

Understanding American Land Use Regulation Since 1970

A Revisionist Interpretation

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This article challenges the conventional accounts of the history of American land use regulation over most of the last two decades. It traces the emergence of centralized regulation in the early 1970s and presents the standard (but contradictory) explanations of what has happened to it since: the liberals' interpretation that the regulation faded and the conservatives' interpretation that it bloomed excessively. The article offers a third, more pragmatic interpretation, which reconciles the other two—that centralized regulation quietly succeeded, even into the late 1980s, as it increasingly overcame its initial practical disadvantage of unfamiliarity. The article ends by examining this revisionist interpretation's surprisingly optimistic political and professional implications for planners.

Land use regulation has probably changed more since 1970 than in any comparable period in the nation's history. Two decades ago American land use regulation consisted almost entirely of local zoning; it no longer does. Instead, it has become increasingly centralized—that is, more likely to originate with regional, state, and federal agencies rather than with local ones (Healy and Rosenberg 1979; Popper 1981; DeGrove 1984). The changes in regulation have transformed American planning: its practice, its aims, its role in American government, even its attractiveness as a career. But planners have not grasped the extent of the regulatory changes, their political meaning, or their professional consequences.

Two competing interpretations—one liberal, the other conservative—now attempt to explain the recent history of American land use regulation. The liberal view maintains that the environmental shortcomings of local land use regulation, especially zoning, led to the creation in the early 1970s of new regional, state, and federal regulatory powers. Those policies, liberals contend, were largely unable to withstand the conservative onslaught—against centralized regulation, against bureaucracy, against environmentalism—that began in the middle 1970s and crested with the Reagan administration. Thus the liberals maintain that the new centralized regulatory programs never got a chance to prove themselves. Like the local controls they were intended to supplement, they amounted to insufficient land use regulation.

The conservative perspective, on the other hand, argues that the new initiatives, far from being insufficient, created so many and such potent centralized regulatory mechanisms that the nation in effect had serious federal regulation of land use by the late 1970s and still has it in the late 1980s. The conservatives, however, maintain that the public reacted against what it rightly saw as bureaucratic overreaching; it brought conservatives to power to try to restrain the new programs, and the battle to neutralize them continues to this day. The conservatives argue that the programs in fact got a chance to prove themselves and did so too well. The conservatives believe that the centralized initiatives' key political difficulty was not that they constituted too little land use regulation as the liberals maintain, but that they constituted too much.

In this article I first examine the emergence of centralized land use regulation in America. Then I present the two existing interpretations of the overall experience of centralized regulation.¹ Next I suggest a way to reconcile the interpretations through an alternative explanation that fits the facts and explains events since 1970 better than the other two. I take a

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less ideological, more pragmatic approach: I argue that centralized regulation has unobtrusively succeeded in ways neither liberals nor conservatives appreciate. In particular, it has overcome its initial practical disadvantage of unfamiliarity, achieved wide (though often specialized) application, received substantial public acceptance, and even attained a measure of acquiescence from land use conservatives, including those in the Reagan administration. I conclude by exploring this revisionist interpretation's surprisingly optimistic implications for the future of American land use regulation. Much of the interpretation draws on but differs from my previous work (Popper 1981), which is to say that I changed my mind. I used to subscribe to the liberals' interpretation, but now I find the revisionist one more persuasive.

The rise of centralized regulation

There may never have been a time when it was as good to be an American city planner or land use lawyer as the late 1960s and early 1970s. Planning was coming alive; huge segments of the public were interested in it and its possible contributions, probably for the first time in American history. The post-World War II building boom, culminating in the record-high development rates of the late 1960s, had produced a professionally exhilarating set of environmental problems. Even more exciting, planners, land use lawyers, and their political allies had new and apparently practical solutions to those problems, which the public would accept.

There was no denying the magnitude of the country's land use difficulties. Development projects of all kinds—commercial, residential, industrial, and governmental—were getting bigger and polluting more. The interstate highway system, begun in 1956 and reaching completion from the middle 1960s on, had created vast new stretches of urban or potentially urban land. Too much of it seemed to be succumbing to formless sprawl and strip development, or to shoddily built leisure home projects, ruinous strip mines, and polluting power plants. The nation's countryside was urbanizing rapidly and unattractively.

Under the pressures that such developments caused, long-standing deficiencies in local land use regulation became clear. Zoning, the action arm of local planning and the nation's most prevalent mechanism for land use control, seemed especially fallible. Most zoning agencies and ordinances had originated in the 1920s and 1930s, and were often inadequate to cope with the 1960s' development. They could not handle huge suburban residential projects that might affect dozens of rapidly growing localities beyond the boundaries of the regulating one. They could not deal with big energy facilities that might have regional, state, or even national impacts. They could not deal with large,

complicated public works projects. In all such cases lone communities were dealing with land use questions of regional or state impacts but were making their decisions without consideration of surrounding communities and often causing harm.

