

# Siegan Brought Up-to-Date: A Critical View of the Expansion of Zoning in Santiago, Chile

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## *About the author*



Dr. John Cobin is Professor of Economics and Public Policy at Universidad Finis Terrae in Santiago, Chile. He has also taught (part time) at other universities in Chile, including Universidad Católica in Santiago, Chile, the International MBA program at Universidad Adolfo Ibañez and Universidad Marítima (both in Viña del Mar, Chile) plus Universidad del Desarrollo in Concepción, Chile. He is active in public policy research and writing, and has completed projects for Centro de Estudios Públicos in Santiago. Dr. Cobin received his BA in Business Economics from California State University, Long Beach (1985), his MA in Business Economics from University of California, Santa Barbara (1987), his MA in Economics from George Mason University, Fairfax, Virginia (1995), and his PhD in Public Policy also from George Mason University (1996). Dr. Cobin's research has focused on evaluating urban public policies such as zoning, building and fire safety regulation, and highway construction, as well as theoretical ways to reduce economic problems associated with them (e.g., his book *Building Regulation, Market Alternatives, and Allodial Policy*, London: Avebury, 1997.) He has also written on applied micro-economic topics, policy issues such as abortion, and this introductory text *A Primer on Modern Themes in Free Market Economics* (Parkland, Florida: Universal Publishers, 1999) covering public choice, Austrian economics, law and economics, and public policy themes. In addition to his teaching and research, Dr. Cobin has been a successful entrepreneur and consultant, having started and operated three small businesses for several years.

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[99 words]

Abstract: *Bernard Siegan's critique of zoning is elaborated by the interjection of public choice and knowledge theories. An extensive review of the zoning literature shows that these important insights that have been slighted. I argue that Siegan's thesis is more congruent with these theories than some present applications of the perfect competition model by neoclassical scholars like Donald Wittman. Santiago's noble zoning plan, aimed at removing negative externalities, provides an example of how zoning will fail to serve its public interest goals efficiently and effectively as both these theories and Siegan imply. Several market-based alternatives are suggested instead of zoning.*

# **Siegan Brought Up-to-Date: A Critical View of the Expansion of Zoning in Santiago, Chile**

## **Introduction**

Santiago, Chile is a remarkable testament to the benefits of a free market. It has risen from the disastrous fetters of socialism less than three decades ago into a bustling first world city. Thanks to the influence of the so-called “Chicago Boys”, many market-based solutions have been adopted in Chile, such as private social security, balanced budgets, non deficit financing, extensive privatization of industry, and a relatively low tariff rate of 11% on nearly all goods (scheduled to be reduced to 6% by 2003 for all but a few agricultural commodities). However, government regulation has continued to expand in Chile. In October 1994, a plan was adopted to implement inter-communal zoning in the Santiago metropolitan area, wresting considerable control from localities. Santiago’s high rate of economic growth had raised concerns that culminated in a call to expand zoning regulation.

This paper considers the merits of this public policy in light of advances in modern economic theory and previous studies in the United States, in particular Bernard Siegan’s famous (and recently republished) study of the effects of non zoning in Houston. His empirical case suggests that zoning should be enjoined. Yet, while Siegan’s study is robust, it is theoretically lame. Accordingly, a theoretical rationale is presented in this paper that zoning in Santiago will fail to be efficient and effective, at least in terms of the public interest, for the same reasons that Siegan noted, plus some additional theoretical insights. Public choice and knowledge theories provide the basis for an alternative explanation of why zoning was implemented in Santiago, why it is likely to be ineffective and inefficient in promoting the public interest (complimenting the reasons that Siegan gives), and why it will be unlikely that it will ever be removed under present democratic conditions. Instead, market-based solutions, both those highlighted by Siegan and some new ones, are provided as alternatives to zoning, land use regulation, and as means to alleviate negative externalities in Santiago.

### *Purpose and highlights of the Santiago zoning plan*

The Santiago Metropolitan Regulatory Plan is a lengthy document containing many grand and noble objectives for the improvement of life in Santiago. The crafters of this plan were concerned that non-zoning in Santiago had led to significant social maladies. For instance, Edmundo

Hermosilla Hermosilla, Minister of Housing and Urban Development, contends that the “indiscriminate expansion of the metropolitan area” has led to increased “social costs”. He claims that society has expressed its “preference for modernizing the regional urban system” through the democratic process and, subsequently, the plan evolved as a “tool to explicitly orient, facilitate and regulate the community’s decisions in building, preserving and inhabiting the city.”<sup>1</sup> Architect Sergio Gonzalez Tapia notes that the plan is a basic tool in the “grand collective task” of coordinating the roles of the public and private sectors in order to improve municipal efficiency. It is a “normative and priority tool” produced by the “joint effort” of thirty-seven “metropolitan municipalities”.<sup>2</sup> Alex Figueroa Muñoz, Metropolitan Governor and President of the Regional Metropolitan Council, states that the plan will combat urban growth inefficiencies and negative externalities.

[T]he new Regulatory Plan puts a stop to the unrestrained expansionary growth of the city, which has obliged it to expand urban infrastructure at enormous cost, not only implying a violation of the natural environment, but also translating into increasingly serious problems of highway deficiency and atmospheric pollution, etc. The new regulations on land use, housing density and location of urban activities, have also been worked out with environmental conservation in mind.<sup>3</sup>

The plan’s introduction contains this summary:

The main objective of the present Metropolitan Plan aims essentially at providing norms for the use of the territory, so as to enable it to cope with the estimated population in the year 2020, in conditions and quality of life compatible with human dignity in a context of increasing economic development. Another aim emerges linked to the above: that of contributing to an equilibrium between the city and its surroundings, by tightening up the rules on the levels of contamination in soil, water and air, and at the same time formulating safety standards required for the development of sectors involving some degree of hazard for the population. Likewise, it is extremely important to preserve agricultural land and non-renewable natural resources constituting goods needed for production not only for their owners but also for the community. Finally, both the studies and the perception that exists in the cities, tell of a highly inefficient system, whose increasing complexity makes it ever more difficult to operate.<sup>4</sup>

The plan seeks to improve the quality of life by “enhancing the use of urban land...intensifying land use and increasing urban densities” where possible, “protecting the environment”, and imposing zoning that is “consistent with carrying out the socio-economic activities that sustain the metropolitan system”. In order to accomplish these goals, planners will “establish criteria and general technical standards” for urban growth limits, population densities, environmental concerns, green and recreational areas, “amenity centers”, and transportation. The state will thus attempt to harmonize the “common good” by its urban planning while preserving the “heavily compromised natural balances of the Santiago basin”.<sup>5</sup>

*Zoning as a means to correct market failure*

Many economists advocate that the market fails as a result of one or more natural or accidental defects, including monopoly, the imperfect information of consumers, public goods, and negative externalities. Conformably, the motive for zoning has always been either to mitigate negative externalities or to “improve on the market’s allocation of land” (Maser, Riker, and Rosett 1977, p. 112). Tae H. Park and Suk Heun Yoon suggest that the presence of externalities while undertaking costly redevelopment plans provides a rationale for zoning (Park and Yoon 1994). Thus, developing countries use zoning as a tool to avoid negative externalities. For instance, Cambodians have been concerned with implementing zoning policies that balance archaeological protection with tourism and development (Wager 1995).

Accordingly, the main focus of Santiago zoning policy, as represented in the objectives of the Santiago plan, is to employ talented planners with the objective of alleviating negative externalities. These objectives in Santiago have wider implications as well, being congruent with notions of planning in the United States. To illustrate, Judge Keating of the New York Court of Appeals remarked in 1968:

Zoning is not just an expansion of the common law of nuisance. It seeks to achieve much more than the removal of obnoxious gases and unsightly uses. Underlying the entire concept of zoning is the assumption that zoning can be a vital tool for maintaining a civilized form of existence only if we employ the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and all the other professions concerned with urban problems.<sup>6</sup>

Accordingly, Santiago planners presume that market failures in land use can be mitigated by government regulation. Hence, the planners have imagined a better state of affairs in Chile, which they presume is preferred by the majority Chileans, at least if sufficient steps are taken to make implementation of the plan as cost-effective as possible. Yet the ability of the planners in Santiago to effectively enhance social welfare cannot be taken for granted. Indeed, some others have wondered whether zoning effectiveness is impertinent since the problems it seeks to fix are more or less chimerical.

### **Previous scholarly work on zoning**

There are currently several theories about zoning: (1) it can only have negative effects, (2) given local spatial externalities, it can be useful socially, and (3) it can be a powerful tool of urban development (Duranton 1997a). According to William T. Bogart, there are various motivations for exclusionary zoning, which include: fiscal zoning, public goods zoning, consumption zoning, and political economic zoning. He also notes that as policy and one motive for zoning inevitably affects other motives, and that it is necessary to find the “true motivations” behind any zoning or land use controls (Bogart 1993). However, J. Michael Pogodzinski and Tim R. Sass argues that a comprehensive theory of the six effects of zoning has yet to be developed. The six effects include: supply-side effects, demand-side effects, Tiebout effects, externality effects, endogenous zoning, and rent-seeking behavior (Pogodzinski and Sass 1990). More recently, Peter F. Colwell devised a real property system that demonstrated both the need for government-run zoning and a means to eliminate zoning’s inefficiency and inequity, rent seeking and negative externality problems in particular (Colwell 1997).

However, good and sustainable zoning policy is difficult to do. Gilles Duranton argues that zoning might be able to solve some urban inefficiencies, but the task remains difficult in light of the preponderance of many inestimable parameters (Duranton 1997b). Indeed, inefficiencies in zoning policy and practice pose formidable obstacles to success, as many scholars have noted. MaryJane Lenon, Sajal K. Chattopadhyay, and Dennis R. Heffley suggest that interdependencies exist between urban areas when selecting zoning and fiscal policies which will make them locally rational but socially inefficient (Lenon, Chattopadhyay, and Heffley 1996). Vernon Henderson argues that uncertainty causes zoning to be inefficient in controlling development (Vernon 1991). Geoffrey K. Turnbull notes that zoning can produce distortions in urban development (Turnbull

1991). Patricia Burgess Stach argues that zoning has been one of a number of other factors which have undermined the efficiency of real estate developers in the United States, in places like Columbus, Ohio. Similarly, William A. Fischel argues that while collective action through zoning may be needed to overcome some free rider problems, most growth controls impose a net cost on society. Government zoning agencies may introduce distortions in the land market, although he found empirical ambiguity regarding zoning's inefficiency or ineffectiveness (Fischel 1985, 1990, 1980, 1982, 1994, 1995).

Siegan goes further and argues that zoning is both distortive and irrecoverably inefficient and should thus be eliminated (Siegan 1970, 1993). Zoning is not immune from the plethora of general critiques of regulation, which focus on its inefficiency and even its ineffectiveness. In his foreword to Siegan's landmark study on zoning in Houston (and other urban areas), *Land Use Without Zoning*, Ronald Coase remarks:

At the present time it is generally agreed that government regulation in many areas is failing. And yet the almost instinctive reaction to the situation is to ask for more, or a different kind of, government regulation. This attitude represents what Dr. Samuel Johnson called, when speaking of another enterprise, a triumph of hope over experience.<sup>7</sup>

Coase's point is simply that many people want to believe that regulation (such as zoning) can improve social welfare. In spite of the fact that such amelioration has not occurred in reality, people continue to support increased regulation, often hoping that larger budgets and staffs will make regulation more effective. The sentiment noted by Coase implies that both the public and urban planners really want to augment the social welfare by regulation and planning, or at least they have led many people to believe so, but have ended up failing in reality.

#### *Effective zoning is hampered by political imperfections*

A number of previous studies about zoning question the efficiency of the political process in providing zoning. Thomas J. Miceli argues that zoning is distortionary and serves as a means to extract rents from new entrants that exceed the cost of local goods and services they consume, which shows that local governments possess some monopoly power over land use within their jurisdictions (Miceli 1992). Leon Taylor argues that developers might be able to manipulate zoning boards into approving a project by understating its infrastructural costs, which later will saddle the community with unexpectedly high costs. A municipality's fiscal loss could be heavy if

it competes with its neighbors for economic development, and thus the board will have an incentive to pass some or all of these costs on to the developer such that social welfare is maximized (Taylor 1991).

Jeffrey Rubin, Joseph J. Seneca, and Janet G. Stotsky note that in New Jersey municipal political actors can obtain exemption from litigation by builders through developing and implementing a state-certified housing plan. This fact alters both the incentives of political actors and their behavior in making municipal choices for zoning and housing policies (Rubin, Seneca, and Stotsky 1990). David M. Henneberry and Richard L. Barrows have demonstrated that agricultural zoning may be capitalized into land values, supporting the political phenomenon that farmers vote for zoning ordinances as rational welfare-maximizing agents (Henneberry and Barrows 1990). David Mills argues that the rent seeking efforts of landowners trying to obtain land rents created by zoning may cause zoning to create social costs which could conceivably exceed any benefits of zoning. In the extreme case, non zoning is the best policy, and yet, more realistically, he argues that a better solution would be to simply sell zoning rights (Mills 1989). These studies support the public choice paradigm, at least by implication (also see Ault and Ekelund 1988).

