harmful, that it is either too rigid to deal with the actual harms and benefits of different land uses or too vulnerable to corruption where it is flexible, and that it is used to exclude moderate-cost housing, thus harming lower-income people for the benefit of the well-to-do.[4] The vehicle for this critique of zoning was a detailed description of land use patterns in Houston, which did not have zoning until 1982. His description of Houston showed that a city with subdivision, building, and traffic regulations, pollution control and nuisance laws, and a Federal Housing Administration that makes mortgage financing available only to developers who protect their neighborhoods with restrictive covenants, was not very different from cities with zoning. Siegan felt that this demonstrated the superiority of private agreements such as restrictive covenants over government regulation.

The theoretical basis for a critique of regulation was provided by the

Coase Rule, after R. H. Coase, which states that the assignment of property rights and their attendant liability rules will not affect the outcome of economic activity unless there are transaction costs that inhibit market exchange.[5] Thus there is no need for government to modify private property rights because the owner whose use of the land is the most valuable will be able to compensate other owners, through private agreements (transactions), for any costs his most efficient use may cause them. In this view, social costs result from transaction costs: search and information costs in setting up a possible transaction, bargaining and decision costs in making the transaction, and policing and enforcement costs in making sure the transaction is carried out.

Coase dealt with interactions among producers only, and critics pointed out that consumers' effective demand for any good is determined not only by their subjective inclinations but by their wealth, the extent of their property ownership.[6] Assignment of property rights has an income effect that alters the allocation of resources efficient for a given set of subjective demands. Coase used the example of a rancher and a farmer, each of whom could compensate the other to reduce or change their operations so as not to interfere with a use that was more profitable. In dealing with a factory that pollutes the air of a nearby city, however, if residents have the initial right, then they will probably demand cleaner air than they would if they had to sacrifice part of their current standard of living in order to provide compensation to the factory. The amended Coase rule, then, is that assignment of property rights does not affect the efficiency of resource allocation in the absence of either transaction costs or income effects. The conclusion that the "Coasians" draw from this is that while government is necessary to establish and protect private property rights, there is no justification for any further government action.[7]

Robert Ellickson made the first use of transaction cost minimization as a guide to land use regulation in his article "Alternatives to Zoning."[8] Ellickson describes regulation as a continuum of legal mechanisms distinguished by their degree of direct government control versus delegation of control to private parties (centralized - decentralized), and by whether nuisance costs are restrained by liability rules (liability-laissez faire). He argues that the debate on regulation has been about centralized government regulation versus decentralized laissez faire, ignoring the possibility of a decentralized system using expanded liability rules. Such a system would replace zoning with revised private property rights, and the revisions would be guided by the goal of minimizing transaction costs.

According to Ellickson, "Efficient resource allocation is accomplished through the minimization of the sum of nuisance costs, prevention costs, and administration costs arising from land use conflicts."[9] Following the Coase rule, Ellickson disregards nuisance costs since, like any externality, they are two-sided. The prevention of a nuisance imposes costs just as the nuisance does and, assuming zero transaction costs and no income effects, the most profitable use will be implemented through bargaining and payment of compensation among the affected parties. Ellickson sees prevention costs as mostly determined by technology, and thus not directly affected by legal rules. What the law can affect, then, are the administrative costs, which Ellickson equates with transaction costs. He then suggests that administrative costs will be minimized if the liability for nuisance costs is placed on the party who has the most knowledge, is best organized, and controls the property where preventive action can best be taken. This should lead to the maximum preventive action at the least administrative cost.[10]

Following this line of reasoning, air rights should be held by local residents rather than by a nearby factory that emits pollutants, and thus the factory should compensate the local residents, because the factory has the knowledge of what pollutants it emits and the ability to modify its production facilities and engage in research of new technologies. Nearby residents, on the other hand, have little knowledge, are loosely organized, if at all, and can control pollution only in their own homes, if at all. Ellickson makes a similar argument concerning a convenience store locating in a residential neighborhood. This application of the transaction cost argument seems to support the anti-corporate approach of the consumer and environmental movements.