Another reason local planning and zoning did not work well was that in most of the country, particularly in the small, rural communities now in the path of urban expansion, relevant laws had never really existed in the first place. Such communities espoused the American ideal of rugged individualism; many of their residents thought zoning verged on socialism. Some excellent examples of that viewpoint come from the Appalachian part of New York (Robbins 1974) and from the Missouri and Arkansas Ozarks (Lewis 1976).

In 1971 George Hartzog, director of the National Park Service, became concerned about the proliferation of commercial development on the edge of Mammoth Cave National Park in Kentucky. "I talked to those people down there about zoning," he told writer John McPhee. "'Zoning?' they said. 'Zoning?' I had the impression that I was in a foreign land" (McPhee 1977: 258). In 1971 only 30 percent of Kentucky's cities and 20 percent of its counties had zoning. Even in seemingly more urban New York state, only 40 percent of the cities had zoning, and the counties had no zoning powers at all (RuBino and Wagner 1972: 9, 16). In many rural places where zoning laws did exist, they were undemanding, unenforced, or ignored (Williams 1975).

To counter that ragged local performance, a loose coalition of environmentalists, city planners, land use lawyers, state and federal officials, progressive business people and developers, and citizen activists of all kinds emerged, bearing an alternative—more precisely, a supplement—to local land use regulation: centralized land use regulation. The coalition's goal was new regulation that would operate at higher levels of government and would apply mainly to projects that were large or in environmentally sensitive areas.

The Rockefeller Brothers Fund Task Force on Land Use and Urban Growth produced a report, *The Use of Land*, which became one of the best-known documents of the movement for higher-level regulation (Reilly 1973). It declared, "Important developments should be regulated by governments that represent all the people whose lives are likely to be affected by it, including those who could benefit from it as well as those who would be harmed by it. Where a regulatory decision significantly affects people in more than one locality, state, regional, or even federal action is necessary" (Reilly 1973: 27). From the late 1960s well into the 1970s, that approach received the imprimatur of the nation's leading land use lawyer, Chicago's Richard Babcock (1966), the National Commission on Urban Problems (1968), the American Society of Planning Officials (Heeter 1969), Ralph Nader's Study

Group on Land Use in California (Fellmeth 1973), the American Bar Association (Fishman 1977), and the American Law Institute (1977). In yet another of the period's authoritative-influential documents, sponsored by the Council on Environmental Quality, Babcock's law partners Fred Bosselman and David Callies called the rising movement "The Quiet Revolution in Land Use Control" (Bosselman and Callies 1972).

As an exercise in intellectual advocacy, interest-group politics, and the self-advancement of the planning profession, the Quiet Revolution was remarkably effective. In 1969 only Hawaii—a state whose development patterns, land market, and local government structure differed deeply from those of the rest of the country—had a state law regulating land use, and it had been passed in 1961, another era entirely. By 1975 the Quiet Revolution had achieved at least 20 new environmentally-oriented state land use laws, mostly in the northeast, the upper midwest, and the far west. Those laws variously regulated the siting and operation of all large development projects, particular kinds of large projects such as power plants or strip mines, or projects in environmentally sensitive places such as coasts, mountains, wetlands, and farmlands (Rosenbaum 1976; Healy and Rosenberg 1979; Popper 1981; DeGrove 1984). Thirty-seven states had new programs of statewide planning or statewide review of local regulatory decisions (Council of State Governments 1976: 23–26).

At the federal level the Quiet Revolution succeeded in obtaining programs where the federal government funded state ones. Through the 1972 Coastal Zone Management Act, the U.S. Department of Commerce gave the 30 Atlantic, Pacific, Gulf, and Great Lakes states grants totalling about \$16 million a year to plan for and regulate coastal development. The 1977 Surface Mine Control and Reclamation Act gave the states \$110 million annually in Interior Department grants to regulate strip mining. The 1970 Clean Air Act, the 1972 Clean Water Act, and the 1974 Safe Drinking Water Act gave the states a total of nearly \$3 billion yearly in Environmental Protection Agency grants to carry out regulatory and construction programs with complex but definite land use implications, including controls on the location of new projects (Natural Resources Defense Council 1977: 40–97). The 1973 Flood Disaster Protection Act required that states and localities regulate development in flood plains before they (and their residents) could buy federal flood insurance or receive federal flood disaster aid (Natural Resources Defense Council 1977: 121–32).

It is hard now to recall the euphoric excitement of the land use community in the early 1970s, but it was wonderful while it lasted. Congress even came close to passing the ultimate Quiet Revolution legislation, the National Land Use Policy Act—which amounted to an extension of the Coastal Zone Management Act

to all noncoastal areas of the country or, from another perspective, a national expansion of the state comprehensive laws regulating all large developments, such as those in Florida, Oregon, and Vermont (Plotkin 1987: 149–200).