#### *Zoning's affect on real property prices*

A number of studies have shown that zoning has a considerable impact on real property values, suggesting that zoning's institutional impact should be taken seriously. Pogodzinski and Sass provide evidence that while land-use regulations seem to "follow the market", without appreciably affecting housing values, zoning regulations have significant effects them (Pogodzinski and Sass 1994). Paul K. Asabere and Forrest E. Huffman show that land zoned for industrial use in Philadelphia was associated with sharp (58%) price discount, at least in part due to the slowness in adjusting zoning regulations (Asabere and Huffman 1991). Louis A. Rose likewise shows how zoning affects urban land prices, accounting for a large percentage of interurban price differentials (Rose 1989). James M. Holway and Raymond J. Burby found that zoning and building regulation contributed to the lowering of floodplain land values (Holway and Burby 1990). Accordingly, there is evidence that zoning dramatically affects real property prices, especially in urban areas. However, Steven M. Maser, William H. Riker and Richard N. Rosett performed a regression analysis and found that no real price effect could be attributable to zoning in Rochester, New

York. Nevertheless, they concluded that zoning is ineffective in improving on the market's allocation of land (Maser, Riker, and Rosett 1977).

*Calls for more flexibility in zoning*

Scholars have pointed out that one means to reduce inefficiencies in zoning would be to make it more flexible. For instance, a more flexible (non-mechanistic) zoning policy exists in Britain, which still treats each application for development on its own merits (Gilg and Kelly 1997). Asabere and Forrest E. Huffman found that some market price distortions are caused by zoning which might be mitigated if zoning policy were made more flexible (Asabere and Huffman 1997). Peter Clough notes that a practically irreversible, inter-temporal negative externality is caused by urban expansion into rural areas which could be solved by planning. While tradable development rights have high efficiency, they run up against many legal, practical and political obstacles. Therefore, he suggests that flexible zoning is the best practicable option, even though there will be losses in allocative efficiency from such a policy (Clough 1996).

*Market-based strategies can partially offset zoning problems*

Some scholars have suggested that inefficiencies in the zoning process and problems in dealing with externalities might be alleviated by using market mechanisms. David Brownstone and Arthur De Vany argue that land parcels can be privately "scaled" to internalize externalities in spite of zoning being present (Brownstone and De Vany 1991). Similarly, Joseph Gyourko further argues that the use of impact fees provide flexibility in pricing entry into municipal sectors and reduces incentives to extend zoning policy (Gyourko 1991). In addition, a lot of work has been done analyzing the efficient use of developers in the decision making process. William A. Fischel notes that the development of Foster City by a single landowner was remarkably efficient, although he also adds that this case is not so much evidence against zoning as it is evidence of the efficiency of large-scale private development (Fischel 1994).

Dennis Epple, Thomas Romer, and Radu Filimon show that institutional effects are important in metropolitan zoning decisions, since developers do not choose exclusionary zoning when they make decisions and thus provide zoning that offset deadweight losses (Epple, Romer, and Filimon, Radu 1985). In sum, efficient patterns of development are possible if competitive landowners or developers control zoning decisions (Epple, Romer and Radu 1988). David E. Dowall compares performance in Bangkok's land and housing markets in 1974-84 and 1988-90,

the results which show that, despite more conversion pressure and price increases but also without any zoning restrictions, developers are still able to provide considerable amounts of affordable housing through decentralized development projects (Dowall 1992). The upshot of these studies is that the practice of zoning can be improved by injecting market-based alternatives for planning and alleviating negative externalities.

#### *Externalities and zoning*

Scholars have researched zoning's effectiveness in dealing with negative externalities for decades. Such work is particularly important because the reduction of negative externalities is the main objective in Santiago and other urban centers. In their study of Pittsburgh, John Crecine, Otto Davis, and John Jackson found that urban property markets exhibit a "great deal of independence" and they were unable to identify any of the pervasive negative externalities that zoning seeks to alleviate. Thus, they concluded that "[t]here would seem to be little doubt but that the evidence reported here suggests that the entire practice of zoning and land planning needs to be reconsidered" perhaps by "relying more fully upon the pricing mechanism" (Crecine, Davis, and Jackson 1969, pp. 81, 93, 95-6). In a later empirical study of Pittsburgh, Frederick Reuter arrived at a similar conclusion (Reuter 1973, p. 113).

Correspondingly, Arik Levinson argues that negative externalities caused by pollution can be better alleviated replacing certain zoning restrictions (which actually augment social harm) with transferable development rights (Levinson 1997). Zoning may in fact be a cause of externalities due to urban sprawl, even though it might actually raise the utility level of poorer people via setting suburban minimum lot sizes (Pasha 1996). However, William Stull found evidence to the contrary in Boston, a metropolitan area which he says is characterized by substantial urban interdependence (Stull 1975, pp. 552-553). Thus, in Stull's analysis, zoning may be effective in alleviating negative externalities, leaving us with conflicting empirical results.

#### *A new direction in zoning research is needed*

Conceivably, such empirical research may be misdirected. These studies focused on determining whether urban areas are significantly inundated with certain negative externalities which can only be effectively coped with by zoning. Instead, a more fundamental question might be considered first: "Is effective and efficient zoning *possible*, in terms of enhancing the public interest?" After all, it is much easier to state grand and noble objectives like those in the Santiago plan than it is to

actually accomplish them. Can the Santiago planners effectively achieve the ample coordination and social betterment they imagine?

Taken as a whole, the literature on zoning highlights four basic points. First, zoning is an important institution that should be taken seriously by scholars, who are still sharply divided over whether it is socially beneficial or not. Moreover, the current theory of zoning is incomplete, having failed to integrate a number of significant variables into one or more robust and cogent theories. Second, improvements in zoning policy are thought to be feasible by means of making it more flexible and by injecting market-based enhancements into the process. Third, there is a preponderance of evidence (although not entirely conclusive) which suggests that zoning has been inefficient and ineffective generally or, at least, in correcting market failures. Fourth, problems in the political process tend to debilitate zoning's ability to meet its public interest objectives and, in fact, cause zoning to create net social losses at times. In this paper, I extend these latter two points by incorporating some relatively neglected insights from modern economic theory. In doing so, a strong nexus will be made with Siegan's work that serves to enhance his position, and to extend his analysis to see why public interest zoning will fail in Santiago.

Indeed, the "triumph of hope over experience" sentiment is problematic in light of modern economics and public policy research. Upon closer examination, it subsumes a rather naïve view of human action in the political process. The motivation of planners is frequently presumed to be benevolent at best and benign at worst, and is thus frequently an exogenous factor in models of economic policy. But can planners consistently subordinate personal goals in favor of *public* betterment goals? Do planners primarily and genuinely aspire to improve *social* conditions through zoning. Is it correct to ubiquitously attribute planning failures to unforeseen obstacles and deficient resources?

In recent years, economists and policy researchers have used public choice and Austrian<sup>8</sup> knowledge theories to reject the naïve view of government and the supposition that market failure is more troublesome than government failure. They have debunked the market failure paradigm<sup>9</sup> with both theoretical advances<sup>10</sup> and historical evidence of failed government regulation<sup>11</sup> (which often augments the problems it is supposed to curtail).

### **Theories relevant to zoning that have been slighted**

While zoning exists in many places, and is often heralded as successful, it is not clear that it has been effective or efficient in terms of the public interest or relative to unfettered land use in the market. The extensive literature on zoning, with somewhat heterogeneous results, indicates that zoning causes important institutional and incentive effects in markets and the political process that raise social costs, and leaves many scholars questioning the effectiveness or efficiency of zoning. Knowledge and public choice theories, along with studies on real property regulation, provide powerful explanations why zoning and other real property regulation will likely be ineffective and inefficient in terms of the public interest, and likewise carry potent implications for zoning in Santiago.

#### *Knowledge deficiencies in zoning*

The theory of dispersed and fragmented social knowledge, what has come to be termed *the knowledge problem*, was originally used by Friedrich von Hayek and Ludwig von Mises in the Austrian critique of central planning. As Hayek notes, “it is a problem of the utilization of knowledge not given to anyone in its totality” (Hayek 1945, p. 520). Social knowledge is dispersed among individuals in fragments. However, individuals are able to act in spite of incomplete knowledge because the price system communicates enough information to facilitate economic choices as well as to coordinate human action. Thus, without any single mind having comprehensive knowledge, the market can function. As Hayek says, “The most significant fact about this system is the economy of knowledge with which it operates, or how little the individual participants need to know in order to be able to take the right action” (pp. 526-527).

Conversely, central planning is impossible because planners do not have sufficient knowledge to allocate resources. Moreover, even on a local scale, planning boards face the same knowledge problem as central planning regimes. From the outset, finding a committee of expert planners is arduous and perplexing. Indeed, Murray Rothbard points out that choosing expert planners is beyond the capabilities of government. “Not only does government lack a successful test for picking the proper experts, not only is the voter necessarily more ignorant than the consumer, but government itself has other inherent mechanisms which lead to poorer choices of experts and officials” (Rothbard 1970/1962, pp. 775-776)<sup>12</sup>

To be effective, planners must not only process an enormous amount of data but, as Thomas Sowell notes, “the knowledge needed is a knowledge of *subjective patterns of trade-off that are*

*nowhere articulated*, not even to the individual himself” (Sowell 1980, pp. 217-218). Furthermore, George Selgin argues that “economic administration of resources ultimately depends upon correct [present] anticipation of conditions (for example, consumer preferences) of the *future*” (Selgin 1988, p. 91)

The solution to any policy problem is divided among numerous individuals and it is simply not possible for planners to know all of the information currently needed, to find out the unarticulated subjective preference information needed, or to correctly anticipate future conditions. Thus, the knowledge problem makes most, if not all, government regulation impossible. Even the best planners (who are truly motivated to serve the public interest), plus many pages of carefully crafted regulations, cannot possibly provide optimal resource allocation, and will almost certainly not be able to improve it. Accordingly, Randall Holcombe argues that trying to improve the quality of life by good planning is both incredulous and hazardous on account of the knowledge problem. (Holcombe 1995, pp. 15-16).<sup>13</sup>

Economic activity is too complex to be orchestrated by expert planners. Surely zoning a major metropolitan area like Santiago, with more than four million inhabitants and a vast interconnected system of exchange and countless interactions producing economic resource allocation, cannot be considered a trivial task. As noted previously, the Santiago planners themselves admit the intricacy of the system they seek to regulate in the plan’s introduction: “both the studies and the perception that exists in the cities, tell of a highly inefficient system, whose increasing complexity makes it ever more difficult to operate.”<sup>14</sup> Santiago planners, even if they have admirable and thoughtful designs, cannot hope to garner the requisite knowledge to provide more efficient and effective zoning than markets can. Having excellent and noble intentions to alleviate negative externalities does not grant sufficient prowess to overcome the knowledge problem. In fact, well-meaning planners might actually make the situation worse. Accordingly, Santiago planners will fail to be efficient and almost certainly fail to be effective (at least in terms of the public interest) on account of the knowledge problem. Moreover, when regulators are *not* motivated by the public interest, the knowledge problem is effectively superseded by public choice problems.

#### *Public choice problems that affect zoning*

A public choice arises when a choice or decision by one person is also a choice or decision for another person. The theory of public choice is simply the application of economic theory to

government and public policy, in that it extends basic economic premises (like self-interest) to politics. Public choice theory suggests that political actors are motivated by self-interest before they are elected or appointed to public office and continue to be so motivated afterwards. Despite enthusiastic claims to the contrary, politicians do not primarily (if at all) serve the public interest. Even if they wanted to be altruists, the nature of the democratic process with its competing special interest groups (SIGs) will tend to make their public decisions benefit private interests.

The key insight of public choice theory is that public benefits can be successfully concentrated on SIGs by widely dispersing the costs in society. As Peter Boettke notes, “the logic of the political process is to concentrate benefits on well-informed and well-organized interest groups, and to disperse the costs among the ill-informed and unorganized mass of voters” (Boettke 1992, p. 67). Government is not something that stands above the market but runs parallel with it, and each seeks to fill the demands of consumers or citizens. While the baker (as Adam Smith says) bakes his bread to satisfy his self-interest, he inadvertently benefits society. Yet the political “market” produces benefits for small groups but generates detrimental effects in society. Stated tersely, while voluntary market transactions produce positive sum games, most political transactions produce negative sum games.

Accordingly, public choice theory has shattered the romantic view of the government, and has toppled the dominant quixotic vision of politics which had been reflected in mainstream welfare economics (i.e., market failure theory). Politicians and bureaucrats, rather than acting in the public interest, act as any other economic agent in society. They respond to political pressures, regardless of any negative consequences to the public interest. Political actors do not have more moral turpitude than other people, but they make choices as any self-interested person would who faces political incentives. They act purposely to remove their uneasiness, rather than forwarding the public interest by executing orders from voters or superiors ahead of (or in spite of) their own interests.