I would argue that this approach is mistaken, however. If local residents are really so lacking in information and organization, then they will be unable to make the best possible agreement, and they will be unable to monitor the agreement once it is made. On the other hand, if they organize themselves and employ experts who know about pollution problems, then there is no reason to assume they are in greater need of help than the factory.[11] This is also the case for conflict between neighbors and a convenience store. Indeed, middle-class residents may well have higher incomes and more education than the shopkeeper to start with. Control over a transaction is based on a combination of information and power. Changing the ownership of air rights or development rights does not change the costliness of the transaction, it only changes who has more power.

Other writers claim that private property rights inherently minimize transaction costs, a claim based on the concept of "attenuation."[12] They start with the point that property rights must exist if transactions are to take place, and make the claim that the difficulty of making transactions increases the farther the structure of rights moves away from private property in the direction of common property. At its mildest, the attenuation of property rights may simply be the result of organizational problems such as the difficulty absentee owners may have in controlling the management of a business. Utilities regulation provides an example of moderate attenuation. Since the state regulates the utility's profit level, the managers have an incentive to conceal profits above the legal limit in such forms as better offices and shorter working hours.[13] The extreme case of attenuation is the "tragedy of the commons," in which the uncontrolled public use of a scarce natural resource leads to its complete destruction.[14]

I would argue, however, that the concept of attenuation confuses public or common property rights with the lack of rights and with lawlessness. The tragedy of the commons results from the lack of any regulatory structure at all, whether based on private or public ownership. Common property rights are individual rights of access to scarce resources that belong to every member of a group. People have an interest in protecting such rights, and the value of the resource, just as they do with private property rights. If the value of each individual right is small, then it is true that each individual will have less interest in overseeing the management of the scarce resource than would a single owner. This is a problem of organization that the corporation can solve for shared private property and that democracy can solve for common property. In either case managers compete for management positions on the basis of offers of improved management made to the shareholders or citizens, and in either case management has an incentive to weaken voter control once in office.

The public/private ownership distinction is not adequate to explain the attenuation of social control. Publicly owned utilities, for example, apparently have lower management costs than regulated private utilities.[15] Even when management costs are higher, as is apparently the case in mutual insurance companies, we need to consider whether the member-shareholders think the additional costs of a one-member, one-vote system have compensating benefits.[16] Consumer democracy protects small shareholders and consumers against the self-interested control over management that a large private stockholder can exercise in an entirely capitalist private firm.

The attenuation theory is the implicit basis for work on zoning reform by Robert Nelson and William Fischel.[17] Their insight is that, through zoning, neighborhoods and local governments have established collective, but incomplete, ownership of development rights. Since the vast majority of homeowners seem to favor zoning protections, it is not realistic to try to eliminate zoning and replace it with private covenants, as Siegan suggests, but it should be possible to make the rights established by zoning more closely resemble private property rights. This will ensure that gains from trade can take place and smooth out problems of neighborhood transition. Where the benefits of a change in zoning are reaped entirely by the owner, who is able to develop, while the costs are borne by the entire neighborhood, it is understandable that residents oppose development. At its most flexible, zoning may require nuisance prevention measures and compensating amenities, but cash payments are ruled out. For this reason, residents are more resistant to change than they would be if they were, in effect, shareholders in a neighborhood land development corporation and could receive cash payments for the right to develop.

One can easily make the case, particularly in suburbs, which are in effect independent neighborhood governments, that zoning is sold already. New development is generally scrutinized for its net fiscal impact, and towns naturally favor development that will bring in more in taxes than it will cost in services. In addition, developers are often required to make contributions to parks, roads, schools, etcetera. Measures that lower the taxes on old residents are equivalent to a cash payment for zoning. But more important than saleability may be the question of allocation of property rights, saleable or not.