The National Land Use Policy Act, as the epitome of the Quiet Revolution, would have given federal grants (\$100 million annually in the 1975 bill, probably coming from the Interior Department) to draw up statewide land use plans, devise procedures to protect environmentally sensitive areas, and regulate big private developments and public works. The legislation was introduced under varying forms (and names) every year from 1968 to 1975 by liberal Democrats such as Arizona Representative Morris Udall and the late Washington Senator Henry Jackson. It reached its high tide in 1974, when the Senate passed it by a wide margin, as it had in 1972 and 1973. But the House rejected it by seven votes when President Nixon withdrew his support, reputedly in a bid for conservative votes to prevent impeachment (Lyday 1976: 40).

Planning, legal, and environmental organizations closely watched the act's progress. As a low-ranking staff member at the Chicago headquarters of the American Society of Planning Officials (ASPO) in the early 1970s, I knew that high-ranking ASPO staff members made nearly daily telephone calls to Washington to check on the bill. I assumed that much more was done at the American Institute of Planners (now merged with ASPO to form the American Planning Association), which was in Washington and, unlike ASPO, had a lobbying operation. An ASPO deputy executive director believed the act's passage would increase planners' average income by \$2,000. Land use lawyers would get even more. Yet the planners, lawyers, and environmentalists were also animated by a truly public-spirited desire to show how well they would perform if given the opportunity. In 1974 the act's narrow defeat seemed to them an annoyance that would soon be rectified. Their chance would come again.

The liberal point: too little centralized regulation

Land use liberals now interpret the 1974 defeat of the National Land Use Policy Act as a near miss, after which the cause of centralized land use regulation went into decline. The liberals argue that there never was enough centralized regulation, never had been, probably never would be. They believe the years since 1974 have not been good to the Quiet Revolution; in a noisy counterrevolution, the political climate has turned hostile. The reasons are familiar: a more difficult and a volatile economy (for instance, in the energy and agricultural sectors), a resurgent conservatism,

strained government finances, growing public distrust of such devices as regulation and federal grants in all fields of policy, a disenchantment with government itself.

The liberal perspective emphasizes that in recent years states have passed few new land use laws and most states still lack genuinely strong ones. Moreover, in the states that have them, the regulations have often been weakened in scope, budgets, staffing, and enforcement (Popper 1981: 116–53, 165–68; DeGrove 1984: 217–31, 308–31). Throughout the 1970s, for instance, the Florida comprehensive and California coastal programs had no enforcement staff whatever (Popper 1981: 119). Sometimes the state regulatory bodies deliberately effaced themselves, lowered their bureaucratic profile. Beginning in the late 1970s, for example, the Florida and Vermont land use programs shortened their applications and combined them with those of other state environmental agencies. They also began to hold joint hearings with state, local, and federal agencies.

By the early 1980s it was distinctly more possible in many places than it had been five years earlier for conservative state and local politicians to successfully take positions against centralized land use regulation. In 1972 Governor Ronald Reagan opposed a voters' initiative to create state commissions that would regulate development along the California coast. But when the initiative passed, he made predominantly environmentalist appointments to the commissions that were in regions where such sentiment was powerful—for instance, the areas centered around San Francisco and Santa Cruz. By contrast, in his 1982 gubernatorial race California Republican George Deukmejian made the coastal commissions a special target. Once in office, he substantially reduced their personnel and funding. In 1987, for instance, he cut \$400,000 out of a budget of \$5 million and closed the Santa Cruz and Santa Barbara offices.

At the federal level, there was a comparable deterioration of early 1970s planning hopes and of the federal support of state regulatory programs. At the urging of many developers and localities, the Reagan administration in effect abandoned, for example, the Coastal Zone Management Act. The administration never asked for funding for it in any of its annual budget proposals; Congress had to supply the funding every year. The Reagan-era directors of the program were always publicly committed to terminating it. Many talented staffers left and their jobs went unfilled. Some operations, such as those that supplied special regulatory funds for states whose coasts were experiencing intense energy development, have been terminated (Mitchell 1986: 325–26). The Clean Air, Clean Water, Safe Drinking Water, Flood Disaster Protection, and Surface Mine Control and Reclamation acts have suffered similar neglect (Hays 1987: 501–4).

Some planners, lawyers, and environmentalists experienced a nostalgia for the National Land Use Policy Act (for example, Strong 1981). The feeling was irrational, but understandable. The legislation seemed the great might-have-been of American land use planning and the Quiet Revolution, the missed opportunity that would have convinced the public that centralized regulation could deliver something it wanted. In 1978, three years after the bill had lost any chance of passage, a group of land use professionals established the American Land Forum (I later joined its board), in large part to keep alive the impulses that animated the National Land Use Policy Act.