Consequently, along with the older notion of market failure, public choice theory has made the idea of “government failure” a permissible and powerful explanation for social and economic problems. Public choice theory rejects both the possibility of formulating an objective social welfare function that can be maximized by planners, and the notion that planners are motivated to pursue it. All individuals, whether in the political or private sector, make choices based on private

assessments of costs and benefits. Thus, in any positive theory or empirical analysis, it is now necessary to endogenize politics in models for economic policy-making, without romanticizing the political process.<sup>15</sup> Indeed, the economic analysis of politics is impeded by presupposing a romanticized view of government.

Various social maladies that are caused by political market activity have been identified in the public choice model, and at least seven of them seem to be relevant to Santiago zoning policy. These problems dramatically reduce the likelihood that zoning will be effective or efficient in terms of the public interest:

- intensified interest group activity,
- rent seeking,
- regulatory capture,
- vote seeking,
- demosclerosis,
- the transitional gains trap, and
- perverse incentives.

(The appendix contains a summary of each of these tenets of public choice theory with application to Santiago zoning policy.) Apart from occasional references to rent seeking, the current zoning literature has failed to adequately include these elements, leading to an incomplete and rather lame theory of zoning.

#### *Recent challenges to public choice theory*

Donald A. Wittman, more or less building on the work of Gary Becker (Becker 1983), contends that there are some errors in government failure models, noting that democratic systems have qualities typically associated with efficient markets. Becker had argued that a pressure group will have an advantage in the political process if it supports the most economically efficient outcome, or what might be seen as the extension of the “invisible hand” idea to the public sector. Accordingly, Wittman doubts public choice insights into the rational ignorance of voters, opportunism by politicians, high transactions costs and other inefficiencies in political institutions, the deleterious effects of pressure groups, and problems with regulation, noting especially that zoning is likely to be efficient. The welfare of citizens can be successfully pursued by democratic government policy efficiently. His notion is bolstered by imposing a Chicago-school view of

economics on the democratic process, where transactions costs are low and Coasean solutions are feasible (Wittman 1995). Perhaps ironically (or at least oddly), Wittman's argument for efficient democratic policy is built on the same neoclassical model which has often been used to show the inefficiencies of government interference in markets. Like the strong criticisms of Becker's work by public choice economists Gordon Tullock and Charles Rowley (Tullock 1993 and Rowley 1993), there have been a number of critical, if not devastating, reviews of Wittman's work (Rowley 1997, Rowley and Vachris 1996, Boudreaux 1996, and, relatedly, Cordato 1998).

Such public choice (or so-called "Virginia-school") rebuttals suggest that transactions costs are significant and that government resource allocation is typically inefficient in the context of democratic politics. The best insight that Wittman offers, they say, is that there is an advantage of being efficient in the political process, even (ironically) through the application of special interest forces. Hence, political actors need not merely be pawns of special interests all the time, although Wittman does not satisfactorily deal with problems caused by free riding. Donald J. Boudreaux adds that, while Wittman is insightful and has a logical argument, his fatal flaw lies in his uncritical analogy between private-property markets and politics (Boudreaux 1996).

Bryan Caplan argues that Wittman's thesis is confounded by the fact that voters are inept and not very well informed in their choices. They will not help to produce the efficient outcomes that he predicts. Theoretically, there is no advantage for voters to consult with experts about political choices because the marginal cost of making a wrong choice is minuscule, given that there is virtually no chance that a single vote will determine the outcome of any democratic election with more than a few hundred voters. In addition, there is plenty of empirical work which shows that voters are ignorant about the both who is in politics and most basic political issues on which they will vote, e.g., the name of their district's senator or how many senators there are in a state. Hence, we know that voter information is imperfect, to say the least, and, as a result, the efficient outcome that Wittman predicts is not possible. The marginal cost of idiocy or lunacy in political choices is basically zero to any voter and thus we end up with tariffs, rent and other price controls, and a host of other distortive and socially costly rules. In Caplan's estimation, the most valuable contribution that Wittman makes is by pushing the arguments he has to their logical conclusion we can see more clearly the errors of the Chicago approach to politics (Caplan 1998).

Accordingly, neither the public choice perspective nor previous criticisms by Siegan and others affiliated with the Chicago tradition, who say that zoning is inefficient and socially harmful, have been convincingly rebutted by Wittman. Furthermore, it might make the most sense to view Wittman as the logical result of applying Chicago neoclassical principles and the perfect competition model to public policy, while placing Siegan's work as largely congruent with the Virginia school of public choice (even though such a strong nexus has not been made up to this point). Wittman's work extends the Chicago model and concludes that zoning is efficient. Siegan's work compliments the Virginia public choice model and Austrian knowledge concerns which imply that zoning is inefficient and harmful. This fact will become clearer as we review Siegan's work.

### **Siegan's critique of zoning**

The city of Houston provides an interesting case for studying zoning policy because, unlike most major American cities, Houston has a nearly free market in land use planning. According to Siegan, while Houston has "subdivision controls, a minimum housing ordinance, a building code, and traffic ordinances", which he considers to be "extremely modest", it has never adopted a zoning ordinance (Siegan 1993/1972, pp. 24, 26).<sup>16</sup> Nevertheless, this policy has not proven to be a social detriment. Indeed, Siegan's work casts doubt on the effectiveness and efficiency of zoning anywhere in the United States. He argues that "the record of local zoning has been largely one of failure" and rejects the argument calling for augmenting zoning powers. Indeed, the problem will not be corrected by "new and different governmental controls" which he says "largely account for the major problems of present land use".

[M]ost of these proposals are essentially a replay of what has occurred in zoning since its inception: more and greater controls over land use designed to cure the failures of prior controls which were likewise supposed to have cured the defects of a previous set of controls, etcetera, *ad nauseum*. (p. 149)

Siegan argues that planners are simply incapable of performing their task well and will likely cause greater problems.

The widespread adoption of "wait and see" techniques acknowledges the failure of traditional zoning concepts. The zoners have learned that it is simply not feasible to encumber the future of the land. There is no way to predict the future and exceedingly difficult to evaluate the

present. Although these techniques have eliminated, to some extent, the problem of the future, they have created equally or more difficult problems by injecting local government directly into land use and development decisions. (p. 157)

Zoning causes economic distortions. It reduces opportunities and impedes innovation (p. 76). Planning errors cannot easily be rectified, leading Siegan to argue that rezoning is not “a satisfactory remedy” to such land use planning distortions (p. 21). Instead, “The solution lies in the direction of removing restrictions generally” (p. 125).<sup>17</sup>

*Eliminating zoning would foster the public interest*

Although changing to a policy of non-zoning would be dramatic, Siegan argues that it would not cause further distortions. “As Houston has shown, non-zoning may be no more chaotic or haphazard than zoning.” In fact, when a district is close to full development, the future use of vacant land becomes more predictable (p. 132). Houston demonstrates the benefits of having a free market in land use. “It shows that freedom operates well when allowed to function in the use of property (p. 142).”

Hence, zoning does not serve the public interest or further social needs. Given that people have varied preferences, Siegan says it is “most unfair and perilous to progress to allow any one person or group to impose aesthetic controls (p. 143, cf. p. 147).” Moreover, Siegan concludes that “The objectives and motivations at the local levels of government are inconsistent with the needs and requirements of society, and any meaningful reform requires removal of their zoning powers (p. 158).” He argues:

[Zoning] is not necessary; it is not desirable; it is detrimental. It has no relationship to public health, safety, and welfare, except, on the whole, an adverse one. It is regulation almost solely for the sake of regulation...This will happen because zoning trials are replete with fictions and charades that camouflage the real issues...In accordance with the law in this regard, no inquiry is permitted as to what really motivated the action taken by the local legislators (p. 221).

Public choice theory provides a powerful explanation of what the “real issues” are and what “really motivated” the legislators. Enhancing the public interest may be the stated purpose of zoning but in reality private interests are being served. This insight was evinced in the rather stark comment by New York Judge van Voorhis in 1963, “Zoning, important as it is within limits, is

too rapidly becoming a legalized device to prevent private property owners from doing whatever their neighbors dislike.”<sup>18</sup>

Furthermore, because of high transactions costs, many individuals and institutions adversely affected by zoning policy are “effectively incapable of using the judicial process.” Thus, Siegan argues that courts should eliminate zoning powers. “Otherwise, the right of property will remain no more than a platitude for large numbers of people. They have no recourse whatsoever for the inequities and tyrannies of local politicians and bureaucrats” (p. 223).<sup>19</sup> In Siegan’s view, zoning policy perverts the law of property and impairs individualism (p. 227), causing substantial economic distortions. Thus, in his concluding remarks, he calls for fresh public policy abolishing zoning:

It is time that we apply the clear and unmistakable lesson of the past fifty years: zoning has been a failure and should be eliminated! Governmental control over land use through zoning has been unworkable, inequitable and a serious impediment to the operation of the real estate market and the satisfaction of its consumers. And, as the experience of non-zoning in the city of Houston and elsewhere demonstrates, it is not even necessary for the maintenance of property values. In attempting to solve certain problems of land use and development, zoning has created many greater problems for our society. When zoning restricts the operation of the real estate market, it also restricts the supply of housing...When zoning curtails development, it likewise curtails business activity and badly needed revenues of local government...When zoning reduces competition, it inhibits the creation of a better environment with better living conditions. (p. 247)

*Evidence of market-based “zoning” to control externalities*

Congruent with the Houston case, a policy of non-zoning would not lead to chaotic conditions. Siegan argues that private interests in a free market would provide sufficient incentives to allocate land use effectively and efficiently as possible while minimizing negative externalities.

Every land use will find its economic level...This means, as the experience of non-zoning shows, that billboards, gas stations, and most other commercial uses will be generally absent from the residential areas and will locate only on the major thoroughfares...*Better* zoning is no more the answer to *no zoning* than *better* censorship is to *no censorship*. (p. 144)

The Houston study shows that without zoning, market forces will serve to segregate commercial and residential interests. Siegan found that “Owners of businesses which require high accessibility and substantial traffic have no interest in locating on an interior street” (p. 36). Businesses, like gas stations, prefer to locate where they have the highest chance of success i.e., where there is the most public traffic even when land costs are significantly higher. Thus, even without zoning, Houston does not suffer from a proliferation undesirable enterprises in residential areas. In addition, Siegan found that “heavy industry may now be equally as anxious to avoid homeowners as homeowners are to avoid industry” because of the high direct costs and indirect costs stemming from a bad public image that comes from dealing with public complaints (p. 62). Thus, Siegan concludes that “Economic forces tend to make for a separation of uses even without zoning” (p. 75). Indeed, the market creates its own form of zoning (p. 97).

The Houston case also shows that the market has generated other mechanisms to control land use when specific measures are needed to prevent negative externalities. According to Siegan, restrictive covenants, “a device of the market to maximize the value of homes”, have been effective in restricting land use in Houston. A restrictive covenant is an agreement that is attached to the land for a specified number of years, or even perpetually, and “unless there is a provision to the contrary, any change in the covenants require the approval of all owners in the subdivision. Such consent might, of course, have to be purchased” (p. 34). Thus, the price system intervenes to provide an effective and efficient allocation of land.

Restrictive covenants provide homeowners with freedom to live in the environments that they prefer while causing the least amount of harm to others. Conversely, zoning policy entails “consequent adverse effects”. Hence, Siegan contends that homeowners would be better off relying on restrictive covenants. “Restrictive covenants are more likely to preclude any use of property which might be harmful to values. They allow for much greater architectural and aesthetic controls than zoning does” (p. 83). Land use decisions without zoning “will be more rational” and in conformity with consumer demand (p. 199).

#### *Bringing Siegan’s study theoretically up-to-date*

The key insights from Siegan’s work are that zoning is not an effective or efficient means of land use planning, that markets are capable of effectively and efficiently dealing with land allocation, and that land use may be effectively restricted by means of restrictive covenants.<sup>20</sup> However,

while Siegan came to the solid conclusion that zoning should be enjoined, he failed to recognize the significance of public choice and knowledge problems in derailing the planning process in zoning. Siegan alludes to the knowledge problem on at least nine occasions,<sup>21</sup> without following through with the implications of that insight for his work.<sup>22</sup> He also manifests his view that government has failed to serve the public interest through zoning policy.

Therefore, while Siegan applied crucial elements of standard microeconomic theory in his study, his conclusions lacked potency since the level of theory he used was not robust enough to explain and predict current and future zoning problems on account of political market activity. In other words, Siegan provided an excellent empirical example of why zoning does not work well, but he lacked a complete theoretical basis to explain what he found.