Neither Fischel or Nelson deal with how neighborhood boundaries are to be drawn and how payments will be distributed within them. Clearly, inclusion in one neighborhood rather than another under a saleable zoning plan will be as important as inclusion in one zone or another is today, as would decisions to allocate funds based on the value of the property one owns, the fact of ownership within the neighborhood, or the fact of residence within the neighborhood, whether or not one is an owner. All the political conflict involved in today's non-saleable zoning is recreated in the process of establishing the rules for a zoning market, because the new property rights, like all property rights, must be established politically. Saleability allows gains from trade, but if the initial entitlements are fundamentally unsatisfactory, then trading will not make them much better.

Fischel notes that the non-saleability of zoning protects third parties from the effects of potential transactions, but considers this a minor point.[18] It is not. Sale of zoning would take place through a political process rather than by the unanimous consent of all residents. A minority who oppose the sale of their zoning are, in this case, a third party to the transaction. And, unlike the investor who can easily sell shares of stock and move on to another investment when dissatisfied, these people have their homes at stake. The police-power basis of zoning limits bargaining to infrastructure and services that mitigate the harms caused by a proposed change in the pattern of land use. This weights the transaction in favor of those residents most strongly attached to the area they live in and the quality of life it allows, and against those who are more transient or oriented toward homeownership as an investment. This is neither "inefficient" nor "an incomplete assignment of property rights." Rather, it is a structure of rights that protects one set of values rather than another. Not all rights are property rights, and full or partial protection from inclusion in the market is a valuable form of right.

Oliver Williamson calls transaction cost analysis "the new institutional economics," but so far its practitioners have ignored the central insight of the old institutional economics, that economic relationships reflect the underlying balance of power.[19] For John R. Commons, for example, liberty and coercion go hand in hand, because one person's liberty requires the exposure of others to the consequences of that liberty.[20] This is not to say that society is inherently a zero-sum game in which the total amount of freedom is always the same. Freedom and coercion are weighted by values, and it is possible for people to arrange a society in ways that allow them more freedom, according to their values, than would other societies. Unless the values are held unanimously, however, they are necessarily imposed on some members of society. There is no such thing as "social cost." There are individual costs and benefits that lead people to come in conflict with each other, as each person or group of people tries to realize her own values. The problem of social cost, of externalities, of transaction costs, is really the problem of social conflict. The Coase rule, ironically, describes a communist utopia in which people are in perfect harmony and in which property rights, like the state, have withered away. Neo-classical economic analysis cannot determine the appropriate structure of rights because efficiency, the central value for neo-classical analysis, is determined through the market, and the market can exist only if property rights already exist.

Property Rights and Human Rights

The analysis of economic institutions should clarify the values implicit in the different forms of rights embodied by those institutions, and the effect that those values have on the political process by which rights are established. The attraction of the free market model is that it proposes a consensual decision-making process.[21] But a market cannot exist without property rights, and rights can only be established politically. The problem then is to find a political procedure that people can agree is fair, and this inevitably raises the question of equality. Private property rights are a form of power created by government but insulated from democratic control by their private status. Instead of dispersing power and limiting the Leviathan State, private property can serve to harness the power of government to create great accumulations of wealth and power. People with little wealth or income have little market power, and to the extent that market power is convertable into political power they are in an inferior position in the political arena as well. People with little power can simply be brushed aside, rather than treated with the respect due to someone whose views, while they may not be accepted now, may prevail in the near future.

Inequality is a corrosive force in any democratic process, yet as conservatives never tire of pointing out, the creation of a government apparatus capable of redistributing income, and the creation of regulatory agencies that intervene in the market in the name of the public interest, could themselves create a tremendous source of inequality of power. The public interest, unlike market efficiency, rests on the outcome of political processes in which goals are not set in advance but rather may change in the course of discussion. Both left and right point out that the rich and powerful can often bend these procedures to their own advantage. Zoning, for example, is legally based on the police power to prevent harm, yet it frequently serves as a harmful exclusionary barrier by which suburban towns and city neighborhoods prevent construction of apparatus, rental housing, and even single-family homes affordable by people with modest incomes.