Thus in 1983 the forum (which by then had become the American Land Resource Association) held an open meeting at its Bethesda, Maryland, headquarters on the topic "Toward a Land Resource Policy Agenda." Charles Little, founder of the forum, suggested, "I'd like to reopen something that really interested me. Is there a piece of overarching legislation that isn't like the National Land Use Planning and Policy Act of 1974 but is something we can concoct here that would provide the policy context for all of these locally wonderful things to happen? . . . I don't want to lose sight of our need to have a single, consensus-building kind of approach that would be something we would take to the doorstep of Congress and say, 'Look, here's exactly what you ought to do.'" Neil Sampson, head of the National Association of Conservation Districts, then observed, "There is some virtue in reconceptualizing the land use bill, in tearing it apart and seeing what it was and wasn't." It was left to me to be "bothered by the continual returning to the idea of a National Land Use Policy Act or redoing it or in fact reconceptualizing it. That strikes me as the political equivalent of never getting over whomever it was you had a crush on when you were seventeen. There's a lack of consensus here about what overarching idea would replace the 1974-style approach" (American Land Forum 1983: 21–22). That was a minority opinion. The clear sense of the meeting was that the country needed more centralized land use regulation.

The conservative counterpoint: too much centralized regulation

Land use conservatives—most developers, many local officials, nearly all libertarians, and certainly political figures such as Ronald Reagan and James Watt—see the matter differently. They emphasize the vast amount of centralized land use legislation that has passed since 1970, as well as the bureaucratic toils in which the laws have enmeshed unsuspecting homeowners, developers, and localities. The conservatives like to count up numbers of laws, the contradictions between them, and the resulting long application-processing times that lead to regulatory horror stories.

Conservatives then tell the stories to embarrass and cow the agencies administering the laws (Porter 1986; Pacific Legal Foundation 1985).²

The conservatives can clearly produce strong evidence of excessive regulation, often out of the mouths of liberals. Chicago lawyer Fred Bosselman, shortly after the last defeat of the National Land Use Policy Act (which he helped draft), wrote that "Congress has already passed so many federal land use regulations that in a few years only a rare development project of any size will get by without two and probably more federal approvals" (Bosselman 1975: 136-37). His prediction came true. By 1979 Lance Marston, the Interior Department official who might well have directed the implementation of the National Land Use Policy Act had it passed, estimated that there had been "at least—at least—a 20 percent growth in federal land use programs in the last three years" (Meyer 1979: 58, emphasis in the original). He was referring to such legislation as the Surface Mine Control and Reclamation Act and the amendments to the Clean Air, Clean Water, and Safe Drinking Water acts—all of which, like the National Land Use Policy Act, relied primarily on federal grants to states. In that light, the failure of the more lightly funded Land Use Act became almost immaterial to conservatives: far too much legislation like it (and worse, because better funded) sprang up in its wake.

At the state level the growth of land use legislation was equally impressive and equally objectionable to conservatives. By the early 1980s California had 41 state agencies besides the coastal commissions with overlapping regulatory responsibilities for the coastal zone—the Energy Commission, the Forestry Board, the State Lands Commission, the Public Utilities Commission, and so on. Six Minnesota agencies exercised 679 regulatory (and nonregulatory) powers (Popper 1981: 161; see also Bosselman, Fuerer, and Siemon 1976). These clear-it-with-yet-another-regulator programs inevitably antagonized the regulated. The theme of runaway regulation—with its subthemes of delay, expense, paperwork, inconsistent rules, disappointment, and injustice for applicants—figured strongly in the important 1987 Supreme Court case, *Nollan v. California Coastal Commission*, which at a minimum invalidated much of the commission's regulation concerning beach access for the public. The counsel for the victorious plaintiffs—a family that had sought to demolish a dilapidated beach house in Ventura but was overruled by the commission, which wanted plans for more public access to the beach portion of the property—was the Pacific Legal Foundation in Sacramento, probably the nation's leading conservative public-interest law firm. When one counts both state and federal agencies, most of the private land in America and all the biggest projects on it have been subject throughout the late 1970s and the entire 1980s

to large amounts of centralized regulation—multiple, frustrating layers of it. Private land is now one of the most centrally regulated sectors of the American economy.

Just as centrally regulated, unbeknownst to most land use liberals, are America's *public* lands—the third of the nation, primarily in the deep-rural, intermountain west and Alaska, which the federal government owns. Those are the lands of the Interior Department's Bureau of Land Management (the largest federal land agency, which holds a fifth of the entire United States), the Interior Department's National Park Service and its Fish and Wildlife Service, and the Agriculture Department's Forest Service: the country's national parks, forests, wildlife refuges, public grazing areas, and the federally designated wildernesses within those lands. California, the nation's most populous and in many ways most urban state, nonetheless is 45 percent public land, primarily away from the coast and especially east of the Central Valley. Arizona is 44 percent public land, Wyoming 48 percent. Alaska, Idaho, Nevada, Oregon, and Utah are over half public land; Nevada is an astonishing 86 percent public land. The federal holdings comprise much of America's fabled wide open spaces and its surviving frontier (Popper 1986). They are the source, through federal leasing to private contractors, of half the nation's timber, a third of its known coal and uranium reserves, four-fifths of its oil shale, and similarly large proportions of its copper, silver, lead, natural gas, phosphate, potash, and grazing grass. The holdings amount to a second land tenure system in the United States, almost a sore-thumb outpost of federal-*rentier* socialism in the American economy. They are governed by federal land use laws entirely separate from those that apply to private land.