That is not to say that Siegan intentionally ignored public choice, most of which was just emerging when he wrote his book in 1972. In fact, Siegan alludes to or hints at public choice problems and government failure perhaps two dozen times in his book<sup>23</sup> without labeling them as such or applying such theoretical insights to make his work more profound. For instance, Siegan notes that zoning breeds corruption and favor brokering activity:

Dennis O’Harrow, known to many as “Mr. Planner,” now deceased and formerly executive director of the American Society of Planning Officials, once said at an annual convention of the society that in too many instances zoning has failed because it has become a “marketable commodity.” He quoted a planning official who assured him that “you can buy with money any kind of zoning you want in half the communities of the United States.” (p. 196)

Siegan continues:

And it is equally possible in certain areas that a certain developer may be allowed a certain use for no other reason than that he has “paid off” or “employed” the “right” people. These results are inevitable as long as the political process controls the use of the land. (p. 199)

However, at many other points, Siegan demonstrates his analytical schizophrenia by succumbing to the faulty romantic view of the state.<sup>24</sup> Thus, he seems to have arrived at a correct verdict about zoning by using a rather lame theory.

It should be noted that Siegan does at least mention public choice in the first footnote in his later *CATO Journal* paper (Siegan 1990). This fact seems to indicate that Siegan eventually comprehended the otherwise unspecified link between his work and public choice theory.

Nevertheless, the nexus was not adequately clarified or emphasized by Siegan quietly referring to his adherence to Nobel laureate James Buchanan's public choice perspective in that footnote.

Surely, it makes sense to identify and ground his findings in developed theories. Public choice and Austrian knowledge theories provide theoretical support for Siegan's results, and they make his study much more puissant when they are applied rigorously.

*Support for Siegan from the study of building regulation*

Siegan argued that, "A freer market in housing thus provides great housing benefits at little cost to the taxpayer" (p. 95). My book, *Building Regulation, Market Alternatives, and Allodial Policy*, supports Siegan's opinion. Moreover, it contains important implications for zoning and all land use planning. Although it does not deal with zoning specifically, the issues it addresses have considerable application to zoning.

I found that costly fire safety regulation in Baltimore has not been effective. The annual number of structural fires in Baltimore per 1,000 population has steadily increased to 25.2 times the 1859 level, while the building code has grown from 1 to 1,397 pages and the number of inspectors has increased from 0 to 178. Thus, there is no evidence that costly safety regulation has improved building fire safety. Moreover, judging from the data I have gathered on fires in Santiago (which seem somewhat less dramatic than the results in Baltimore), there is little evidence from the Chilean record that regulation improves fire safety.

In addition, I found that the *absence* of a building code in Jefferson County, West Virginia and Franklin County, Pennsylvania has coincided with anywhere from a negligible effect to a 30% *increase* in home prices, relative to prices of homes in their principal cities (which have a building code). Controlling for other demand factors, I argue that price is a fair proxy for quality. Thus, I conclude that building quality has not been ameliorated by costly regulation and, in fact, may have dwindled because of it. I also recorded ample visual evidence of housing and construction that confirmed this supposition.

Subsequently, I sought for examples of market-regulatory alternatives that were *free* of the influences of government regulation. After considerable deliberation, I settled on the rare coin industry (and, as a corollary, the gemstone industry). Thus, I show how markets can provide effective, competitive, and low-priced grading and certification services. I argue that building

safety and quality are *not* public goods that cannot be provided by markets, and that costly building regulation could be replaced by a more effective and efficient market-based alternative.

My book provides auxiliary support for Siegan's conclusion that zoning should be eliminated in favor of market-regulatory alternatives. Like Siegan, I found that restrictive covenants were effective in allocating real property resources and I suggested that further reliance should be given to market incentives to improve the quality of life. Unlike Siegan, I thoroughly grounded my results in public choice and Austrian knowledge theories in order to better explain the reasons for the regulatory failure I found.

#### *A brief overview of allodial policy*

Furthermore, I suggested that government and market provision of grading and certification services may spring from alternative property rights theories. The dominant paradigm assumes that government regulation is needed because of market failure and it can be beneficial when performed efficiently. However, I noted that an internally consistent paradigm underlying market provision, known as *allodialism*, could provide a policy relevant alternative system of real property rights and regulation.

The ownership of real property (i.e., land and things attached to it) would be *absolute* under allodial policy. Real property would not be subject to zoning, building regulation, environmental or growth planning, or taxation. In short, allodial real property is owned absolutely without being subject to any tax, duty, or right of a superior including the state.<sup>25</sup> Hence, allodial policy necessitates complete reliance on market mechanisms, like restrictive covenants, for regulation and resource allocation (Cobin 1999).

Allodialism is a practicable policy alternative to zoning which, when coupled with its natural market-based corollaries, would provide significant benefits without public choice and knowledge problems. Rent seeking is not possible under allodial policy since land use, building regulation, and other real property regulation would not be subsumed in the political process.

The antithesis of allodial policy is feudal policy. A number of scholars, including myself, have concluded that modern real property policy is feudal in the United States (and probably everywhere else in the world). Feudal policy entails real property regulation by a superior and real property taxation. In the modern age, the superior or lord is the state (legal sources in the United States are blatant on this point).

Given the evidence from Houston and the ante-bellum United States, the fact that allodiaries are free to do anything with their real property (not prohibited by restrictive covenant) should not be a cause for concern. There are many market incentives, whether they be financial, contractual, religious, or the drive to maintain social status, friends, and a good reputation that automatically work to curtail negative externalities. Arguably, most expostulated special case negative externalities result from government failure, i.e., public choice problems and poorly defined real property rights. Allodial policy would preclude such things.

Allodial policy would provide attractive social benefits by facilitating community and market-based regulatory alternatives. The market would be relied on to generate standards-setting institutions and land use regulation would depend on voluntary contracting by real property owners and developers. Moreover, provided that there is a rule of law and strict enforcement of contracts,<sup>26</sup> restrictive covenants would serve to alleviate negative externalities. The benefits of the price system would also bolster resource allocation. The development of markets for trading real property risk i.e., buying and selling restrictions on real property would make allodial policy flexible. Restrictions could be eliminated simply by purchasing the rights that create them, and vice-versa, with the value of restrictive covenants will being internalized in the price of the land.<sup>27</sup>

### **Will there be effective zoning in Chile?**

#### *Libertad y Desarrollo's concerns about the Chacabuco plan*

Instituto de Libertad y Desarrollo (The Liberty and Development Institute), a major public policy think tank in Santiago, recently criticized the Regulatory Plan's extension to the area of Chacabuco. This mostly rural region just north of Santiago, with a population of about 90,600 (mostly in three small towns), was not comprehended in the original Santiago plan. Libertad y Desarrollo complains that the extension of the plan to this area amounts to urban statism.<sup>28</sup>

The plan limits urban growth (reducing the present possibilities for expansion considerably), determines where people may and may not live, and regulates urban development. Libertad y Desarrollo notes several defects of the plan:

- it will increase urban densities and problems related to it by prohibiting urban expansion,
- it will cause the conversion of agricultural property surrounding the urban area to other uses (since it would command a higher market price),

- it will lead more people to commute longer distances and thus increase transportation and infrastructure costs,
- it has increased the price of urbanizable land (and they provide empirical evidence of this fact), distorted expectations, and has made it more difficult for the poor to obtain housing,
- it will abuse the institution of private property rights, since many people who have purchased land in the Chacabuco region for building homes in the future now face oppressive restrictions and thus a severe decline in the value of their property, and
- it will increase incentives for corruption.

While the Libertad y Desarrollo study is a good brief critique of the plan, there are further problems that must be noted. Given the critique of planning from the knowledge problem, government planners cannot possibly know enough to determine the proper size of a city, where people ought to be able to live, and decide how a city should develop. Plus, any endeavors to do so will be despoiled by public choice problems as rent seekers and SIGs attempt to enhance private interests at public expense.

Many distortions are caused by zoning, and it is possible for astute rent seekers to benefit by them. For instance, Libertad y Desarrollo notes that by limiting urban growth, government causes more demand for high-rise living and greater density within urban growth limits. It also reduces the value of land where building or use restrictions have been imposed, and causes property values to rise both in the city and in rural areas outside the growth boundary restriction. It might also be noted that this artificial change might make life more dangerous in earthquake-ridden Santiago. The tallest buildings in Santiago have little more than thirty stories because erecting taller buildings that are earthquake-resistant is relatively costly. Although the earthquake risk can be partly alleviated by utilizing more expensive construction techniques, such improvements would be reflected in higher prices for consumers. Developers evidently prefer to build more buildings with fewer stories than fewer buildings with more stories on account of their cost-benefit estimates.

But these developers must also consider the benefits possible from the strategic use of zoning regulation. Rent seeking developers, as astute businessmen, may find further opportunities for profit by promoting zoning. Depending on how much they must pay a political favor broker,

directly or indirectly, they may choose to petition government for one or more favors. We might ponder some hypothetical possibilities for regulatory capture:

- perhaps a competitor can be damaged by convincing government to restrict the use of some or all of his land holdings earmarked for development, or
- perhaps the rent seeker can have government declare “unsafe” a new technology used by a competitor in producing taller and safer buildings, thus preventing erosion of his market share and supporting his relatively inefficient production method (avoiding further capital investments), or
- perhaps the rent seeker can obtain favorable zoning for some or all of his property holdings (but not for his rivals), thereby enhancing the market value of his developments.
- Developers might find strategic and profitable means of capturing zoning regulators or rent seeking.

There are also other people besides developers, bureaucrats, and favor brokers who can benefit from zoning. Without a doubt, many such people have innovations or products to sell that would have no demand without zoning. Plus, there are still others who will try to win special privileges or de facto licenses to provide some production or service related to zoning.

Profitable rent seeking opportunities for firms and individuals are bred by regulation like zoning. For instance, since some people will prefer to commute a considerable distance in order to avoid higher prices and congestion in the city, land that would otherwise be of little residential value before zoning will obtain an artificial price boost on account of the restriction. Astute rent seekers will again be able to gain accordingly:

- by buying property before adoption of the plan, lobbying for beneficial zoning, and selling it at an opportune time afterwards,
- by obtaining a special privilege to operate a bus or train service for the additional long distance commuters that will emerge as a result of the zoning ordinance,
- by developing special construction technologies for earthquake-resistant high-rise apartments and having government mandate their use via the zoning ordinance.

Therefore, public choice theory suggests that rent seekers will be able to profit by zoning and supporting urban growth limits.

The reduction of consumer choices, along with higher prices for housing and transportation, is only one aspect of the problems created by zoning. The regulation also serves as a wealth transfer to rent seekers from those who have property interests restricted or who have productive capacity made obsolete or prohibited by zoning. The result is that benefits are concentrated on a few astute rent seeking SIGs or individuals and the costs are dispersed widely in society. In fact, the brief Libertad y Desarrollo report only identifies the tip of the iceberg in terms of the current and potential social losses created by zoning in Santiago and its expansion into the Chacabuco region. As was the case with Siegan's study, public choice and knowledge theories can be used to bolster the Libertad y Desarrollo findings.

*Conclusion: public interest zoning in Santiago will be impeded*

Studies that focus on zoning's effectiveness in coping with negative externalities have been misdirected. Public choice and knowledge problems will not permit zoning to be effective or efficient, at least not in terms of the public interest. The zoning ordinance in Santiago emerged to satisfy private interests, despite its public interest rhetoric. On account of the transitional gains secured by rent seekers, demoscrosis produced by persistent SIGs who will fight to retain the benefits they have gained by zoning, and possible episodes of regulatory capture, it is unlikely that zoning will be eliminated in Santiago. The only possibility for its removal is to dramatically change the climate of public opinion in Chile, and thus change the incentives of vote-seeking politicians. (The climate of public opinion is clearly mutable and can be changed by developing and distributing academic ideas, although such a feat is not easy to accomplish.)

Therefore, concurring with Siegan (but bringing his work up-to-date with knowledge and public choice theories), it is not likely that zoning in Santiago will succeed to promote the public interest. It will be impossible for government to perform such complex regulation effectively on account of the knowledge problem. In addition, public choice problems will ensure that private interests dominate the public interest over time. The empirical work by Siegan confirms this thesis, as does my study of building regulation. Such reasoning also conforms to the large literature on zoning which generally shows its institutional significance in affecting social costs, and probably market conditions too, in an inefficient and deleterious manner.

Accordingly, zoning in Santiago will produce a government failure, although rent seekers, favor brokers, and planners who receive private benefits at public expense will deem it to be enormously

successful. Likewise, these actors will have a perverse incentive to maintain the optimal level of negative externalities. They will also cleverly use market-endorsing studies (showing the inefficiencies of regulation) to secure larger budgets and more staff. However, they will loathe to implement the market-based alternatives to certain zoning practices that have been lauded in the literature, unless political actors will be able to benefit from doing so either directly or indirectly.

Chileans can expect to see gradual increases in the prices they pay for goods and services affected by zoning. Taxpayers should expect to pay at least a portion of the indirect rent seeking costs, by rewarding certain kinds of rent seeking and/or by making contributions to zoning reform SIGs. From this perspective, there is hardly any means of escaping the detrimental social effects of zoning in Santiago. Alternatively, if Chileans genuinely desire to promote the public interest in land use, then an alternative to zoning must be found which is free from knowledge and public choice problems.