Human rights play an essential role in resolving this dilemma by equalizing power and by insulating the political domain from the effects of market power. By human rights I mean rights that are universal, so that everyone has them, and inalienable, so that they cannot be permanently sold or given away. (In today's world of nations, they are universal only among citizens, members of the nation-state.) Their universality ensures initial equality, while their inalienability ensures that they cannot be transferred to and accumulated by a small number of people. Votes, for example, cannot be legally sold. The lack of enforceable voting contracts and the use of the secret ballot, which makes private enforcement activity difficult, make it more difficult to convert permanent accumulations of market power (property) into permanent accumulations of political power. This is not a restriction on people's freedom to sell their votes, as economists enamored of the "freedom of contract" seem to believe.[22] Rather, it is a refusal to enforce an agreement to give up some freedom in the future. Anyone who buys votes must rely entirely on the good faith of the seller and cannot come running to the government to enforce the agreement. This may be harmful to an individual who would like to be able to make such an enforceable sale contract because he or she could get more money that way, but it protects both that person and the other members of society from the consequences of great political inequality.

Human rights extend far beyond voting and free speech. They can be instituted wherever property rights create disparities of power that prevent equal participation in a bargaining process. In California, for example, despite provisions to the contrary in the standard rental agreement most tenants sign, tenants have an inalienable right to sue their landlord for negligence leading to an injury to persons or property, a right to a court order prior to any eviction, a right to use rent money to make emergency repairs if the landlord does not act, and many others. If these rights could be signed away, if they were not inalienable, then they would rapidly lose their universality as well in the face of the landlord's greater market power.

Human rights can make regulatory processes more effective. For example, rent control serves as a means of protecting tenants from eviction, except for causes set down in the law, such as non-payment of rent or damage to the building. Without such protection, tenants who exercise other rights, such as demanding repairs or putting political posters in their windows, are subject to retaliatory eviction by their landlord. With such protection, tenants can act openly rather than relying on sending complaints to a government agency and trying to remain anonymous. Often they will be able to deal directly with their landlord, rather than bringing regulatory agencies or courts into the process, because their power is made relatively equal through the rights established by rent control.[23]

In effect, rent control creates a human right to remain in one's home, even if one does not have a property right over it. This reflects the belief held by many, renter and homeowner alike, that their homes should not be treated simply as commodities. Most people would be horrified if the town they lived in were controlled in the same way as the corporation they work for. Residents' rights and residents' control have won acceptance, while so far, workers' rights and workers' control have not. Similar provisions for residents' rights are necessary for tenants of publicly owned or subsidized housing if they are to be protected from similar abuse by government administrators. Rights that are universal and inalienable are removed from both the domain of the market and private property and from the domain of administrative discretion that characterizes state property.

Human rights are essential to the functioning of a democratic system, but they are not easy to establish or maintain. The ideal of private property is so firmly rooted in American culture and institutions that it tends to reassimilate non-conforming institutions. As dramatic a break with established institutions as the utopian communist Oneida Community eventually became the Oneida Corporation, and privatization is a typical pattern for successful communes and workers' cooperatives.[24] Sometimes the reassimilation is the result of repression ordered or condoned by the authorities, sometimes it is the result of a lack of needed supporting institutions, and sometimes it simply results from a failure of will in a society in which collective action is not prized.

The same pattern of reassimilation affects government programs. Some, such as the Federal National Mortgage Association, have been turned into private corporations. Others, such as the Tennessee Valley Authority, have been led to act in the same manner as private corporations.[25] And rights can be privatized as well. Rent control in Hong Kong, for example, has been made saleable as a way of smoothing its gradual elimination.[26] Concepts such as "fair market value" effectively subordinate the rights potentially established by regulation to the value structure established by private property rights. It is not the least of the defects of Ellickson's proposal that if society allows nuisances to be created as long as their creator pays compensation based on fair market value, then the same nuisance will cost less when inflicted on the poor than on the rich.