After 1970 that body of federal public-land law expanded rapidly, just like other forms of centralized land use regulation. The prime federal statute regulating the public lands is the 1976 Federal Land Policy and Management Act, which even sounds like the unpassed National Land Use Policy Act. Under the 1976 National Forest Management Act, the Forest Service is conducting what may be the largest, most detailed planning-and-regulation exercise in American history on the service's 298,000 square miles, an area more than a tenth larger than Texas (see Hunt 1987; Wilkinson and Anderson 1987). The 1980 Alaska National Interest Lands Conservation Act created ten new national parks, most bigger than any in the Lower 48. At least ten other major pieces of legislation to preserve the federal lands passed between 1970 and 1980 (Nelson 1982: 27).

All those federal-land laws greatly resemble the post-1970 private-land laws that the federal government passed. Not only do both sets of laws centralize and regulate, but they also deal with impacts that

cross local and state boundaries, have a strong environmental-planning focus, and are aimed at managing growth (in the public-land case, for example, by establishing a moratorium on new coal leasing on the land in 1971 through 1981 and again in 1983 through 1985). In addition, both sets of laws try to blend conservation and development (on the public lands, through the doctrine of multiple use) and seek to preserve environmentally sensitive areas (on the public lands, national parks, wildernesses, wildlife refuges, and trails). As with the private lands, the liberal centralized regulatory efforts on the public lands provoked a conservative counterreaction that Ronald Reagan symbolized. Other potent symbols of revitalized conservatism on the public lands were James Watt, Reagan's first Interior Secretary, and the Sagebrush Rebellion, the grassroots western attempt to shrink the public-land holdings and loosen the laws regulating them. Reagan, Watt, and the Sagebrush Rebellion were highly successful, at least at the latter task: oil, gas, mineral, and timber leasing accelerated, and the government opened more land to those efforts (Popper 1984). The same pattern played itself out in the many states, both western and eastern, with large holdings in state parks and forests. (Eleven states, including such eastern ones as Connecticut, Florida, Louisiana, Michigan, Minnesota, New York, and Pennsylvania, are more than one-tenth state lands [Pekkanen 1983: 178].)

The conservatives maintain that the new programs, whether on public or private land, have overreached, gone too far. They also argue, more tellingly because less ideologically, that the programs have fallen short of many of their stated objectives even when sympathetic liberals rather than hostile conservatives administer them. It can be difficult, for instance, to show any direct, indisputable environmental results from the programs (Popper 1981: 193-94). Moreover, if the previous, solely local regulation was often unenforced or ignored, so is the new centralized regulation; a recent and generally positive study of seven state land use programs found that "the lack of an effective monitoring and enforcement component in the system has emerged as the Achilles heel in implementation" (DeGrove 1984: 391). The centralized programs' attempts to compel, stimulate, or provide incentives for stronger local land use regulation have often proved ineffectual in the face of local resistance. Many rural localities still have weak zoning or lack it entirely (Rudel 1984), and are comfortable with the situation. Almost 30 percent of New York's municipalities, for instance, still lack zoning (McGuinness 1987: 1)—an improvement over the 60 percent figure of the early 1970s, but not huge progress.³ And most localities are years behind in their attempts to comply with the local-planning requirements of the Florida comprehensive and California coastal laws.

More revealing, after nearly two decades of centralized programs, some planners and land use lawyers—the professional groups with the most to gain—are beginning to lose patience with the programs' deficiencies. Much of the criticism is reminiscent of the late 1960s liberal criticism of zoning (for instance, McGuinness 1987) or—most strikingly—it adopts the conservative position that almost any regulation at any level of government is objectionable excess, doomed to frustration, and also harmful to the public (for instance, Bikales 1987). By the middle 1980s, conservatives could find ample confirmation for their consistent 1970s contention that the failings of the centralized programs would turn out to be much the same as those of the local programs they were supposed to supplement or improve on. Adding more programs at higher levels of government would merely spread and amplify the defects of too much regulation.

The pragmatic resolution: increasingly familiar centralized regulation

There is a simpler explanation for the events since 1970. Centralized land use regulation did not collapse from insufficiency, as the liberals maintain. Nor did it collapse from overextension, as the conservatives argue. Instead it did not collapse at all: it continues to expand, but more slowly than liberals hope and conservatives fear. Its fortunes ebb and flow, depending mainly on the politics of the individual states, federal agencies, or land use fields that apply it; but on the whole it is quietly thriving. It is more tempered, more narrowly focused than it was in the early 1970s, less a subject of extravagant ideological claims (or even attention) from either liberals or conservatives. The basic problem of centralized regulation then was that the two groups—as well as the public at large—had little practical experience with it. Nearly two decades later, its unfamiliarity has diminished, and it is becoming utterly acceptable, even ordinary, to much of the political spectrum, including many of its former enemies. The agencies and laws embodying it are melting into almost boring respectability. But the price of achieving familiarity is that centralized regulation evolves in directions its friends and enemies alike might not expect or even recognize.