I have provided a rather dour outlook on zoning policy in Chile, just as Siegan provided a dour view of zoning in the United States. Moreover, I have ventured beyond the fundamental concerns of Siegan by interjecting public choice and knowledge theories to the discussion.

However, we have no need to only focus on negative aspects. There are several positive elements that could be used as policy alternatives. Two such alternatives, as pointed out by Siegan and myself, are to replace zoning with restrictive covenants and market-based incentives for land use. Another alternative is to rely on market-based grading and certification services. A fourth alternative, perhaps with the farthest-reaching significance, is allodialism.

Allodial policy in Chile would promote individual liberty and responsibility, an extended reliance on contracts and private communities, and optimal use of (and care for) real property resources without knowledge or public choice problems. Allodial policy might also prove useful as a tool to develop sparsely populated regions of Chile, since it would create an incentive to buy and develop real property in those regions. On the other hand, retaining the present system of zoning will further advance Chile as a rent seeking society, with all its associated ills.

## **Appendix**

### **A summary of seven major tenets of public choice theory with applications to zoning in Santiago**

*Intensified interest group activity*

A single vote is virtually meaningless and commands infinitesimal political influence. Thus, choosing not to vote is rational, especially when citizens are not obligated to vote by legislation (as they are in Chile — once they initially register to vote). Instead, the most effective use of time and resources under democratic processes will be for citizens to support SIGs that advance the issue(s) of greatest importance to them. Since SIGs represent large blocks of votes, they command considerable political influence. Thus, mature democratic processes, especially when coupled with an expanding regulatory environment, will proliferate SIG activity. The self-interest motive and the logic of concentrated benefits and dispersed costs will naturally continue to spawn SIGs. Accordingly, SIG proliferation is a result of rational behavior rather than social degeneration. A government composed only of saints would produce similar results.

The market process is led by an invisible hand to coordinate human affairs among millions of self-interested economic actors. However, as William Mitchell and Randy Simmons note, the political process is “led by an invisible hand to promote other kinds of interests” (Mitchell and Simmons 1994, p. 39). The political process lacks the market information and incentives which lead to catallactic coordination of human action, and SIG activity distorts political outcomes in favor of private interests.

Likewise, public choice theory suggests that government action cannot cure market failures (and often makes things worse). It has exploded the idea that government is a “frictionless plug” which, as welfare economists often propose, can be used to alleviate market failures. On the contrary, instead of facilitating democratic majority rule and genuine social benefits, the political process often entails “intense competition for power to benefit particularized interests at the cost of wider society” (Mitchell and Simmons 1994, pp. 211, 212, 213). SIGs distort the democratic process, making public policy a battle between special interests rather than rule by the people. The proliferation of SIG activity lessens individual control of government and, perhaps more importantly, permits the use government power to embellish private interests at public expense (although often under the guise of the public interest).

Correspondingly, such government failure can only be mitigated by limiting government, rather than by electing or appointing the most honest or well-trained planners. Public choice theorists regard SIGs as being one of the most potent influences in a democratic process, second only to perhaps the innate self-interest motive itself and the influence of academic ideas on the climate of

public opinion. Even the strongest, most widely endorsed political constitution is vulnerable to the onslaught of what Richard Wagner calls the “guns” of SIGs.<sup>29</sup>

The enactment of the zoning ordinance in Santiago was neither accidental nor benevolent. Public choice theory indicates that political action does not occur in a vacuum. Congruently, Austrian theory suggests that all human action (including political action) is purposeful and aims at ends that remove uneasiness (Mises 1966/1949, pp. 10, 13). Therefore, whether blatantly or incognito, SIGs must have been active participants behind the implementation of zoning in Santiago. Accordingly, the plan has intensified SIG activity (and will continue to do so). As a result, private interests will profit at the expense of the Chilean public interest.

### *Rent seeking*

In the market process, entrepreneurs normally gain short-lived monopoly benefits, which are quickly dissipated (in the absence of barriers to entry) as others rush to enter the market. In the political process, however, competition is not a natural check against the long-lived monopoly privileges attained by government sanction. The government enforces the monopoly privileges by barring all potential entrants. Thus, government-sanctioned monopoly is very attractive, and public choice theorists call attempts to attain it a form of *rent seeking*.

Gordon Tullock defines rent seeking as “the manipulation of democratic [or other types of] governments to obtain special privileges under circumstances where the people injured by the privileges are hurt more than the beneficiary gains” (Tullock 1993, p. 24, cf. p. 51). James Buchanan says, “The term *rent seeking* is designed to describe behavior in institutional settings where individual efforts to maximize value generate social waste rather than social surplus” (Buchanan 1980, pp. 46, 47). There are mutually beneficial gains from all voluntary market exchange (i.e., it is akin to a positive-sum game). However, no social gains are created by rent seeking. Instead, there is likely to be a net destruction of value on account of the monopoly privileges granted. Thus, rent seeking is *at best* a zero-sum game.

According to public choice theory, the social loss from rent seeking is not just the “Harberger Triangle” in the typical monopoly diagram, but that area *plus* the “Tullock Rectangle” (the area to the left of the Harberger Triangle). Social losses are exacerbated by “paperwork contests”, as the Tullock Rectangle is dissipated by competing rent seekers and counter rent-seekers (also called “reformers”) try to attain the monopoly benefits (Higgins and Tollison 1988, pp. 150-151). A

successful rent seeking monopolist may lose all or a portion of his rent seeking gains to reformers, or by the expenditures he makes to retain his privileges (Tollison and Wagner 1991, 60-64). Consumers lose because they have to pay higher prices for the duration of the government-enforced monopoly privilege. Moreover, at least a portion of the rent seeking costs will likely be born by taxpayers.

Rent seeking is not limited to attempts to obtain monopoly power. Rent seeking may take many forms. Broadly speaking, it is any attempt to gain concentrated benefits by way of the political process while dispersing the costs widely in society (resulting in social losses). For instance, a rent seeker might try to petition government to create artificial demand for his product. Maybe he would like to create artificial demand for some costly but environmentally friendly processes, innovation, or service that would have little market demand apart from regulation (such as zoning). Or perhaps he desires to secure an exclusive license over some production method. It is possible to obtain these favors by successfully petitioning legislators or regulators.

However, successful rent seeking might entail compensating political actors or favor brokers directly or indirectly. Thus, rent seekers can be expected to hire consultants that help them to both identify rent seeking opportunities and to minimize the commission paid to favor brokers. Rent seeking costs can also be reduced by wisely manipulating the media. For instance, a firm might profit by developing an environmentally friendly and socially conscious image for itself. With this asset, re-election minded politicians might find it more difficult to constrain the rent seeking demands of the firm with attempts to extract higher compensation.

The successful rent seeker will be masterful at discovering ways to convince government that he deserves to be granted a monopoly right or other special privilege. Those who are eminently *alert* to discovering rent seeking opportunities might be called *regressive* entrepreneurs (as opposed to the *progressive* entrepreneurs found in the market). They are regressive because their activity creates social losses, in spite of the fact that they profit personally.

Any kind of regulation, especially new regulation, creates opportunities for rent seeking and proliferates regressive entrepreneurship. The zoning ordinance in Santiago is no exception. There will be many self-interested individuals, firms, and industries that are willing to seek rents. Moral scruples might prevent many economic actors from pursuing some or all rent seeking activity, in the same way that their moral scruples prevent them from running objectionable

businesses in the marketplace (e.g., prostitution rings, drug dealing, etc.). However, there will be plenty of economic actors who will avail themselves of rent seeking opportunities without hesitance, just as there are plenty of people willing to operate objectionable enterprises. The self-interest motive tells us nothing about individual morals or ethics. Some people will likely be persuaded, for better or for worse, that there is nothing wrong with rent seeking.

Therefore, sustaining regulation free of rent seeking is hardly plausible. Economic actors have a natural inclination to secure benefits or rents from the political process to at least offset the tax expense they bear. Favor brokers have an incentive to permit rent seeking since they can gain from it directly by payoffs (e.g., corruption) or by auctioning off a monopoly right or other privilege and thus gaining indirect benefits (e.g., augmenting their budget, likely leading to higher personal wages and power). Thus, we must expect that zoning in Santiago will create many opportunities for rent seeking that lead to economic distortions and social losses. As a result, Santiago consumers can expect to pay higher prices for many goods and services, and to have narrower housing and business location opportunities, as planners reward rent seekers via land use restrictions and stipulations.

#### *Regulatory capture*

Producers are likely to form SIGs to use the public regulation for their benefit. They might thus be able to obtain beneficial regulation by rent seeking that:

- creates or sustains artificial demand for their products,
- assails their competitors,
- generates direct cash subsidies,
- restricts the output and prices of compliments and substitutes,
- legitimizes price-fixing schemes, or
- erects barriers to entry against potential competitors.

Moreover, the firm or industry that successfully captures its regulators will likely be able to disperse most (if not all) of the costs of the regulation to consumers or taxpayers over time.

When a regulator is captured, private interests will be able to dominate the public interest, at the expense of consumers and taxpayers. Studies of regulation of business in the United States suggest that calls to legislate regulation did not originally emerge from the political process but from rent seeking activity. For instance, work by Thomas DiLorenzo, William Shughart, and

George Stigler imply that the Sherman Act of 1890 — the initial federal antitrust legislation in the United States — came about to benefit private interests rather than the public interest. Indeed, business interests have been strong supporters of antitrust legislation, and it is not clear that antitrust legislation has actually curtailed monopoly power as it was supposedly intended to do.

Likewise, Jack High and Clayton Coppin found that rent seeking prompted passage of the Pure Food Act (High and Coppin 1988). Donald Bourdreaux and Robert Ekelund contend that rent seeking by municipal governments and others led to the Cable Television Consumer Protection and Competition Act of 1992 (Bourdreaux and Ekelund 1993, pp. 356, 390). Tullock has provided an example in which state or local governments also practice rent seeking to obtain federal funding for road repairs (Tullock 1993, pp. 17-18). Mitchell and Simmons go so far to say that the “real monopolists” that consumers should be wary of are the “80,000 governments that simultaneously oversupply some services and fail to provide for many other important daily wants” (Mitchell and Simmons 1994, p. 139).

The rent seeking society is not glamorous, except perhaps to rent seekers and favor brokers. It is characterized by venality and ongoing social losses, resource misallocations, and economic distortions,. Nevertheless, rent seeking and regulatory capture are natural outcomes of self-interested participants in democratic processes. As a democratic society, Chile too is susceptible to rent seeking distortions evinced by regulatory capture. While the Chilean constitution is strong, and arguably one of the most resilient to rent seeking in the world, it provides no perfect repellent to regulatory capture. The bountiful language in the Santiago plan concerning environmental issues suggests that there has already been some influence from environmentalist SIGs. Indeed, public choice insights cause us to suspect that the zoning plan in Santiago is serving private interests rather than the public interest. There is no compelling reason to believe that the self-interested planners in Santiago are more immune to capture by private interests than planners are elsewhere in the world.

#### *Vote-seeking*

From a public choice perspective, self-interested politicians are driven by a dominant objective to be re-elected. To be successful, they must find a way to produce political benefits in excess of political costs. When they spend public money, they calculate how many votes they will receive per dollar spent. Likewise, they calculate how many votes they will lose from favoring one group

at the expense of another. In the end, they attempt to determine the policy mix that optimizes the votes they receive (Mitchell and Simmons 1994, p. 52). Astute vote-seekers will be expert strategists in finding the optimal policy mix and seek consultants that will assist them in the art of producing ambiguous and emotive statements that simultaneously minimize voter animosity and maximize sympathetic voter motivation and total votes earned (Mitchell and Simmons 1994, p. 73). Subsequently, vote-seeking politicians will be able to retain political power, perks, money, favor-broker benefits, and even opportunities for venality that proceed from their office. Conformably, Austrian theorist Ludwig von Mises notes:

The politician is...always selfish no matter whether he supports a popular program in order to get an office or whether he firmly clings to his own unpopular convictions and thus deprives himself of the benefits he could reap by betraying them...Unfortunately the office-holders and their staffs are not angelic. They learn very soon that their decisions mean for the businessmen either considerable losses or sometimes considerable gains. Certainly there are also bureaucrats who do not take bribes; but there are others who are anxious to take advantage of any “safe” opportunity of “sharing” with those whom their decisions favor. (Mises 1966/1949, pp. 734-735, cf. p. 852)

The politicians who oversee zoning policy in Santiago will practice vote-seeking. Their first objective will be to get re-elected, not to serve the public interest. They can be expected to prefer using ambiguous statements about the zoning policy that maximize total votes gained by it. For example, consider the following language from the Santiago plan (noted earlier). Social costs have been enlarged by the “indiscriminate expansion of the metropolitan area”, and thus society has expressed its “preference for modernizing the regional urban system”, stopping the “violation of the natural environment”, and preserving the “heavily compromised natural balances of the Santiago basin” by finding “an equilibrium between the city and its surroundings”. At the same time, the plan supposedly enables society “to cope with the estimated population in the year 2020, in conditions and quality of life compatible with human dignity”.