Local government in the United States has, almost from its inception, mirrored the characteristics of the private corporation in the market. Local government has often served as an arm of private land development schemes competing for population and industry with other landowners and their local governments, and this form of competition continues unabated. The creation of autonomous suburban towns that could avoid annexation by the central city created a new element, the exclusive private development with its own government. It allowed the successful intraregional competitor to exclude less desirable residents and land uses and to avoid all responsibility for them, financial or otherwise. The proposals by Fischel and Nelson are logical extensions of this pattern by which government is assimilated into the market.

Local governments, like cooperatives, are mixtures of types of rights, occupying an intermediate position on the continuum from property rights to human rights. They carry rights that are "universal" only within a limited group, such as residents of a town, and that are only partially inalienable. There are continual efforts to bring such mixed institutions closer to one or the other pole. That is why it is missing an important distinction to simply label all rights as a form of property, as Charles Reich does with his concept of "new property."[27] In my concluding pages I will discuss the rights involved in land use regulation, but it should be understood that, in my view, only a broad extension of human rights in many areas will reduce the inequalities of power built into our economic system sufficiently to prevent the reassimilation of any extension of human rights in a single area such as land use.

Land Use Regulation in a Democracy

Land use regulation is rooted in the police power to prevent harm, but defining harm is not easy. There is the problem of trade-offs, since preventing harm to one person will often cause some other harm to another person, and there is the problem of uncertainty and defining acceptable risks. The risk of harm is pervasive in human action, so that the police power leads not to the limited "nightwatchman state" postulated by Robert Nozick, among others, but to the imposition of a set of basic values that govern. The reach and scope of the police power are particularly evident in land use regulation, because every action must *take place* in some location, and thus involves neighbors or future occupants of the site who may be affected. And the situation is complicated by the fact that the importance of different harms and benefits changes with changing circumstances and changing values. The doctrine of ancient lights, for example, was a part of English common law that forbade neighbors from depriving each other of the sunlight through construction of tall buildings or fences. It was abandoned in the early years of the nineteenth century as an impediment to economic growth, but has recently been revived by some state courts in cases involving protection of solar energy systems.

In this spirit, Michael Goetz and Larry Wofford propose that in order to understand zoning we must shift our attention "from gains-from-trade (situation) to a system of rules to deal with change (process)."[28] The main problem Goetz and Wofford see for a process perspective is "an apparently irreconcilable conflict between the need for stable and continuous expectations, and modification of established rules or procedures dictated by either changing circumstances and/or some sort of societal consensus."[29] This is a problem, but it is not impossible to deal with. Social regulation does not usually change wildly and randomly, but rather gradually, with the support of large sections of the population to whom such changes appeal.[30] Newly emerging community standards may prevent someone from profiting from the use of her land as much as she might have under a previous standard, but in a democratic and decentralized society, such changes will emerge sufficiently slowly, and with sufficient warning, that people can plan for possible changes well in advance of their occurance.[31] The U.S. pattern of multiple levels of government provides a means of experimenting with small variations in rights at the local level with the necessary level of political support increasing as larger changes require the consent of higher levels of government.

The issue of particular concern in any decentralized system is that the local units will internalize benefits and externalize costs without regard for the effect on surrounding units. This is just as true for local government's use of land use regulation as it is for private landowners' use of their land. Both homeowners and renters, in effect, buy into a neighborhood as well as a home. When the neighborhood is a self-governing suburban town the problem is to extend rights to residents of the region as a whole without eliminating decentralized government. Thus it is quite appropriate that the main thrust of regulatory reform in the area of land use has been toward creation of a framework of state regulation of local land use controls, as well as requirements that various potential impacts of these controls be investigated and compensated for in local plans.[32]

California, for example, has adopted a "fair share" plan that requires all towns to accept a share of regional housing needs for each income level as long as there is available land. In a related area the California State Supreme Court ruled that the quality of a child's education should not be limited by the amount of taxable property per child located in the child's town. As a result the state government has had to allocate funds to equalize educational opportunities. This is an important, though insufficient, step toward tax sharing plans that eliminate intra-regional competition to gain tax revenues and avoid causes of expenditures.