Given that perspective, a number of important features of the American land use scene of the late 1980s fall into place. There is, for example, more centralized regulation now than there ever has been, but that regulation is also less likely to be comprehensive, more likely to be specialized, oriented to particular purposes (Brower and Carol 1987). The trend already was visible in the late 1970s, when the executive director of the California League of Cities, Don Benninghoven, said, "There is no interest in statewide land use planning in California. None. Not by cities,

not by counties, not by the state. . . . We've given up on the grand scheme of doing anything statewide. Instead, we concentrate on legislation on specific problems, such as coastal protection, prime agricultural land, and preserving Lake Tahoe" (*Planning* 1977: 7). The sentiment, provocative then, is now near-conventional wisdom, for the state level has seen many new centralized regulatory efforts of specialized kinds in the 1980s: programs for hazardous waste facilities, farmland protection, wetland and floodplain regulation, groundwater protection, industrial- and energy-facility siting, sensitive-area preservation (for example, along the Maryland shore of Chesapeake Bay [Powers 1986]), state parks and forests (Fund for Renewable Energy and the Environment 1988). Every state, for example, now has some form of protective legislation for farmland (National Association of State Departments of Agriculture Research Foundation Farmland Project 1987). State parks are a newly exciting land use field (Myers and Reid 1986).

The new acceptability of centralized regulation also means that the combination of even a few single-purpose laws can easily be as effective as a comprehensive land use law of the Florida-Oregon-Vermont sort. In the late 1980s New Jersey has unobtrusively made itself a leader in combining single-purpose laws. It has state-required and state-reviewed local regulations; regional regulations for the rural fifth of the state in the Pinelands near Philadelphia and Atlantic City and for the urban 30-square-mile, high-growth Hackensack Meadowlands near New York City and Newark; state hazardous waste, coastal zone, wetland, and farmland protection laws that are among the strongest in the country (Duerksen 1983: 218-29); and the nationally unique *Mount Laurel* legislation governing the local placement and amount of new low income housing. Several of those programs only came into being after 1980. The state is seriously considering a demanding state land use plan, regional regulation of the land use impacts of transportation facilities, and a state shore-and-ocean agency with powers that would surpass those of any existing state coastal zone program.

Many of the state land use programs that dated back to the 1970s have made significant midcourse administrative corrections as centralized regulation have become more familiar in the 1980s. Most programs have tried to simplify and coordinate their bureaucratic procedures so as to defuse conservative resistance without actually undoing their regulation (Popper 1981: 165-68; Duerksen 1983: 150-68). Some programs have undergone formal self-evaluations that led to tighter regulation. The Vermont program, for instance, made two such studies (Vermont Environmental Board 1981; Byers and Wilson 1983), which finally resulted in a 1987 law that extended state regulation to developments with fewer than ten lots,

thus closing a loophole builders had previously used to escape regulation.

In some states the 1970s' centralized programs have found especially high public acceptance and made hefty political gains in the 1980s. Florida passed a package of legislation in 1984, 1985, and 1986 that amounted to an entire second-generation effort at centralized regulation, a revamping and expansion of the state's 1972 comprehensive land use law (Rhodes 1986; deHaven-Smith and Paterson 1986). Many programs tried to consolidate their political support, often by at least partially winning over such former enemies as developers and local governments—for instance, by persuading developers that the programs could improve their product and so help them charge higher prices for it (DeGrove 1984: 383-84; Popper 1981: 205-6; Wilson 1987b: 34A). The Oregon program, to take the most impressive case of political consolidation, first had to survive a series of developer-inspired voters' initiatives that would have abolished it. The challenges, in 1976, 1978, and 1982, became progressively weaker; by the middle 1980s many of Oregon's builders and some of its local governments occasionally found themselves siding with and participating in the state's key land-and-environment citizens' watchdog group, 1000 Friends of Oregon. In 1986 Florida's program was buttressed by the formation of 1000 Friends of Florida, which was modeled on the Oregon group and expected to elicit similar support from the program's previous opponents. A review of the recent experience of the 1970s state programs concluded that "it is clear that the movement to strengthen the state's role in growth management is winning new support in the 1980s" (DeGrove and Stroud 1987: 8).

At the federal level, the Reagan administration always claimed that it opposed centralized land use regulation. But when forced or embarrassed by Congress, it still undertook such measures, albeit specialized, hedged, and relatively unpublicized ones. In 1981 it agreed to the Farmland Protection Policy Act, intended to prevent federal agencies' actions from contributing to agricultural land loss; then it used the law mainly as a way to defer to state farmland protection programs (Dunford 1984). In 1982 it actively promoted the Coastal Barrier Resources Act, intended to restrain growth in selected barrier areas, such as islands and exposed mainland beaches, that are vulnerable to damage from hurricanes, erosion, and other natural hazards (and which thus often necessitate large federal flood insurance payments). In 1987 the administration proposed to triple the size of the protected area—but it would even so have totalled barely 2,000 square miles (an area about the size of Delaware) and would still have been only on the Atlantic and Gulf coasts, a relatively small proportion of the area that might have been protected (Mitchell 1986: 320-22). In 1987 the administration agreed to an expansion

of the 1977 Surface Mine Control and Reclamation Act to cover strip mines of less than two acres, a heretofore-serious loophole for coal operators. It put over 7,000 square miles of river banks into the federally protected wild and scenic river system. On the public lands it has added nearly 11,000 square miles of federally designated wilderness since 1981. The Reagan administration was not greatly enamored of centralized land use regulation but did not prove as uniformly hostile to it as its liberal critics assumed.