Although the plan does contain some specific details, its major tenets are ambiguous, and vote-seeking politicians will be sure to stick to that portion of the plan in their public comments (lest they offend more voters than they gain). Since the meanings of words or phrases such as: “indiscriminate expansion”, “modernizing”, “violation”, “natural balances”, “equilibrium”, “cope”,

“dignity” and others in the plan will differ dramatically across a wide range of voters, they have no specific meaning in the context of the goals of zoning policy, other than perhaps the private definitions given to them by politicians and planners. Vote-seeking politicians will avoid talking about the precise details and costs of zoning in Santiago, preferring to focus attention on the ambiguous benefits. Over time, they will succumb to pressures from rent seeking SIGs that control large blocks of votes. Subsequently, zoning policy will prove to be the triumph of private interests over the public interest.

### *Demosclerosis*

Public choice theorists contend that the apparent gridlock in the political process caused by SIG pressures is a misperception. According to Jonathan Rauch, political actors are becoming ever more responsive and willing to change, especially in the United States (Rauch 1996, pp. 18, 17). The concept of demosclerosis is simply that SIGs work hard to retain the benefits (government programs) that they were granted in the past and, as a result, these benefits never get cut no matter how popular reform movements become. Democratic societies generate SIGs (or lobbies) faster than they eliminate them, and these SIGs seek to win (and then defend) some government subsidy, regulation, or tax break. Vote-seeking politicians exacerbate the problem when they choose to retain programs rather than upset a substantial a block of voters represented by the affected SIG. They will eagerly try to keep everyone happy, making it increasingly difficult to remove benefits once they have been granted. Hence, Rauch concludes that government “succumbs to a kind of living rot...Stuck with all of its first tries [at various regulations or programs] virtually forever, government loses the ability to end unsuccessful programs and try new ones. It fails to adapt and, as maladaptive things do, becomes too clumsy and incoherent to solve real-world problems” (Rauch 1996, p. 18 and also see Mitchell and Simmons 1994, pp. 53, 76).

SIGs will rush to obtain the benefits made available through Santiago’s new zoning plan, and they will become entrenched as they work to retain them. Thus, the SIGs, the benefits, and the programs spawned by zoning will likely become permanent fixtures in Santiago, creating and dispersing substantial social losses for the benefit of concentrated interests. The result is that the Chilean government will become more maladaptive, clumsy, and too incoherent to effectively and efficiently solve the problems zoning ostensibly seeks to address.

### *The transitional gains trap*

Tullock has identified what he calls “transitional gains” for favored SIGs that win special privileges from government, specifically monopoly privileges through licensing requirements and so forth. Such rent seeking gains are difficult to secure and even the most effective and efficient SIGs often have to expend considerable resources to get them. However, the monopoly privileges won by initial rent seekers are transitional. New entrants into an affected market will be trapped into paying an entrance fee, effectively transferring the monopoly profits they might have received to government.

Tullock contends that “surviving original owners have opportunity costs equivalent to the price of the entry barrier and consumers are worse off” (Tullock 1975, pp. 671-675). Accordingly, the original rent seekers have transitional gains but afterwards there is a permanent deadweight social loss and consumers will have to pay perpetually higher prices. Reform is difficult since removing the restriction will likely require compensating those who would suffer the loss of the fee paid to enter the market. Moreover, reform requires convincing government to give up a source of tax revenue. Consequently, firms who have paid for such privileges will rent seek to retain them, even if they received none of the transitional gains. Maintaining restrictions will likely be easier than obtaining the original transitional gains, since political actors have a natural incentive to retain the current level of fees received and, as Tullock notes, vote-seeking politicians will be “reluctant to inflict direct losses on specific sections of the electorate” (Tullock 1993, p. 68). The best way to avoid the transitional gains trap is, of course, to not make any transitional gains available to rent seekers.

The implementation of any new regulation, such as zoning in Santiago, creates new opportunities for rent seekers to obtain monopoly or artificial demand privileges. Self-interested rent seekers will garner transitional gains without regard to the long term social losses they will inflict on others. For instance, zoning will augment rent seeking opportunities as prohibitions and restrictions are enacted against potential competitors who want to do business in affected sectors of Santiago (while existing firms in those sectors are, of course, “grandfathered”).

The only way to avoid the transitional gains trap from zoning is to abolish the policy. But by now zoning has many friends in Santiago. Some like zoning for ideological reasons, but there are bound to be many who support it because they benefit by it. Thus, along with demoscclerosis, the

transitional gains trap will make it increasingly unlikely that zoning will ever be repealed. Consequently, Santiago consumers can expect to pay higher prices for housing and other goods and services affected by zoning over time.

### *Perverse incentives*

Public choice theory does not impugn the motives or character of planners and others who create public choice problems. These difficulties are simply the predictable result of the human self-interest motive. Accordingly, public choice theory suggests that self-interested political actors will be subject to perverse incentives.

For instance, Holcombe remarks that planners have a perverse incentive to be ineffective. “The government will never lose profits from being a poor regulator; in fact, the opposite is likely to be true” (Holcombe 1995, p. 103). If regulation were completely effective at eliminating a negative externality then there would no longer be a need for regulation. A regulator or planner who wants to maintain his employment (and we may assume that virtually all of them do) will have an incentive to maintain some minimum levels of negative externalities in order to preserve his job. In addition, planners have a perverse incentive to encourage adverse public information which suggests that current regulation is failing. The typical response to this information will be increased calls for government to augment regulation, likely leading to larger budgets and salaries for planners. Thus, from a public choice perspective, regulatory failures may actually be successes, depending on the perspective taken. It is plausible that rent seekers and regulators will be pleased by a regulatory failure while consumers and taxpayers are not.

There is no compelling reason to believe that self-interested Santiago zoning planners and enforcers will be free from perverse incentives. Therefore, reports of at least some minimum level of negative externalities concerning population densities, transportation, environment and surroundings, land, and the “natural heritage” will certainly circulate in Santiago in order to provide a basis for continued zoning. At the same time, studies that find the present level of regulation to be inefficient can be expected to be heralded (at least to some level) by planners, who in turn can be expected make strategic appeals to the public for larger budgets by blaming regulatory problems on being under-funded and under-staffed. Chicago economists, famous for their criticisms of regulation on the grounds of its inefficiencies, will likely find (to their chagrin) that their studies are being used to augment regulation.

## References

- Asabere, Paul K., and Huffman, Forrest E. (1997), "Hierarchical Zoning, Incompatible Uses and Price Discounts", *Real Estate Economics*, vol. 25, no. 3, Fall, pp. 439-51.
- Asabere, Paul K., and Huffman, Forrest E. (1991), "Zoning and Industrial Land Values: The Case of Philadelphia", *American Real Estate and Urban Economics Association Journal*, vol. 19, no. 2, Summer, pp. 154-60.
- Ault, Richard W. and Ekelund, Robert B., Jr. (1988), "Rent Seeking in a Static Model of Zoning", *American Real Estate and Urban Economics Association Journal*, vol. 16, no. 1, Spring, pp. 69-76.
- Becker, Gary (1983), "A Theory of Competition Among Pressure Groups for Political Influence", *Quarterly Journal of Economics*, Vol. 98, No. 3, pp. 371-400.
- Benson, Bruce L. (1990), *The Enterprise of Law: Justice Without the State*, Pacific Research Institute: San Francisco.
- Boettke, Peter J. (1992), "Economic Education and Social Change", in Robbins, John W., and Spangler, Mark, eds., *A Man of Principle: Essays in Honor of Hans F. Sennholz*, Grove City College Press: Grove City, Penn., pp. 63-74.
- Boettke, Peter J. (1994), "Hayek's Serfdom Revisited: Government Failure in the Argument Against Socialism", part of the *Economic Research Reports* series compiled by the C. V. Starr Center for Applied Economics, New York University Economics Department: New York, 37 pages.
- Boettke, Peter J. (1997), "James M. Buchanan and the Rebirth of Political Economy", in Pressman, Steve, and Holt, Ric, eds., *Against the Grain: Economic Dissent in the 20th Century*, Edward Elgar: Brookfield, Vermont.
- Bogart, William T. (1993), "'What Big Teeth You Have!': Identifying the Motivations for Exclusionary Zoning", *Urban Studies*, vol. 30 no. 10, December, pp. 1669-81.
- Bourdreaux, Donald J., and Ekelund, Robert B., Jr. (1993), 'The Cable Television Consumer Protection and Competition Act of 1992: The Triumph of Private Over Public Interest', *Alabama Law Review*, Vol. 44, No. 2, Winter, pp. 355-91.
- Boudreaux, Donald J. (1996), "Was Your High School Civics Teacher Right After All?", *The Independent Review*, vol. 1, Spring, pp. 111-28.

- Brownstone, David, and De Vany, Arthur (1991), "Zoning, Returns to Scale, and the Value of Undeveloped Land", *Review of Economics and Statistics*, vol. 73, no. 4, November, pp. 699-704.
- Brubaker, Earl R. (1988), "Free Ride, Free Revelation, or Golden Rule", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 93-109.
- Buchanan, James M. (1988), "An Economic Theory of Clubs", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 193-208.
- Buchanan, James M. (1991), "Private Preferences to Public Philosophy: The Development of Public Choice", in his *Constitutional Economics*, Basil Blackwell: Cambridge, Mass.
- Buchanan, James M. (1980), 'Rent Seeking and Profit Seeking', in James Buchanan, Robert Tollison, and Gordon Tullock, eds., *Toward a Theory of The Rent-Seeking Society*, Texas A&M Univeristy Pr: College Station, Texas, pp. 3-15.
- Buchanan, James M. and Tullock, Gordon (1982), "An American Perspective: from 'Markets Work to Public Choice'", in Buchanan, James M., *Constitutional Economics*, The Institute of Economic Affairs: London, pp. 17-28.
- Caplan, Bryan (1998), "Is Democratic Failure a Myth?", (lecture notes — George Mason University), Public Choice Outreach Seminar, Summer, <http://www.gmu.edu/departments/econo-mics/bcaplan/pubcho2.html>.
- Cheung, Steven N. S. (1988), "The Fable of the Bees: An Economic Investigation", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato: Fairfax, Virginia, pp. 279-304.
- Clough, Peter (1996), "Planning and Sustainable Management: A Re-examination of the Peri-urban Problem", *Review of Marketing and Agricultural Economics*, vol. 64, no. 3, December, pp. 277-89.
- Coase, Ronald H. (1974), "The Lighthouse in Economics", *Journal of Law and Economics*, Vol. 17, No. 2, October, pp. 357-76.
- Cobin, John M. (forthcoming 1999), "Allodialism as Economic Policy", *Estudios Publicos*, June/July.

- Cobin, John M. (1997), *Building Regulation, Market Alternatives, and Allodial Policy*, Avebury Press: London.
- Colwell, Peter F. (1997), "Tender Mercies: Efficient and Equitable Land Use Change", *Real Estate Economics*, vol. 25, no. 4, Winter, pp. 525-37.
- Cordato, Roy (1998), "Time Passage and the Economics of Coming to the Nuisance: Reassessing the Coasean Perspective", *Campbell Law Review*, Spring, vol. 20, no. 2.
- Cowen, Tyler (1988), "Public Goods and Externalities: Old and New Perspectives", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 1-26.
- Crecine, John P., Davis, Otto A., and Jackson, John E. (1969), "Urban Property Markets: Some Empirical Results and Their Implications for Municipal Zoning", *Journal of Law and Economics*, Vol. 10, pp. 79-99.
- Dahlman, Carl J. (1988), "The Problem of Externality", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 209-34.
- Demsetz, Harold (1988), "The Private Production of Public Goods", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 111-26.
- DiLorenzo, Thomas J. (1985), "The Origins of Antitrust: An Interest-Group Perspective", *International Review of Law and Economics*, Vol. 5, pp. 73-90.
- Domper, Maria de la Luz, "Estatism Urbano: Plan Regulador de Chacabuco", *Revista Libertad y Desarrollo*, No. 57, September, pp. 6-8.
- Dowall, David E. (1992), "A Second Look at the Bangkok Land and Housing Market", *Urban Studies*, vol. 29, no. 1, February, pp. 25-37.
- Duranton, Gilles, (1997a), "L'analyse économique du zonage urbain: Une breve revue de la litterature" (The Economic Analysis of Urban Zoning: A Brief Review.), *Revue d'Economie Regionale et Urbaine*, no. 2, pp. 171-87.
- Duranton, Gilles (1997b), "Une approche alternative du zonage", *Recherches Economiques de Louvain*, vol. 63, no. 3, third trimester, pp. 271-92.