Regulation suffers from enforcement problems precisely because, as a means of allowing a measure of decentralization of control, it leaves the initiative in the hands of those being regulated. Thus it is important that those on whose behalf the regulations exist are given the right to take independent action. An essential step toward this is the gradual recognition by the courts that non-residents and non-landowners are entitled to standing to challenge in court local measures that affect them. There are also a number of examples of zoning based on performance standards, which more clearly specify the harms to be prevented and the benefits to be encouraged, and allow flexibility in meeting these goals.

Useful and important as these reforms are, they need to be accompanied by efforts to change the cultural patterns maintained by exclusionary land use regulations. Zoning is shaped by Americans' desire for tranquility at home and in their neighborhoods, and by their fear that people different from themselves will create conflicts. Homeowners in particular fear increased density housing, whether for renters or condominium owners, because it carries with it the image of the city, with its crime, deviance, and contact with other ways of life, and is often associated with racial minorities. Constance Perrin investigated the roots of homeowners' fear of increased densities and found that it reflects the view "that unwanted social contact and the possibility of social conflict are best dealt with by the single-family detached house in a socially homogeneous block."[33] She concluded that "lacking objective, qualitative, systematic, and credible information about how people negotiate their differences, social frights are perpetuated, and segregation by race and income is the social tranquilizer."[34]

This tradition of exclusion as a means of avoiding conflict is a cultural heritage of our private property system. The basis of private property is the right to exclude others, and our identification of freedom with private property encourages us to employ exclusion as the solution to any potential conflict. The tradition of citizenship and democracy, which provides resources for dealing with and resolving conflicts, seems to be regarded as a fall-back, an unfortunate necessity, rather than as a social process of great value in daily life.

The homogeneous residential neighborhood is no longer as homogeneous as it once was, as a result of the changing demographic structure of the United States. Where, at the peak of the baby boom, the majority of U.S. households contained two parents with children in the home, this is now only one pattern among many. Neighborhoods of detached single-family homes now house single individuals, single parents, couples without children, couples whose children have left, and families where both husband and wife are working, and very few housewives who keep an eye on the neighborhood during the day, watch children, and maintain social contact between neighboring families. Homogeneity and exclusion are even less suited to their task than they once were, while democratic conflict resolution is needed now more than ever.

Conflict resolution is not an area in which Americans have a great deal of experience. Our legal system encourages an adversarial approach rather than trying to reach agreements that both sides can live with and that would enable them to work together in the future. Experiments with environmental conflict mediation and with community dispute resolution boards outside of the legal system are steps in the right direction.

Privatization of zoning restrictions will not make it easier to resolve land use conflicts. The extension of the form of rights embodied in private property will only strengthen people's belief in exclusion as the solution to social problems. It is certainly true that land use regulation can be used by the more powerful to strengthen their own position at the expense of the less powerful, but so can the lack of regulation. The solution lies in extending a wider range of both human rights and material resources to those with less power and property.

Notes

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27. Charles Reich, "The New Property," *The Yale Law Journal* 73 (April 1964): 733–87. A similar usage, involving the modes of election of local judges, can be found in Josef M. Broder, "Citizen Participation in Michigan District Courts," in *Law and Economics: An Institutional Perspective,* eds. Warren J. Samuels and A. Allen Schmid (Boston: Martinus Nijhoff, 1981), p. 178.
28. Michael L. Goetz and Larry Wofford, "The Motivation for Zoning: Efficiency or Wealth Redistribution," *Land Economics* 55 (November 1979): 472–85.
29. Ibid., p. 482.

30. A point made by Commons, *Legal Foundations of Capitalism.*
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32. Frank J. Popper, *The Politics of Land-Use Reform* (Madison: University of Wisconsin Press, 1981).
33. Constance Perrin, *Everything In Its Place: Social Order and Land Use in America* (Princeton: Princeton University Press, 1977), p. 85.
34. Ibid., p. 179.