Because the administration *was* perceived as hostile (and not just by liberals), an interesting spillover effect appeared: the long-ignored local level of land use regulation revived in many places in the 1980s. Most planners know from experience that zoning, especially in big cities, is now more pervasive, sophisticated, and effective than it ever has been. Chicago's Richard Babcock, still the nation's leading land use lawyer just as he was over 20 years ago when he endorsed centralized regulation as a supplement to zoning (Babcock 1966; 166-84), has more recently argued that zoning has a large continuing usefulness even in the absence of centralized regulation (Weaver and Babcock 1980; Babcock and Siemon 1985). In a 1986 interview he admitted zoning's defects, then said, "But what would you substitute for it? Do you want no control over development at all? That would be turning back the clock" (Knack 1987: 23). He never mentioned centralized regulation.

Zoning and local regulation, in fact, have shown a practical adaptiveness and political feasibility that no one anticipated in 1970. By the late 1980s local regulation's surprise liveliness is particularly evident in a series of stringent (and technical) growth-management initiatives in the Sun Belt. In 1986 Los Angeles voters approved a proposition to limit the floor area ratio of new buildings in many neighborhoods to 1.5, a ballot-box downzoning from the planning department's previous ratio of 3.0. The same year San Francisco voters approved a proposition tightly controlling the height, size, and number of downtown buildings (*Zoning News* 1986a: 2). In 1987 San Diego became the largest city in the nation to try to limit its population when it passed an ordinance capping the permitted number of new residential housing units at 8,000 a year, about half the number built in 1986. Even Houston, famous as the nation's largest city without zoning, was reconsidering its stance (*Zoning News* 1986b: 2-3). Meanwhile, local planners throughout the country were exploiting the many new real-world opportunities for linkage policies (Merriam, Brower, and Tegeler 1985), impact fees (Frank and Rhodes 1987), aesthetic regulation (Duerksen 1986), controls on office, commercial, and industrial growth (Fulton 1986), development moratoria (Wilson 1987b), agricultural zoning (Toner 1984), and innovative vari-

ants on permitting systems (Gordon 1984) and master plans (Lorenzen 1987).

Liberals looking at American land use in the late 1980s might easily take comfort in the acceptance of centralized regulation; conservatives might well be pleased with the limitations on it. But neither group actually is satisfied; liberals bemoan centralized regulation's shortfall, conservatives fear its overreach. Both groups misunderstand their situation. At the federal level populist conservatives preside over a nation that has more of the centralized regulation they loathe than it has had at any point in its history. In addition, while conservatives prefer local government to the federal government, they distrust all government and regulation intensely and so cannot be truly happy about the explosion of local regulation. (That was a theme in the 1987 Supreme Court case, *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, where the Court ruled that a property owner can be compensated for an economic loss resulting from a land use regulatory decision such as a downzoning—a major conservative victory.) At the same time liberals keep wishing, mostly in vain, for more federal regulation. They do not realize that their political possibilities are now better at the state, regional, and local levels than they have ever been.

The pragmatic resolution's implications

The interpretation I have suggested has intriguing political and professional consequences that in large measure are encouraging for planners. There is now more land use regulation—centralized and local, for big projects and small, on private and public land—than ever before. The future probably will see even more regulation. Membership in environmental organizations keeps climbing steadily. The public's support for land use and environmental regulation has remained high and constant throughout the 1970s and 1980s, and shows no signs of wavering (Dunlap 1987). The Reagan administration was not able to alter that consensus, and sometimes had to accommodate to it. The liberal impulses that drove the Quiet Revolution and the National Land Use Policy Act did not decline or disappear. They won out, and nobody noticed.

Yet in one respect the Reagan-conservative approach to land use regulation achieved an odd triumph: no one expects major federal initiatives anymore. No one, including state and local governments and planners and environmentalists, relies on such initiatives (or the prospect of them) as they did in 1972 or 1975. The federal government has become dissociated from the other parties, decoupled from them. Under Reagan federalism, each level of government and each individual government goes its own way, develops and manages and finances its own programs that spring

from its own circumstances; free administrative enterprise prevails. Thus regulation can bubble up from local government and simultaneously trickle down from the state (or even federal) level. Alternatively, it need not appear at all, at any level. Or it may appear at one level and then be resisted at another, as when the federal government tries to cut back funding for state surface mine regulation or opposes state coastal zone regulation intended to restrain oil and gas drilling on the federal Outer Continental Shelf. In all such cases the rules are those of *laissez faire* bureaucratic democracy, and no outcome is foreordained (Peterson and Lewis 1986; Nathan, Doolittle, and Associates 1987).