- Epple, Dennis, Romer, Thomas, and Filimon, Radu (1985), "Community Development with Endogenous Land Use Controls", Carnegie-Mellon GSIA Working Paper Series: 28, March, np.
- Epple, Dennis, Romer, Thomas, and Filimon, Radu (1988), "Community Development with Endogenous Land Use Controls", *Journal of Public Economics*, vol. 35, no. 2, March, pp. 133-62.
- Fischel, William A. (1990), *Do Growth Controls Matter? A Review of Empirical Evidence on the Effectiveness and Efficiency of Local Government Land Use Regulation*, WP87-9, Lincoln Institute of Land Policy: Cambridge, Mass. (<http://www.lincolninst.edu/pubs/abstract.html>), 68 pp.
- Fischel, William A. (1985), *The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls*, Baltimore: Johns Hopkins University Press.
- Fischel, William A. (1980), "Externalities and Zoning", *Public Choice*, vol. 35, pp. 37-43.
- Fischel, William A. (1982), "The Urbanization of Agricultural Land: A Review of the National Agricultural Lands Study", *Land Economics*, vol. 58, pp. 236-256.
- Fischel, William A. (1994), "Zoning, Nonconvexities, and T. Jack Foster's City", *Journal of Urban Economics*, vol. 35, no. 2, March, pp. 175-81.
- Fischel, William A. (1995), "Zoning and the Urban Environment", in Daniel W. Bromley, ed., *Handbook of Environmental Economics*, Basil Blackwell: Oxford.
- Foldvary, Fred (1994), *Public Goods and Private Communities: The Market Provision of Social Services*, Edward Elgar Publishing Co. [The Locke Institute]: Brookfield, Vermont.
- Gilg, A. W., and Kelly, M. P. (1997), "The Delivery of Planning Policy in Great Britain: Explaining the Implementation Gap. New Evidence from a Case Study in Rural England", *Environment and Planning C: Government and Policy*, vol. 15, no. 1, February, pp. 19-36.
- Gyourko, Joseph (1991), "Impact Fees, Exclusionary Zoning, and the Density of New Development", *Journal of Urban Economics*, vol. 30, no. 2, September, pp. 242-56.
- Hale, Dennis (1985), "The Evolution of the Property Tax", *Journal of Politics*, Vol. 47, No. 2, May, pp. 382-404.
- Hayek, Friedrich A. von (1988), *The Fatal Conceit: The Errors of Socialism*, University of Chicago Press: Chicago.

- Hayek, Friedrich A. von (1944), *The Road to Serfdom*, University of Chicago Press: Chicago.
- Hayek, Friedrich A. von (1945), "The Use of Knowledge in Society", *American Economic Review*, Vol. 35, No. 4, September, pp. 519-30.
- Henderson, J. Vernon (1991), "Optimal Regulation of Land Development through Price and Fiscal Controls", *Journal of Urban Economics*, vol. 30, no. 1, July, pp. 64-82.
- Henneberry, David M., and Barrows, Richard L. (1990), "Capitalization of Exclusive Agricultural Zoning into Farmland Prices", *Land Economics*, vol. 66, no. 3, August, pp. 249-58.
- Higgins, Richard S., and Tollison, Robert D (1988), "Life Among the Triangles and Trapezoids: Notes on the Theory of Rent-Seeking", in Charles Rowley, Robert Tollison, and Gordon Tullock, eds., *The Political Economy of Rent-Seeking*, Kluwer Academic Publishers: Boston, pp. 147-57.
- High, Jack C., and Coppin, Clayton A. (1988), "Wiley and the Whiskey Industry: Strategic Behavior in the Passage of the Pure Food Act", *Business History Review*, Vol. 62, pp. 286-309.
- High, Jack C., and Ellig, Jerome (1988), "The Private Supply of Education: Some Historical Evidence", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Pr. /Cato Inst.: Fairfax, Virginia, pp. 361-82.
- Holcombe, Randall G. (1995), *Public Policy and the Quality of Life: Market Incentives Versus Government Planning*, Greenwood Press: Westport, Conn.
- Holway, James M. and Burby, Raymond J. (1990), "The Effects of Floodplain Development Controls on Residential Land Values", *Land Economics*, vol. 66, no. 3, August, pp. 259-71.
- Lenon, MaryJane, Chattopadhyay, Sajal K., and Heffley, Dennis R. (1996), "Zoning and Fiscal Interdependencies", *Journal of Real Estate Finance and Economics*, vol. 12, no.2, March, pp. 221-34.
- Levinson, Arik (1997), "Why Oppose TDRs?: Transferable Development Rights Can Increase Overall Development", *Regional Science and Urban Economics*, vol. 27, no. 3, June, pp. 283-96.
- Maser, Steven M., Riker, William H., and Rosett, Richard N. (1977), "The Effects of Zoning and Externalities on the Price of Land: An Empirical Analysis of Monroe County, New York", *Journal of Law and Economics*, vol. 20, no. 1, April, pp. 111-32.

- McChesney, Fred S. (1987), "Rent Extraction and Rent Creation in the Economic Theory of Regulation", *Journal of Legal Studies*, Vol. 16, January, pp. 101-18.
- Miceli, Thomas J. (1992), "Optimal Fiscal Zoning That Distorts Housing Consumption", *Journal of Real Estate Finance and Economics*, vol. 5 no. 4, December, pp. 323-31.
- Mills, David E. (1989), "Is Zoning a Negative-Sum Game?", *Land Economics*, vol. 65, no. 1, February, pp. 1-12.
- Mises, Ludwig von (1988 [1958]), "Liberty and Property", in *Two Essays by Ludwig von Mises*, The Ludwig von Mises Institute: Auburn, Alabama.
- Mises, Ludwig von (1966 [1949]), *Human Action: A Treatise on Economics*, Third Revised Edition, Contemporary Books, Inc. (Henry Regnery Co.): Chicago.
- Mitchell, William C., and Simmons, Randy T. (1994), *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy*, Westview Press: San Francisco, California.
- Mixon, Frank (1992), "Ronald Coase and the Lighthouse", *Austrian Economics Newsletter*, Spring, pp. 3-4.
- Park, Tae H., and Yoon, Suk Heun (1994), "Urban Land Development and Its Prices: The Effects of Conversion Costs with Redevelopment", *Journal of the American Real Estate and Urban Economics Association*, vol. 22, no. 4, Winter, pp. 603-29.
- Pasha, Hafiz A. (1997), "Suburban Minimum Lot Zoning and Spatial Equilibrium", *Journal of Urban Economics*, vol. 40, no. 1, July, pp. 1-12.
- Pogodzinski, J. Michael and Sass, Tim R. (1990), "The Economic Theory of Zoning: A Critical Review", *Land Economics*, vol. 66, no. 3, August, pp. 294-314.
- Pogodzinski, J. M. and Sass, Tim R. (1994), "The Theory and Estimation of Endogenous Zoning", *Regional Science and Urban Economics*, vol. 24, no. 5, October, pp. 601-30.
- Poole, Robert W., Jr. (1988), "Fire Protection", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 305-25.
- Poole, Robert W., Jr. (1982), ed., *Instead of Regulation*, Lexington Books: Lexington, Mass.
- Poole, Robert W., Jr. (1988), "Leisure and Recreational Services", in Cowen, Tyler, ed., *The Theory of Market Failure: A Critical Examination*, George Mason University Press/Cato Institute book: Fairfax, Virginia, pp. 327-39.

- Rauch, Jonathan (1996), "Eternal Life: Why Government Programs Won't Die", *Reason*, Vol. 28, No. 4 August-September, pp. 17-21.
- Reuter, Frederick H. (1973), "Externalities in Urban Property Markets: An Empirical Test of the Zoning Ordinance of Pittsburgh", *Journal of Law and Economics*, Vol. 16, pp. 313-49.
- Rose, Louis A. (1989), "Urban Land Supply: Natural and Contrived Restrictions", *Journal of Urban Economics*, vol. 25, no. 3, May, pp. 325-45.
- Rothbard, Murray N. (1970 [1962]), *Man, Economy, and State: A Treatise on Economic Principles*, Nash Publ.: Los Angeles.
- Rowley, Charles K. (1997), "Donald Wittman's *The Myth of Democratic Failure*," *Public Choice*, no. 92, pp. 15-26.
- Rowley, Charles K. (1993), *Liberty and the State*, The Shaftesbury Papers, 4, Edward Elgar Publ. Co.: Brookfield, Vt.
- Rowley, Charles K., and Vachris, Michelle (1996), "The Virginia School of Political Economy", in *Beyond Neoclassical Economics*, Fred Foldvary, ed., Edward Elgar Publishing Co.: Brookfield, Vermont.
- Rubin, Jeffrey I., Seneca, Joseph J., and Stotsky, Janet G. (1990), "Affordable Housing and Municipal Choice", *Land Economics*, vol. 66, no. 3, August, pp. 325-40.
- Schansberg, Eric (1996), *Poor Policy: How Government Harms the Poor*, Westview Press: Boulder, Colorado.
- Selgin, George A. (1988), *The Theory of Free Banking: Money Supply Under Competitive Note Issue*, Rowman and Littlefield (Cato Institute): Totowa, New Jersey.
- Shughart, William F. (1990), *Antitrust Policy and Interest-Group Politics*, Quorum Books: New York.
- Siegan, Bernard H. (1990), "Land Use Regulations Should Preserve Only Vital Pressing Government Interests", *CATO Journal*, vol. 10, no. 1 (Spring/Summer).
- Siegan, Bernard H. (1993 [1972]), *Land Use Without Zoning*, Bartholdi & Lazarus: Houston, Texas [originally published by Lexington Books, D. C. Heath and Company].
- Siegan, Bernard H. (1970), "Non-zoning in Houston", *Journal of Law and Economics*, vol. 13, no. 1, April, pp. 71-147.
- Sowell, Thomas (1980), *Knowledge and Decisions*, Basic Books: New York.

- Sowell, Thomas (1995), *The Vision of the Anointed: Self Congratulation as a Basis for Social Policy*, Basic Books: New York.
- Stach, Patricia Burgess (1989), "Real Estate Development and Urban Form: Roadblocks in the Path to Residential Exclusivity", *Business History Review*, vol. 63, no. 2, Summer, pp. 356-83.
- Stigler, George J. (1975), *The Citizen and the State: Essays on Regulation*, University of Chicago Press: Chicago.
- Stigler, George J. (1985), 'The Origin of the Sherman Act', *Journal of Legal Studies*, Vol. 14, January, pp. 1-12.
- Stull, William J., (1975), "Community Environment, Zoning, and the Market Value of Single-Family Homes", *Journal of Law and Economics*, Vol. 18, pp. 535-57.
- Taylor, Leon (1991), "Deceptive Developers, Competitive Zoning Boards, and the Asymmetry of Information", *Review of Regional Studies*, vol. 21, no. 3, Fall, pp. 261-75.
- Tollison, Robert D. (1988), "Public Choice and Legislation", *Virginia Law Review*, Vol. 74, No. 2, March, pp. 339-71.
- Tollison, Robert D. (1982), 'Rent Seeking: a Survey', *Kyklos*, Vol. 35., Fasc. 4, pp. 575-602.
- Tollison, Robert D., and Wagner, Richard E. (1991), "Romance, Realism, and Economic Reform", *Kyklos*, Vol. 44, No. 1, pp. 57-70.
- Tullock, Gordon (1993), *Rent Seeking*, The Shaftesbury Papers, 2, Edward Elgar Publ. Co.: Brookfield, Vermont.
- Tullock, Gordon (1975), 'The Transitional Gains Trap', *The Bell Journal of Economics*, Autumn, pp. 671-8.
- Turnbull, Geoffrey K. (1991), "A Comparative Dynamic Analysis of Zoning in a Growing City", *Journal of Urban Economics*, vol. 29, no. 2, March, pp. 235-48.
- Wager, Jonathan (1995), "Environmental Planning for a World Heritage Site: Case Study of Angkor, Cambodia", *Journal of Environmental Planning and Management*, vol. 38, no. 3, September, pp. 419-34.
- Wittman, Donald A. (1995), *The myth of democratic failure: Why political institutions are efficient*, (American Politics and Political Economy series), University of Chicago Press: Chicago and London.

Zandt, David van (1993), “The Lessons of the Lighthouse: ‘Government’ or ‘Private’ Provision of Goods”, *Journal of Legal Studies*, Vol. 22, No. 1, January, pp. 47-72.

## Endnotes

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<sup>1</sup> Santiago Metropolitan Regulatory Plan (English translation by Centro de Estudios Publicos), pp. 2, 3.

<sup>2</sup> Ibid., pp. 6, 7.

<sup>3</sup> Ibid., pp. 4, 5.

<sup>4</sup> Ibid., p. 11.

<sup>5</sup> Ibid., pp. 12, 14, 15.

<sup>6</sup> *Udell v. Haas* (1968), 21 N.Y. 2d. 463, 235 N.E. 2d 897, 900-901. Cited in Bernard H. Siegan (1993 [1972]), *Land Use Without Zoning*, p. 3.

<sup>7</sup> Bernard H. Siegan (1993 [1972]), *Land Use Without Zoning*, p. xiii [foreword by Ronald H. Coase].

<sup>8</sup> The Austrian school of economics is so-called because its founder Carl Menger, and its chief proponents, including Ludwig von Mises, Friedrich von Hayek, and others, were from Austria (many of whom eventually migrated to the United States).