The result can be remarkable variation across governments—here a sign of true, flexible responsiveness to the wishes of the relevant constituencies: the population gets the regulation it wants. Thus state land use regulation flourishes in Florida, New Jersey, and Oregon, but languishes in Colorado (DeGrove 1984: 291–333). Local regulation booms in California as it busts in Kansas (Rudel 1984: 494). State regulation thrives in Vermont while local regulation falters; just across the Connecticut River in New Hampshire, the situation is reversed (Merrill 1987). State and local regulators work together poorly in Maine, well in Florida and North Carolina (DeGrove 1984: 99–176, 335–70). Federally funded state coastal zone regulation performs nicely in Washington state, does not exist at all in Georgia or Illinois (Mitchell 1986: 327). The job market has adjusted accordingly; planners have gravitated to politically congenial settings. In early 1987 California accounted for 11 percent of the nation's population, but 17 percent of the members of the American Planning Association. Florida had 5 percent of the American population, 8 percent of APA's members. By contrast, New York state had 7.3 percent of the population, but only 5 percent of the APA's membership.⁴

In the late 1980s American planners have plenty to do. The development boom that began in 1982 now dwarfs the late-1960s one that led to centralized regulation. But the new boom is more geographically uneven, leaves a big hole in the center of the country. The northeast and the far west, particularly in urban and suburban areas, experience near-boomtown capitalism while much of the Great Plains (Popper and Popper 1987), the south, the midwest, and the intermountain west, especially their rural areas, undergo near depression. Moreover, planners across the nation face a daunting menu of new land use issues: acid rain, the cutoff of low income housing construction, hazardous waste, foreign land ownership, suburban traffic gridlock, deindustrialization, high-tech growth corridors, affordable housing for the middle class, the greenhouse effect, LULU blockage, aging strip devel-

opments, the disappearance of small- and mid-scale farming and ranching, gentrification that displaces the poor, homelessness, and—most extensively—the simple ugliness, inconvenience, indistinctiveness, and sterility of much new 1980s development. Large areas of New Jersey, Los Angeles' San Fernando Valley, or urban and suburban Florida can be highly affluent, boast an impressive array of land use controls, and still look vile. Improving the regulations will provide work for planners at all levels of government, including federal. In truth, the professional opportunities for planners—and the chances for genuine power—have never been greater.

But it would help if planners grasped the real nature of the American federalist system of land use controls. It is so loose, so deliberately disjointed and open ended, that it is barely a system in the sense that European elite civil service bureaucracies understand the term. The right to make particular regulatory decisions shifts unpredictably over time from one level of government to another. No principle of administrative rationality, constitutional entitlement, economic efficiency, or even ideological predisposition truly determines the governmental locus of decisions. It is more often a matter of the inevitably uncertain catch-as-catch-can pluralism of democratic power politics.

Thus in 1964 American land use regulation was totally local and appeared likely to stay that way. By 1974 it seemed likely to become more federal. In 1984 it had again confounded prophecy and become more state-level and local. By 1994 it may have shifted again, and our previous conceptions of it will once more look foolish. A future, more liberal administration might, for instance, heavily promote federal regulation, revitalize some of the mechanisms the Reagan administration has neglected (say, the Clean Water Act), perhaps even support a 1990s version of the National Land Use Policy Act. Yet over decades spanning several national political and ideological cycles, late-twentieth-century American society has consistently acquired more regulation, centralized and local, and more tolerance for it. The cycles have come and almost completely gone, often revealing themselves as ephemera, birds of political passage. Regulation has grown throughout and shown true political staying power. In much of the country and certainly in the large population centers, there seems to be more land use regulation every year, regardless of who is in power in Washington, the state capitals, or city hall. American planners should take heart from those trends. They can feel proud of their accomplishments since 1970.

Author's note

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Notes

1. A third, less widely held but more radical interpretation argues that centralized regulation sprang primarily from large development corporations more concerned with protecting their profits than promoting environmental quality. This interpretation disagrees with those of both the liberals and conservatives; it maintains that centralized regulation is objectionable not because in practice it is ineffective or excessively effective, but because it is ideologically regressive and socially inequitable. The interpretation agrees with the liberals that centralized regulation has faded since the middle 1970s. For examples of the interpretation, see Plotkin (1987) and Walker and Heiman (1981). The interpretation, however trenchant, has come solely from a small number of academics and has had no influence beyond academe.
2. McCloughry (1975) presents an early prediction of those kinds of difficulties. He is a Republican conservative who in 1982 ran for the Senate from Vermont on a platform opposing the state's land use law.
3. For a similar example from Maine, see Wilson (1987a).
4. I received this information in a computer printout from the American Planning Association, dated April 7, 1987; at the time, I was a member of the APA board and received the printout in that capacity.

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