<sup>9</sup> See, for example, the following theoretical and empirical work, much of which emphasizes market solutions to failed public policy: John M. Cobin, *Building Regulation, Market Alternatives, and Allodial Policy*, Fred Foldvary, *Public Goods and Private Communities: The Market Provision of Social Services*, Friedrich A. von Hayek, *The Fatal Conceit: The Errors of Socialism*, Randall G. Holcombe, *Public Policy and the Quality of Life: Market Incentives Versus Government Planning*, William C. Mitchell and Randy T. Simmons, *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy*, Eric Schansberg, *Poor Policy: How Government Harms the Poor*, and sections in George A. Selgin, *The Theory of Free Banking: Money Supply Under Competitive Note Issue*. Complete citations are listed under the references section.

<sup>10</sup> Consider the following theoretical work: Peter J. Boettke, “Hayek’s Serfdom Revisited: Government Failure in the Argument Against Socialism”, Peter J. Boettke, “James M. Buchanan and the Rebirth of Political Economy”, Earl R. Brubaker, “Free Ride, Free Revelation, or Golden Rule”, James M. Buchanan, “An Economic Theory of Clubs”, James M. Buchanan, “Private Preferences to Public Philosophy: The Development of Public Choice”, James M. Buchanan and Gordon Tullock, “An American Perspective: from ‘Markets Work to Public Choice’”, Carl J. Dahlman, “The Problem of Externality”, Kenneth D. Goldin, “Equal Access vs. Collective Access: A Critique of Public Goods Theory”, Richard S. Higgins and Robert D. Tollison, “Life Among the Triangles and Trapezoids: Notes on the Theory of Rent-Seeking”, Fred S. McChesney, “Rent Extraction and Rent Creation in the Economic Theory of Regulation”, Robert W. Poole, *Instead of Regulation*, Jonathan Rauch, “Eternal Life: Why Government Programs Won’t Die”, Charles K. Rowley, *Liberty and the State*, William F. Shughart, *Antitrust Policy and Interest-Group Politics*, Thomas Sowell, *The Vision of the Anointed: Self Congratulation as a Basis for Social Policy*, Robert D. Tollison, “Public Choice and Legislation”, Robert D. Tollison, “Rent Seeking: a Survey”, Robert D. Tollison and Richard E. Wagner, “Romance, Realism, and Economic Reform”, Gordon Tullock, *Rent Seeking*, and Gordon Tullock, “The Transitional Gains Trap”. Complete citations are listed under the references section.

<sup>11</sup> For example, the following empirical work provides support for the critique of market failure theory: Donald J. Bourdreaux and Robert B. Ekelund, Jr., “The Cable Television Consumer Protection and Competition Act of 1992: The Triumph of Private Over Public Interest”, Steven N. S. Cheung, “The Fable of the Bees: An Economic Investigation”, Clayton A. Coppin and Jack High, “Entrepreneurship and Competition in Bureaucracy: Harvey Washington Wiley’s Bureau of Chemistry, 1883-1903”, Ronald H. Coase, “The Lighthouse in Economics” [also cf. David Van Zandt, “The Lessons of the Lighthouse: ‘Government’ or ‘Private’ Provision of Goods” and Frank Mixon, “Ronald Coase and the Lighthouse”], Harold Demsetz, “The Private Production of Public Goods”, Jerry Ellig, “The Baseball Anomaly and Congressional Intent”, Jack C. High and Clayton A. Coppin, “Wiley and the Whiskey Industry: Strategic Behavior in the Passage of the Pure Food Act”, Jack C. High and Jerome Ellig, “The Private Supply of Education: Some Historical Evidence”, Thomas K. McCraw, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn*, Robert W. Poole, “Fire Protection”, and Robert W. Poole, “Leisure and Recreational Services”. Complete citations are listed under the references section.

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- <sup>12</sup> Rothbard also adds: “In the market, the fittest are those most able to serve the consumers. In government, the fittest are either (1) those most able at wielding coercion or (2) if bureaucratic officials, those best fitted to curry favor with the leading politicians or (3) if politicians, those most adroit at appeals to the voting public”.
- <sup>13</sup> Holcombe says: “In a market economy, the profit motive gives people an incentive to act on this information [about prices and production efficiency] and change their prices accordingly without consulting anyone. Then, others in the economy can use this information to make their own decisions about resource allocation...To take advantage of all the information like this in a centrally planned economy, everyone would have to be constantly passing information up the chain of command to the central planners, who then would have to modify the central plan accordingly and pass the information back down to those who need it. The problem with central planning is there is too much information for the central planners to digest and comprehend, and even if they could receive all this information, they would be unable to use it as effectively as the people who originally had it to begin with...How would a central planner decide which potential innovations are worth pursuing? In these areas, where market participants have specific information on the potential value of innovations, markets fare far better than central planning. Hayek’s insights on the workings of the market are critical to understanding why central planning failed in socialist countries and why there are perils in trying to use government planning to enhance the quality of life. Every individual has certain specific knowledge that is difficult to share with the central planner and that would be difficult to use even if the information were available.”
- <sup>14</sup> Santiago Metropolitan Regulatory Plan (English translation), op. cit., p. 11.
- <sup>15</sup> See Peter J. Boettke (1997), “James M. Buchanan and the Rebirth of Political Economy”, in Pressman, Steve, and Holt, Ric, eds., *Against the Grain: Economic Dissent in the 20th Century*, p. 10. [The idea was taken from the manuscript version, New York University, 1996.]
- <sup>16</sup> Siegan undertook the study of non-zoning in Houston (and other cities) during his tenure as a Research Fellow in Law and Economics at the University of Chicago Law School.
- <sup>17</sup> Additionally, eliminating zoning would achieve public finance benefits, as Siegan notes on page 127: “One way to help improve local tax revenues is to eliminate zoning”.
- <sup>18</sup> *People v. Stover* (1963), 12 N.Y. 2d. 462, 191 N.E. 2d 272. Cited in *ibid.*, p. 145.
- <sup>19</sup> Siegan further comments: “Property ownership is not a privilege exclusively of the wealthy. Similarly, the overwhelming number of builders and contractors are small-business men. The results of the zoning elections should demolish forever the myth that less affluent property owners seek zoning controls to protect their interests.”
- <sup>20</sup> See Siegan, pp. 32-7, 41ff [showing that restrictive covenants work].
- <sup>21</sup> See Siegan, pp. 3, 8, 18, 20, 69 (planned chaos, cf. 70), 124, 157, 164, 195 [knowledge problems].
- <sup>22</sup> Indeed, Hayek’s important work is not even listed among Siegan’s references. However, he does list other Austrian works: Mises’s *Bureaucracy* and Rothbard’s *Power and Market*.
- <sup>23</sup> See Siegan, pp. 6, 8, 9, 10, 12, 13, 65, 78, 89, 126-9, 145, 149, 150, 152, 155, 161, 165, 167, 195-9, 221, 223, 227, 231, 234 [self-interest motive and public choice problems like vote seeking, rent seeking, venality, interest groups, the transitional gains trap, etc.], and pp. 166, 187 [government failure].
- <sup>24</sup> For example, see Siegan, pp. 12, 136, 150, 232 (civil servant, altruistic/public interest, or romantic view of political actors), 135 (supposed effectiveness of antitrust laws), 126-7, 130, 194 (encourages budget increase motive of political actors), 163 (“compromise” should be seen in terms of logrolling or rent seeking), 167 (failure to see the American Law Institute as just another rent seeking SIG), 171 (seeming acceptance of judicial paternalism), 172 (suggests infrequency of venality), 188 (suggests that the failures and “absurdities” of planning are accidental rather than successes of SIGs), 214 (failure to recognize judicial distortions as intentional and serving private interests), 223 (failure to recognize the natural outcome of a feudal real property system), 226-7 (failure to see that private interests dominate public interests).
- <sup>25</sup> Note for readers of the Spanish translation: The definitions of “allodial” in the larger English dictionaries like *Oxford’s* or the various legal resources provide the most accurate rendering. The single larger Spanish dictionary I consulted under ‘alodial’ gave its definition as “patrimony”.

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This is not accurate in the sense that allodial is used in this paper since a patrimony as either an endowment from the church or as an inheritance from an ancestor does not convey the absolute quality of ownership rights.

<sup>26</sup> Particularly if civil procedure is privatized. See Bruce L. Benson (1990), *The Enterprise of Law: Justice Without the State* Benson, Pacific Research Institute: San Francisco.

<sup>27</sup> Zoning affects private property rights and thus significantly restricts individual liberty. In Friedrich von Hayek's view, relinquishing control of productive property to the state destroys liberty (Hayek 1944, pp. 103-104). Ludwig von Mises remarks that private property is an essential feature of freedom that gives consumers "supremacy in all economic affairs" (Mises 1988/1958, p. 39) Charles Rowley notes that, "The natural right to property is simply another name for the freedom to act according to one's own choices, defining allowable acts of transformation of the material world" (Rowley 1993, p. 73). Siegan likewise argued that zoning curtails individual freedom and caters to well-organized SIGs.

Modern feudal policy is characteristically restrictive. Unlike most personal property (which is held absolutely), real property owners are not permitted to use it any way they wish. Their range of options may be wide, but it is not unlimited. Failure to pay real property taxes or violating regulatory rules will likely result in the real property being transferred to the state which holds the superior right to it much in the same way as medieval kings held a superior right to all real property in their realms (Cobin 1997, p. 116). Note that Feudalism is and was a system of real property and should not be confused with *manorialism*, which often accompanied it in the middle ages. Manorialism is a system where the superior has rights to demand personal services from his subordinates, even to the point of controlling key aspects of their lives — almost like slavery (Cobin 1999).

It is also possible to have *quasi-allodial* policy, as was manifest in the ante-bellum United States (1776-1865), where only trifling and occasional taxes or regulations were ordinarily imposed on real property. Under this policy, real property would not be held in allodium technically, but it would be closer to allodialism than feudalism to warrant special distinction (Cobin 1997, pp. 116-9, 144, 147, 152, 165-9, 173, 203-5). There has been considerable discussion of allodial policy in American history. (Note that the quasi-allodial real property policy of the ante-bellum period in the United States was rather anomalous in world history.)

It is possible under allodialism that developers would buy large tracts of land and then employ restrictive covenants to preclude commonly construed social and economic bads (e.g., drug laboratories, prostitution houses, nuclear reactors, airports, etc.). Such restrictions would augment property values because the restriction applies to bads. Conversely, any restriction applied to goods would reduce the opportunities available from real property and thus also reduce its market value. Of course, if there are no restrictive covenants on adjoining tracts, parcels furthest from the unrestricted land will command higher market prices. (Border parcels would be riskier, being the least secure from negative external effects.) Unrestricted vacant land would have a lower price, interesting those who wish to self-insure against negative external effects, and its buyers would suffer the consequences (without legal recourse) of any unforeseen adversity arising from that decision. Of course, should restrictive covenants be applied to adjacent real property in the future, those buyers would receive a windfall. The market will likely provide a wide variety of real property alternatives to satisfy the wide range of consumer risk preferences, just as it does with other goods and services.

Therefore, allodial policy would be a superior policy alternative to modern feudal policy and its components like zoning. The existence of quasi-allodialism in the ante-bellum United States, implies that at least quasi-allodialism is a practical real property policy option, provided that contracts restrictive covenants in particular are strictly enforced.

Since state tax revenues would decline by switching to allodial policy, public choice theory suggests that the shift will be difficult and unlikely unless an incentive can be found to favorably motivate political actors. Nevertheless, allodial policy would not preclude a tax shift to other sources, and certainly would not discourage privatization measures to eliminate the need for those taxes. Moreover, eliminating property taxes could gain wide support, since both the right and the left dislike them. The right is disposed to lower taxes generally while the left dislikes taxes that adversely or disproportionately affect the elderly and the poor (Hale 1985, pp. 382-4, 404). However, the exact details of accomplishing public finance after the transition to allodial policy is a topic for another paper.

<sup>28</sup> See Domper, Maria de la Luz (1996), "Estatismo Urbano: Plan Regulador de Chacabuco", *Revista Libertad y Desarrollo*, No. 57, September, pp. 6-8. (Translation: "Urban Statism: The Chacabuco Regulatory Plan", *Liberty and Development Magazine*).

<sup>29</sup> See Charles K. Rowley (1993), *Liberty and the State*, pp. 52, 88 citing Richard E. Wagner (1987), "Parchment, Guns and the Maintenance of Constitutional Contract", in C. K. Rowley, ed., *Democracy and Public Choice: Essays in Honor of Gordon Tullock*, Basil Blackwell: Oxford, pp. 105-21; Richard E. Wagner (1988), "Agency, Economic Calculation and Constitutional Construction", in C. K. Rowley, R. D. Tollison and G.

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Tullock, eds., *The Political Economy of Rent-Seeking*, Kluwer Academic Publishers: Boston, pp. 423-446; and Richard E. Wagner (1993), *Parchment, Guns and Constitutional Order*, Shaftesbury Paper Number 3, Edward Elgar Publishing: Aldershot and Brookfield, Vermont.